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Presidential Documents

Title 3—

The President

Proclamation 8014 of May 11, 2006

Peace Officers Memorial Day and Police Week, 2006

By the President of the United States of America

A Proclamation

Every day, our Nation's dedicated law enforcement officers put themselves at risk to keep their fellow Americans safe. As we observe Peace Officers Memorial Day and Police Week, we pay tribute to the courageous men and women who have lost their lives protecting us, and we honor all those who wear the badge and keep the peace.

The law enforcement officers of today carry on the long and proud tradition of service built by their predecessors. With valor and distinction, these citizens stand watch over us all and work hard to fight crime, violence, and terrorism in communities across America. We are a country built on the rule of law, and our Nation is grateful to the men and women who enforce those laws and uphold the fairness and peace we treasure.

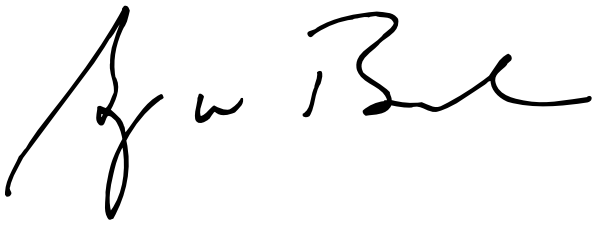
Law enforcement officers deserve our appreciation for the work they do, and citizens fulfill an important civic responsibility by supporting their work to protect our communities. Through organizations like Citizen Corps, men and women are assisting their local police force, fire department, and neighborhood watch program. More information about Citizen Corps volunteer opportunities can be found at citizencorps.gov. I encourage all Americans to help fight crime in their communities by volunteering and participating in crime prevention organizations. By working together, we can achieve a better and more secure future for our children and grandchildren.

On Peace Officers Memorial Day and during Police Week, we honor the heroism of all our law enforcement officers, especially those who have given their lives so that others might live. They performed their jobs with extraordinary distinction, and a proud and grateful Nation will always remember their service and sacrifice. We ask God's blessings for the families and friends they left behind.

By a joint resolution approved October 1, 1962, as amended, (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week,'' and by Public Law 103–322, as amended, (36 U.S.C. 136), has directed that the flag be flown at half staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2006, as Peace Officers Memorial Day and May 14 through May 20, 2006, as Police Week. I call on all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



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Rules and Regulations

Federal Register
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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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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2640

RINs 3209–AA00 and 3209–AA09

Revisions to the Executive Branch Confidential Financial Disclosure Reporting Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule amending the executive branch regulation regarding confidential financial disclosure. The amendments, once effective January 1, 2007, will change the dates of the annual reporting period; change the annual filing date; clarify the criteria for designating confidential filers; narrow the information required to be reported; create a separate ''report contents'' section for confidential reports; and highlight an existing provision regarding alternative financial conflict of interest review systems. In addition, the final rule includes new examples to illustrate these changes, and some technical amendments. This rule also makes one minor conforming amendment to the OGE branchwide financial interests regulation.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, Associate General Counsel, or Amy E. Braud, Attorney-Advisor, Office of Government Ethics; Telephone: 202–482–9300; TDD: 202–482–9293; Fax: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Analysis of Amendments

OGE received comments from 13 executive branch agencies and one individual Federal employee about the proposed amendments that were published at 70 FR 47138–47147 (August 12, 2005). As discussed below, we have incorporated some of these comments into this final rule.

A. Reporting Period: We have decided to finalize our proposal to change the annual confidential financial disclosure reporting period, specified in 5 CFR 2634.903(a) and 2634.908(a), from a fiscal year to a calendar year cycle.

One agency suggested that OGE allow each agency to establish its own reporting period for its employees. We have not adopted this suggestion because we believe that it is important to maintain consistency in the application of the executive branchwide confidential financial disclosure system.

Two agencies expressed concern about the burden of having to review both incumbent OGE Form 450 Confidential Financial Disclosure Reports and incumbent SF 278 Executive Branch Personnel Public Financial Disclosure Reports during the first half of the calendar year. Although we are sensitive to this concern, we also believe that adopting a calendar year reporting period for annual confidential reports would make filing more convenient for filers because they would be able to rely on their year-end financial statements to gather the required data. A calendar year reporting period also is more consistent with the public financial disclosure reporting system. Thus, we believe that, on balance, adopting a calendar year confidential annual reporting period is warranted.

In order to transition to a calendar year reporting period, we expect to waive the forthcoming fiscal year 2005 (10/01/05–09/30/06) annual confidential financial disclosure report filing season, with reports normally due at the end of October 2006. Instead, OGE will require confidential filers to submit their next annual reports, using the forthcoming new reporting format, by February 15, 2007. This first annual confidential financial disclosure report filing under the new system will cover the 15-month period from October 1, 2005 to December 31, 2006 to avoid a gap in reporting period coverage. Subsequent annual reports will cover only the preceding calendar year. New entrant confidential filers will continue to file the current OGE Form 450 reports for the remainder of 2006, but starting January 1, 2007, new entrants will start using the new reporting format with the modified 450 report form.

B. Filing Date: Our proposal to change the annual filing date for incumbent filers from October 31 to February 15 engendered a wide range of comments. Four agencies believed that a filing deadline later than February 15 would be more appropriate, in order to allow filers more time to collect and compile their year-end tax forms (*e.g.,* Form 1099s), which typically are not received until about February 1. Conversely, two agencies expressed a preference for an earlier filing date in order to permit their reviewers more time to review the annual incumbent OGE Form 450 confidential reports before having to collect their employees' annual incumbent SF 278 public reports on May 15. One agency, at which the OGE Form 450s and the SF 278s are reviewed by separate ethics officials, suggested adopting May 15 as the filing deadline for both reports. Another suggested that OGE allow each agency to establish its own filing deadline for its employees.

We have decided to adopt our proposal to set February 15 as the annual incumbent report filing date because we believe that it best strikes the balance between affording filers time to compile their year-end financial data and giving reviewers adequate time to finish reviewing their agencies' OGE Form 450s before the SF 278 annual report due date of May 15. Although we understand that year-end tax documents are not typically received until the beginning of February, filers generally do not need these tax documents in order to complete their OGE Form 450s. Unlike the SF 278 public financial disclosure report, the OGE Form 450 confidential report (for both the current and new form) does not require the filers to report any dollar values. Therefore, filers' year-end statements from banks, brokers, and investment managers, which typically are received in early January, generally will provide all of the information necessary to acquire a ''snapshot'' of their holdings on December 31, and to complete their OGE Form 450s by February 15.

We have not adopted the suggestion that we allow each agency to establish its own filing deadline because, as stated above, we believe that it is important to maintain consistency in the application of the executive branchwide confidential financial disclosure system. We also have not adopted the suggestion to set May 15 as

the filing deadline because we believe that this would cause difficulties for most agencies which process the SF 278s, and because we believe that OGE Form 450 filers generally do not need more than 45 days to complete their reports after the close of the reporting period.

C. Termination Reports Not Required: We are adding new paragraph (e) to § 2634.903 to make clear that, unlike a public filer, a confidential filer leaving his filing position is not required to file a termination report. We received no substantive comments on this proposal.

D. Confidential Filer Definition: We received five comments supporting our proposal to amend § 2634.904, the provision that defines a confidential filer, by incorporating into it the filing exclusion provisions currently found at § 2634.905(a) and (b). All of these commenters agreed with our belief that, because the exclusion provision helps to determine who is required to file, it would be better to incorporate it into the definition of a confidential filer.

One agency suggested that we retain the provision, currently found at § 2634.905(b)(2), that allows an agency to exclude from the filing requirement an individual the duties of whose position involve such a low level of responsibility that any potential conflict would have an ''inconsequential effect'' on the Government's integrity. We declined to incorporate the precise language of this provision into proposed § 2634.904 because we believe that its concept is adequately expressed elsewhere in the section.

It is difficult to imagine a situation in which an employee whose duties involve a very low level of responsibility would be required to file an OGE Form 450. The definition of ''filer'' at new § 2634.904(a)(1)(i) (and current §§ 2634.904(a)(1) and 2634.905(b)(1)) states clearly that an employee should only be designated a filer if the agency determines that the duties and responsibilities of his position require him to exercise ''significant judgment,'' and to do so without ''substantial supervision and review.'' Even if, hypothetically, an agency could determine that an employee with a very low level of responsibility exercises significant judgment, and does so without substantial supervision and review, new § 2634.904(b) retains the agency ethics official's authority to exclude that individual from the filing requirement on the ground that the duties of his position ''make remote the possibility that [he] will be involved in a real or apparent conflict of interest.'' Thus, we continue to believe that the language contained in current § 2634.905(b)(2) does not meaningfully contribute to an agency's determination whether a particular employee should file a confidential report.

Another agency suggested that we require each agency to publish the position titles that it designates as filing positions, and to state the criteria upon which this determination was made. We have not adopted this suggestion because we believe that this requirement would be unduly burdensome on agency ethics officials, and because we have not identified any policy reason for requiring that this determination be made publicly.

One agency suggested that we add an example to illustrate new § 2634.904(a)(1)(ii), regarding requiring an employee to file an OGE Form 450 in order ''to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee.'' We have not adopted this suggestion because this provision, which is identical to current § 2634.904(a)(2), itself contains an example (''Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.'').

E. Alternative Procedures: By renaming § 2634.905 ''Use of Alternative Procedures'', OGE hopes to highlight this provision, which permits an agency to seek OGE approval to use an alternative system in lieu of requiring employees to file an OGE Form 450 or an OGE Optional Form 450–A Confidential Certificate of No New Interests (Executive Branch). One agency suggested that we clarify that any alternative procedure established under this provision would apply only to those employees who meet the definition of a ''confidential filer'' in § 2634.904. We have not adopted this suggestion because we do not believe that it is necessary. We remind agency ethics officials that any procedure used as an alternative to filing would apply only to designated filers.

F. Report Contents:

a. Diversified Mutual Funds: We have decided to adopt as final our proposal to eliminate the requirement for confidential filers to report diversified mutual funds because 5 CFR 2640.201(a) exempts these financial interests from the conflict of interest law on personal financial interests (18 U.S.C. 208). Also as proposed, the regulation will continue to require filers to report all sector mutual funds which they, their spouses, or their dependent children own.

Three agencies expressed concern that these provisions will cause confusion and lead to underreporting on the part of filers, who often have difficulty distinguishing between diversified funds and sector funds. Similarly, one agency suggested that we incorporate or cross-reference the definition of ''diversified'' at 5 CFR 2640.102(a) in order to help filers better distinguish between diversified funds and sector funds.

We are aware that some filers may need assistance to determine whether a particular mutual fund is diversified. We continue to believe, however, that the burden of providing such assistance to filers is outweighed by the benefit to filers of not having to report most of their mutual fund holdings. To the extent that agencies are concerned about underreporting, we suggest that they encourage their filers to report or seek advice about any funds that they are not certain are ''diversified.'' In this final rule, we have also accepted the suggestion that we incorporate the definition of ''diversified'' into § 2634.907(c)(3)(vii), and we have cross-referenced, in § 2634.907(c)(2)(viii), the definition of ''sector mutual fund'' at 5 CFR 2640.102(q). Finally, we plan to issue updated advice to reviewing officials about how to determine whether a particular mutual fund is ''diversified.''

One agency suggested that, instead of exempting diversified mutual funds from the reporting requirement, we simply require the reporting of *any* mutual fund holding valued at over $50,000. Because one regulatory exemption, 5 CFR 2640.201(a), exempts diversified mutual funds regardless of value, and a second, § 2640.201(b)(2)(i), exempts sector mutual funds valued at $50,000 or less, this agency argues that there is no reason to report *any* mutual fund valued at $50,000 or less. Adopting a $50,000 reporting threshold for *all* mutual funds would eliminate the need for filers to distinguish between diversified funds and sector funds while still dramatically reducing the number of mutual funds that would be reportable.

We have not adopted this recommendation in this final rule. Because the regulatory exemption for interests in sector funds applies only when the *aggregate* market value of an employee's interests in sector funds affected by the particular matter is $50,000 or less, an employee who owns interests in more than one fund concentrating in the same sector may have a disqualifying financial interest that would not be required to be reported on the OGE Form 450 under

this suggestion. Accordingly, we believe that it would be unwise to establish a $50,000 reporting threshold for all mutual fund interests.

One agency also expressed concern that the second example after proposed § 2634.907(c)(3) describes a mutual fund as ''widely diversified,'' rather than ''diversified.'' We agree that the term ''widely diversified'' should not appear in this example. The term ''widely diversified'' is used to determine whether a particular asset is an excepted investment fund (EIF), rather than to determine whether an asset is a diversified mutual fund. Thus, we have modified the wording of this example in the final rule by deleting the word ''widely.''

b. Liabilities: We are adopting as final our proposal to eliminate the requirement to report student loans, credit card debts, and loans from financial institutions which are based on terms generally available to the public because these types of loans do not present conflicts of interest for most confidential filers.

One agency commented that these liabilities should not be excepted from the filing requirement because they *can* raise significant conflicts of interest for the employees of *some* agencies. We note that, to the extent that an agency needs additional information in order to perform a conflict of interest review, that agency can request the authority to collect this information supplementally, in accordance with § 2634.901(b).

c. Type of Income: We are also finalizing our proposal to eliminate the requirement to report the type of income earned on reportable assets. The two agencies that commented on this proposal both agreed with our determination, based on experience with the confidential disclosure system over the years, that this information does not add sufficient value to the conflict of interest review process, executive branchwide, to justify continuation of the resulting burden on filers and their agencies.

d. Dates of Agreements and Arrangements: We also are adopting our proposal to eliminate the requirement to report the dates on which agreements and arrangements, other than for future employment, were entered. One agency commented that we should continue to require filers to report these dates because this information can help agency ethics officials determine whether the employee was in a particular ''covered relationship'' at a particular point in time. We are sensitive to this concern, but our understanding is that this information does not contribute to the conflict of interest analysis conducted by most reviewing officials.

Many filers do not remember, and have difficulty acquiring information about, the dates on which they entered into long-term arrangements such as pension plans sponsored by former employers. In contrast, a reviewing official who needs this information in a particular case simply can seek it from the filer. Alternatively, agencies that have a need for this information in all or most cases can request the authority to collect this information from their employees supplementally, in accordance with § 2634.901(b). Thus, we continue to believe based on our experience with the confidential system that the burden of reporting this information outweighs its usefulness on an executive branchwide basis in determining conflicts of interest.

Another agency suggested that we add an example to this subsection illustrating the reporting of an employee's continued participation in a Teachers Insurance and Annuity Association—College Retirement Equities Fund (TIAA/CREF) pension plan. We have not accepted this suggestion because there is no special method for reporting a continuing agreement regarding a TIAA/CREF pension. It should be reported in the same manner as any other continuing participation in a pension plan.

e. Report Form: OGE also will publish in the **Federal Register** a second round paperwork notice of the proposed modified version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report. The new proposed report form will reflect pertinent regulatory changes being made in this final rule. It also has been modified in large measure based on the significant comments received in response to the original first round paperwork notice OGE published at 70 FR 47204–47206 (August 12, 2005), the same day OGE published the proposed rule amendments on confidential disclosure (see 70 FR 47138–47147). Based on the paperwork comments, OGE decided to publish an additional first round paperwork notice (see 71 FR 13848–13850 (March 17, 2006)), in which OGE announced important changes to the proposed modified reporting format in response to the comments on the original notice and provided another 75-day comment period for the public and the agencies. As noted, OGE will separately publish a second round paperwork notice reflecting the comments received in response to both first round notices, once the additional comment period closes. At that time, OGE will also seek three-year clearance from the Office of Management and Budget (OMB) under the Paperwork Reduction Act approval for the OGE Form 450 form as proposed for modification. OGE plans to make effective on January 1, 2007 both the final regulatory amendments in this rulemaking and the mandatory use of the new modified OGE Form 450, once approved by OMB. OGE already has requested from OMB a one-year extension of the Paperwork Reduction Act clearance for the current version of the 450 form to allow its continued use by new entrant confidential filers for the remainder of 2006. See 71 FR 16158–16160 (March 30, 2006). In the future, OGE will make available an electronically fillable version of the new form. We also will allow employees to sign the form digitally, and to file it electronically.

G. Other Amendments Considered:

a. Special Government Employees: One commenter expressed the view that proposed § 2634.904 was unclear as to whether agency ethics officials would continue to have the authority to exclude special Government employees (SGEs) from the confidential filing requirements. This is because current § 2634.905 provides that any individual or class of individuals ''including special Government employees'' may be excluded from the filing requirement, while new § 2634.904(b) as proposed did not include this specific reference to SGEs. We have revised the wording of that provision in this final rule to add specific reference to SGEs.

Two agencies also expressed confusion about the filing requirements for SGEs. Section 2634.903(b) requires SGEs to file new entrant reports, but § 2634.903(a) excludes them from the requirement to file incumbent reports. Thus, these commenters ask whether an SGE who serves on an appointment of over one year (without being reappointed) is required to file a second nominee OGE Form 450 at any point in time.

As we stated in DAEOgram DO–03–021 of October 23, 2003 (at p. 3 thereof), which is posted on OGE's Web site (*http://www.usoge.gov*), ''[a]n SGE confidential filer is never required to file an annual OGE Form 450. Instead, the SGE confidential filer will file a new entrant report either upon his reappointment or redesignation as an SGE or upon the anniversary of his initial appointment.'' In order to avoid the administrative burden of managing these potentially numerous due dates, OGE recommended in that DAEOgram that agencies use May 15 for their SGE report filing anniversary date. Choosing this date gives confidential OGE Form

450 SGE filers the same reporting deadline as public SF 278 SGE filers. It also places all SGE reporting deadlines on the same date as all non-SGE annual public report filers. If an agency chooses not to implement this recommendation, then it will collect new entrant OGE Form 450s from its SGEs on the variously occurring anniversary/reappointment dates throughout each year.

Thus, in this final rule we have not modified § 2634.903 in this regard.

b. Reporting Underlying Holdings of Investment Vehicles: The proposed rule included a note to § 2634.907(c)(1) and (c)(2) clarifying that the underlying holdings of certain investment vehicles must be reported separately. Although we intended to duplicate in this note a provision that currently appears within the text of § 2634.301(a), we had proposed slightly revising its language in the proposed rule amendment. Because one agency noted that the language as proposed might make this note's meaning less clear, we have modified the note to reflect the exact language contained in § 2634.301(a).

c. Gift waiver: Pursuant to § 2634.304(f) of 5 CFR, OGE has the authority to issue to a public filer a waiver from the requirement to report certain gifts. One agency has suggested that we also apply this provision to confidential filers. We have not accepted this recommendation because we do not believe that such an amendment is needed. The waiver provision was promulgated in order to safeguard the personal privacy of individuals who present personal gifts to public filers in particular circumstances (such as upon the occasion of the filer's marriage). Because the OGE Form 450 is not publicly available, this provision is not needed for confidential filers.

d. Exception to Requirement to Report Spouse's or Dependent Child's Assets and Income: Section 2634.907(h)(2) as proposed, which is now being adopted as final, provides an exception to the general requirement that a filer report his or her spouse's and dependent child's assets and investment income. One commenter suggested that we add an example to illustrate a scenario in which this exception properly would be applied. We have not accepted this suggestion because this provision is used so infrequently that we do not believe that it justifies the addition of a specific example.

e. Discussing Assets and Investment Income Separately From Noninvestment Income: New § 2634.907(b), both as proposed and as being adopted as final in this rulemaking, lists the kinds of ''noninvestment'' (*i.e.,* ''earned'') income that must be reported on the confidential OGE Form 450. New § 2634.907(c), also both as proposed and as final, lists the kinds of ''assets and investment income'' that must be reported on the confidential report. This reflects a change from current § 2634.301(b), which will now just apply for public reports, that lists the ''types of property reportable'' in a single paragraph. We believe that separating this provision into two paragraphs for confidential reporting makes it clearer, whether or not we ultimately decide that investment and noninvestment income should be reported in separate sections of the amended OGE Form 450. Thus, we have not accepted one agency's recommendation that we recombine these provisions into a single paragraph and instead are adopting them as final as proposed.

Finally, as referenced in the proposed rule preamble, OGE is making in this final rule a couple of additional conforming cross-references amendments, one in part 2634 and one in part 2640 (personal financial interests) of this chapter, in order to reflect the renumbering of certain sections in part 2634. Moreover, in this final rule, OGE has corrected a few minor errors in amendatory paragraphs of the proposed rule and the regulatory text as proposed to reflect the correct revisions that OGE intended.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees and members of their immediate families.

Paperwork Reduction Act

As noted above, OGE will separately publish in the **Federal Register** a new second round notice under the Paperwork Reduction Act (44 U.S.C. chapter 35) for the information collection requirements in this regulation—a proposed modified OGE Form 450 Executive Branch Confidential Financial Disclosure Report form (OMB control #3209–0006) to reflect the pertinent changes made in this final rule. At that time, OGE will also seek three-year paperwork clearance from OMB for the modified form, which would be used starting in 2007. As explained in the preamble above, OGE has previously published two first round notices for the proposed modified version of the OGE Form 450 and has considered, and is continuing to consider, the public comments received on the proposed new version of the form. See 70 FR 47204–47206 (August 12, 2005) and 71 FR 13848–13850 (March 17, 2006). In addition, as also noted above, OGE has already requested from OMB a one-year extension of the paperwork clearance for the current version of the OGE Form 450, to allow its continued use by new entrant filers (including SGEs filing upon their reappointment/redesignation or appointment anniversary dates) for the remainder of 2006. See 71 FR 16158–16160 (March 30, 2006). OGE plans to dispense with the annual fiscal year (FY06) incumbent report filing using the current version of the OGE Form 450 that is otherwise due on October 31, 2006. Instead, we will require annual filers to file the new form by the new filing deadline of February 15, 2007. This first annual filing using the new OGE Form 450 will reflect a 15-month reporting period (October 2005–December 2006). Thereafter, the new annual confidential reports due each February will just cover the prior calendar year.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this amendatory rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and submitted a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document was sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating these final rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. In

addition, these amendments have been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to these final revisions, which are being codified in a revised 5 CFR part 2634, notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering this amended regulation, since the revisions only clarify and improve the confidential financial disclosure system. Finally, this rulemaking is not economically significant under the Executive order and will not interfere with State, local or tribal governments.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2640

Conflict of interests, Government employees.

Approved: May 5, 2006.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2640 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

■ 2. Section 2634.102 is amended by revising paragraph (b) to read as follows:

§ 2634.102 Purpose and overview.

* * * * *

(b) The rules in this part govern both public and confidential (nonpublic) financial disclosure systems. Subpart I of this part contains the rules applicable to the confidential disclosure system.

Subpart B—Persons Required To File Public Financial Disclosure Reports

§ 2634.203 [Amended]

■ 3. Section 2634.203 is amended by removing the citation ''§ 2634.904(d)'' in the last sentence of paragraph (b) and adding in its place the citation ''§ 2634.904(a)(4)''.

§ 2634.204 [Amended]

■ 4. Section 2634.204 is amended by removing the citation ''§ 2634.904(b)'' at the end of the last sentence of paragraph (b) and adding in its place the citation ''§ 2634.904(a)(2)''.

Subpart C—Contents of Reports

■ 5. The heading for Subpart C is revised to read as follows:

Subpart C—Contents of Public Reports

§ 2634.301 [Amended]

■ 6. Section 2634.301 is amended by:
■ a. Removing the phrase ''part, whether public or confidential,'' in the first sentence of paragraph (a) and adding in its place the word ''subpart'';
■ b. Removing the beginning phrase ''In the case of public financial disclosure reports, the'' in the second sentence of paragraph (a) and adding in its place the word ''The'';
■ c. Removing the phrase ''on public financial disclosure reports'' in the introductory text of paragraph (d);
■ d. Removing the phrase '', and if he is a public filer the amount,'' in the fourth sentence of Example 1 following paragraph (e)(7) and adding in its place the phrase ''and the amount''; and
■ e. Removing the word ''also'' and the ending phrase ''if she is a public filer'' in the second sentence of Example 3 following paragraph (e)(7).

§ 2634.302 [Amended]

■ 7. Section 2634.302 is amended by:
■ a. Removing the phrase ''part, whether public or confidential,'' in the introductory text of paragraph (a)(1) and adding in its place the word ''subpart'';
■ b. Removing the phrase ''in the case of public financial disclosure reports'' in the introductory text of paragraph (a)(1);
■ c. Removing the phrase ''if he is a public filer'' in the third sentence of Example 2 following paragraph (a)(1)(iv);
■ d. Removing the phrase ''part, whether public or confidential,'' in the introductory text of paragraph (b) and adding in its place the word ''subpart'';
■ e. Removing the beginning phrase ''For public financial disclosure reports, the'' in the fourth sentence of paragraph (b)(1) and adding in its place the word ''The'';
■ f. Removing the phrase ''in the case of public financial disclosure reports'' and the comma between the words ''value'' and ''of'' in paragraph (b)(2);
■ g. Removing the phrase ''if he is a public filer'' in the third sentence of Example 1 following paragraph (b)(2);
■ h. Removing the phrase ''if he is a public filer,'' in the fifth sentence of Example 2 following paragraph (b)(2); and
■ i. Removing the phrase ''if she is a public filer'' in the second sentence of Example 3 following paragraph (b)(2).

§ 2634.303 [Amended]

■ 8. Section 2634.303 is amended by removing the word ''public'' and the phrase ''subpart B of this part'' and adding the phrase ''this subpart'' in its place in the introductory text of paragraph (a).

§ 2634.304 [Amended]

■ 9. Section 2634.304 is amended by:
■ a. Removing the citation ''§§ 2634.308(b) and 2634.907(a)'' in the first sentence of paragraph (a) and adding in its place the citation ''§ 2634.308(b)'';
■ b. Removing the phrase ''part, whether public or confidential,'' in the first sentence of paragraph (a) and adding in its place the word ''subpart''
■ c. Removing the phrase ''in the case of public financial disclosure reports'' and the comma between the words ''value'' and ''of'' in the first sentence of paragraph (a);
■ d. Removing the citation ''§§ 2634.308(b) and 2634.907(a)'' in paragraph (b) and adding in its place the citation ''§ 2634.308(b)'';
■ e. Removing the phrase ''part, whether public or confidential,'' in paragraph (b) and adding in its place the word ''subpart'';
■ f. Removing the phrase ''in the case of public financial disclosure reports'' and the comma between the words ''value'' and ''of'' in paragraph (b); and
■ g. Removing the phrase ''by public filers'' in the introductory text of paragraph (f)(1).

§ 2634.305 [Amended]

■ 10. Section 2634.305 is amended by:

■ a. Removing the phrase ''part, whether public or confidential,'' in the first sentence of paragraph (a) and adding in its place the word ''subpart'';
■ b. Removing the beginning phrase ''For public financial disclosure reports, the'' in the second sentence of paragraph (a) and adding in its place the word ''The''; and
■ c. Adding the word ''also'' between the words ''report'' and ''shall'' in the second sentence of paragraph (a).

§ 2634.306 [Amended]

■ 11. In § 2634.306, the undesignated introductory text is amended by removing the phrase ''part, whether public or confidential,'' and adding in its place the word ''subpart'';

§ 2634.307 [Amended]

■ 12. In § 2634.307, the text of paragraph (a) is amended by removing the phrase ''part, whether public or confidential,'' and adding in its place the word ''subpart''.

§ 2634.308 [Amended]

■ 13. Section 2634.308 is amended by:
■ a. Removing the word ''public'' in paragraph (a);
■ b. Removing the word ''public'' in the first sentence of the introductory text of paragraph (b);
■ c. Removing the word ''public'' between the words ''Each'' and ''financial'' in paragraph (c); and
■ d. Removing the word ''public'' between the words ''recent'' and ''financial'' in paragraph (c).

§ 2634.309 [Amended]

■ 14. Section 2634.309 is amended by:
■ a. Removing the word ''either'' and the phrase ''or subpart I'' from the introductory text of paragraph (a);
■ b. Removing the comma between the words ''source'' and ''and'', the phrase ''for a public financial disclosure report'', and the comma between the words ''value'' and ''of'' in paragraph (a)(1)(ii);
■ c. Removing the phrase ''for a public financial disclosure report'' in paragraph (a)(1)(iii);
■ d. Removing the ending phrase '', either on a public or confidential financial disclosure report'' in the third sentence of Example 1 following paragraph (a)(1)(iii);
■ e. Removing the ending phrase '', either on a public or confidential financial disclosure report'' in the second sentence of Example 2 following paragraph (a)(1)(iii);
■ f. Removing the parenthetical phrase ''(applicable only to public filers)'' in the introductory text of paragraph (a)(3); and
■ g. Removing the phrase ''or as a new entrant under § 2634.908(b),'' in paragraph (b).

§ 2634.310 [Amended]

■ 15. Section 2634.310 is amended by:
■ a. Removing the phrase ''or subpart I of this part'' in paragraph (a)(1); and
■ b. Removing the beginning phrase ''Public financial disclosure reports'' in the second sentence of paragraph (c)(1) and adding in its place the word ''Filers''.

§ 2634.311 [Amended]

■ 16. Section 2634.311 is amended by:
■ a. Removing the phrase ''public financial disclosure'' in the first sentence of paragraph (b);
■ b. Removing the word ''part'' in the first sentence of paragraph (b) and adding in its place the word ''subpart'';
■ c. Removing the phrase ''public financial disclosure'' in paragraph (c)(2); and
■ d. Removing the word ''part'' in paragraph (c)(2) and adding in its place the word ''subpart''.

Subpart F—Procedure

§ 2634.601 [Amended]

■ 17. Section 2634.601 is amended by:
■ a. Removing the citation ''§ 2634.905(d)'' in the second sentence of paragraph (a) and adding in its place the citation ''§ 2634.905(b)''; and
■ b. Removing the last sentence (in parentheses) in paragraph (a).

Subpart I—Confidential Financial Disclosure Reports

■ 18. Section 2634.903 is amended by:
■ a. Removing the citation ''§ 2634.904'' in the first sentence of paragraph (a) and adding in its place the citation ''§ 2634.904(a)'';
■ b. Removing the phrase ''twelve-month period ending September 30'' in the first sentence of paragraph (a) and adding in its place the phrase ''calendar year'';
■ c. Removing the phrase ''October 31 immediately following that period'' in the first sentence of paragraph (a) and adding in its place the phrase ''February 15 of the following year'';
■ d. Removing the citation ''§ 2634.904(b)'' in the third sentence of paragraph (a) and adding in its place the citation ''§ 2634.904(a)(2)'';
■ e. Removing the citation ''§ 2634.904(c)'' in the fourth sentence of paragraph (a) and adding in its place the citation ''§ 2634.904(a)(3)'';
■ f. Removing the citation ''§ 2634.904'' in the first sentence of paragraph (b)(1) and adding in its place the citation ''§ 2634.904(a)'';
■ g. Removing the citation ''§ 2634.904(c)'' in the second sentence of paragraph (b)(1) and adding in its place the citation ''§ 2634.904(a)(3)'';
■ h. Removing the citation ''§ 2634.904'' in paragraph (b)(2)(i) and adding in its place the citation ''§ 2634.904(a)'';
■ i. Removing the citation ''§ 2634.904'' in the first sentence of paragraph (b)(2)(iii) and adding in its place the citation ''§ 2634.904(a)'';
■ j. Removing the citation ''§ 2634.904(a)'' in the second sentence of paragraph (b)(2)(iii) and adding in its place the citation ''§ 2634.904(a)(1)'';
■ k. Removing the citation ''§ 2634.904(b)'' in the fourth sentence of paragraph (b)(2)(iii) and adding in its place the citation ''§ 2634.904(a)(2)'';
■ l. Removing the citation ''§ 2634.904'' in the first sentence of paragraph (b)(3) and adding in its place the citation ''§ 2634.904(a)''; and
■ m. Adding a new paragraph (e) at the end of the section to read as follows:

§ 2634.903 General requirements, filing dates, and extensions.

* * * * *

(e) *Termination reports not required.* An employee who is required to file a confidential financial disclosure report is not required to file a termination report upon leaving the filing position.

■ 19. Section 2634.904 is revised to read as follows:

§ 2634.904 Confidential filer defined.

(a) The term *confidential filer* includes:

(1) Each officer or employee in the executive branch whose position is classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is less than 0–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and

without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;

(B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1 to paragraph (a)(1). A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2 to paragraph (a)(1). An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3 to paragraph (a)(1). A GS–13 employee at an independent grant making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to ''substantial supervision and review,'' the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

Example 4 to paragraph (a)(1). As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, and because his work is not substantially supervised, the investigator should be required to file a confidential financial disclosure report.

Example 5 to paragraph (a)(1). An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. Because of the degree of supervision involved in the investigator's duties, the investigator is not required to file a confidential disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees.

Example 1 to paragraph (a)(2). A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2 to paragraph (a)(2). A special Government employee serving as a member of an advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations and forms issued in accordance with §§ 2634.103 and 2634.601(b) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a)(1) of this section.

(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1 to paragraph (b). A special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2 to paragraph (b). An agency has just hired a GS–5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

■ 20. Section 2634.905 is amended by:

■ a. Revising the section heading;

■ b. Removing the undesignated introductory text of the section, paragraphs (a), (b) and (c), and Examples 1, 2 and 3 following paragraph (d);

■ c. Adding a new paragraph (a) and a new example following paragraph (a);

■ d. Redesignating paragraph (d) as paragraph (b), including redesignating paragraphs (d)(1) through (d)(6) as paragraphs (b)(1) through (b)(6), respectively;

■ e. Revising the first sentence of newly redesignated paragraph (b) introductory text;

■ f. Removing the two references to ''paragraph (d)(5)'' in the first and second sentences of newly redesignated paragraph (b)(4) and adding in their place in each instance references to ''paragraph (b)(5)''; and

■ g. Removing the reference to ''paragraph (d)(4)'' in newly redesignated paragraph (b)(5) and adding in its place a reference to ''paragraph (b)(4)''.

The addition and revisions read as follows:

§ 2634.905 Use of alternative procedures.

(a) With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450 or OGE Optional Form 450–A. The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE.

Example to paragraph (a). A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the auditor to file a confidential financial disclosure report.

(b) An agency may use the OGE Optional Form 450–A (Confidential Certificate of No New Interests) in place of the OGE Form 450 if the agency head or designee determines it is adequate to prevent possible conflicts of interest.

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■ 21. Section 2634.907 is revised to read as follows:

§ 2634.907 Report contents.

(a) Other than the reports described in § 2634.904(a)(3) of this subpart, each confidential financial disclosure report shall comply with instructions issued by the Office of Government Ethics and include on the standardized form prescribed by OGE (see § 2634.601 of subpart F of this part) the information described in paragraphs (b) through (g) of this section for the filer. Each report shall also include the information described in paragraph (h) of this section for the filer's spouse and dependent children.

(b) *Noninvestment income.* Each financial disclosure report shall disclose the source of earned or other noninvestment income in excess of $200 received by the filer from any one source or which has accrued to the filer's benefit during the reporting period, including:

(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(2) Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

Note to paragraph (b)(2): In determining whether an honorarium exceeds the $200 threshold, subtract any actual and necessary travel expenses incurred by the filer and one relative, if the expenses are paid or reimbursed by the filer. If such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment.

(3) Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness.

Example to paragraphs (b)(1) and (b)(3). A filer teaches a course at a local community college, for which she receives a salary of $1,000 per year. She also received, during the previous reporting period, a $250 award for outstanding local community service. She must disclose both.

(c) *Assets and investment income.* Each financial disclosure report shall disclose separately:

(1) Each item of real and personal property having a fair market value in excess of $1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, including but not limited to:

(i) Real estate;

(ii) Stocks, bonds, securities, and futures contracts;

(iii) Livestock owned for commercial purposes;

(iv) Commercial crops, either standing or held in storage;

(v) Antiques or art held for resale or investment;

(vi) Vested beneficial interests in trusts and estates;

(vii) Pensions and annuities;

(viii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);

(ix) Accounts or other funds receivable; and

(x) Capital accounts or other asset ownership in businesses.

(2) The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds (see paragraph (i) of this section)), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds $200 in amount or value from any one source, including but not limited to income derived from:

(i) Real estate;

(ii) Collectible items;

(iii) Stocks, bonds, and notes;

(iv) Copyrights;

(v) Vested beneficial interests in trusts and estates;

(vi) Pensions;

(vii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);

(viii) The investment portion of life insurance contracts;

(ix) Loans;

(x) Gross income from a business;

(xi) Distributive share of a partnership;

(xii) Joint business venture income; and

(xiii) Payments from an estate or an annuity or endowment contract.

Note to paragraphs (c)(1) and (c)(2): For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds, and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under paragraph (i) of this section.

(3) *Exemptions.* The following assets and investment income are exempt from the reporting requirements of paragraphs (c)(1) and (c)(2) of this section:

(i) A personal residence, as defined in § 2634.105(l), of the filer or spouse;

(ii) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(iii) Money market mutual funds and accounts;

(iv) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds;

(v) Government securities issued by U.S. Government agencies;

(vi) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act; and

(vii) Diversified mutual funds. (''Diversified'' means that the fund does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments. Whether a

mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund.)

Example 1 to paragraph (c). A filer owns a beach house which he rents out for several weeks each summer, receiving annual rental income of approximately $5,000. He must report the rental property, as well as the city and state in which it is located.

Example 2 to paragraph (c). A filer's investment portfolio consists of several stocks, U.S. Treasury bonds, several cash bank deposit accounts, an account in the Government's Thrift Savings Plan, and shares in sector mutual funds and diversified mutual funds. He must report the name of each sector mutual fund in which he owns shares, and the name of each company in which he owns stock, valued at over $1,000 at the end of the reporting period or from which he received income of more than $200 during the reporting period. He need not report his diversified mutual funds, U.S. Treasury bonds, bank deposit accounts, or Thrift Savings Plan holdings.

(d) *Liabilities.* Each financial disclosure report filed pursuant to this subpart shall identify liabilities in excess of $10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed, except:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it;

(4) Any revolving charge account;

(5) Any student loan; and

(6) Any loan from a bank or other financial institution on terms generally available to the public.

Example to paragraph (d). A filer owes $2,500 to his mother-in-law and $12,000 to his best friend. He also has a $15,000 balance on his credit card, a $200,000 mortgage on his personal residence, and a car loan. Under the financial disclosure reporting requirements, he need not report the debt to his mother-in-law, his credit card balance, his mortgage, or his car loan. He must, however, report the debt of over $10,000 to his best friend.

(e) *Positions with non-Federal organizations*—(1) *In general.* Each financial disclosure report filed pursuant to this subpart shall identify all positions held at any time by the filer during the reporting period, other than with the United States, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution.

(2) *Exemptions.* The following positions are exempt from the reporting requirements of paragraph (e)(1) of this section:

(i) Positions held in religious, social, fraternal, or political entities; and

(ii) Positions solely of an honorary nature, such as those with an emeritus designation.

Example to paragraph (e). A filer holds outside positions as the trustee of his family trust, the secretary of a local political party committee, and the ''Chairman emeritus'' of his town's Lions Club. He also is a principal of a tutoring school on weekends. The individual must report his outside positions as trustee of the family trust and as principal of the school. He does not need to report his positions as secretary of the local political party committee or ''Chairman emeritus'' because each of these positions is exempt.

(f) *Agreements and arrangements.* Each financial disclosure report filed pursuant to this subpart shall identify the parties to, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(1) Future employment (including the date on which the filer entered into the agreement for future employment);

(2) A leave of absence from employment during the period of the filer's Government service;

(3) Continuation of payments by a former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

Example 1 to paragraph (f). A filer plans to retire from Government service in eight months. She has negotiated an arrangement for part-time employment with a private-sector company, to commence upon her retirement. On her financial disclosure report, she must identify the future employer, and briefly describe the terms of, this agreement and disclose the date on which she entered into the agreement.

Example 2 to paragraph (f). A new employee who has entered a position which requires the filing of a confidential form is on a leave of absence from his private-sector employment. During his Government tenure, he will continue to receive deferred compensation from this employer, and will continue to participate in its pension plan. He must report and briefly describe his arrangements for a leave of absence, for the receipt of deferred compensation, and for participation in the pension plan.

(g) *Gifts and travel reimbursements*—(1) *Gifts.* Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description of all gifts aggregating more than $305 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source. For in-kind travel-related gifts, the report shall include a travel itinerary, the dates, and the nature of expenses provided.

(2) *Travel reimbursements.* Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description (including a travel itinerary, dates, and the nature of expenses provided) of any travel-related reimbursements aggregating more than $305 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source.

(3) *Aggregation exception.* Any gift or travel reimbursement with a fair market value of $122 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

(4) *Valuation of gifts and travel reimbursements.* The value to be assigned to a gift or travel reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(iii) The term ''readily available in the market'' means that an item generally is available for retail purchase in the metropolitan area nearest to the filer's residence.

(5) New entrants, as described in § 2634.903(b) of this subpart, need not report any information on gifts and travel reimbursements.

(6) *Exemptions.* Reports need not contain any information about gifts and travel reimbursements received from relatives (see § 2634.105(o)) or during a period in which the filer was not an

officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as ''personal hospitality of any individual'', as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of ''gift'' and ''reimbursement'' at § 2634.105(h) and (n).

Example to paragraph (g). A filer accepts a briefcase, a pen and pencil set, a paperweight, and a palm pilot from a community service organization he has worked with solely in his private capacity. He determines that the value of these gifts is:

Gift 1—Briefcase: $200
Gift 2—Pen and Pencil Set: $35
Gift 3—Paperweight: $5
Gift 4—Palm Pilot: $275

The filer must disclose gifts 1 and 4 since, together, they aggregate more than $305 in value from the same source. He need not aggregate or report gifts 2 and 3 because each gift's value does not exceed $122.

(h) *Disclosure rules for spouses and dependent children*—(1) *Noninvestment income.* (i) Each financial disclosure report required by the provisions of this subpart shall disclose the source of earned income in excess of $1,000 from any one source, which is received by the filer's spouse or which has accrued to the spouse's benefit during the reporting period. If earned income is derived from a spouse's self-employment in a business or profession, the report shall also disclose the nature of the business or profession. The filer is not required to report other noninvestment income received by the spouse such as prizes, scholarships, awards, gambling income, or a discharge of indebtedness.

(ii) Each report shall disclose the source of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) in excess of $200 from any one source during the reporting period.

Example to paragraph (h)(1). A filer's husband has a seasonal part-time job as a sales clerk at a department store, for which he receives a salary of $1,000 per year. He also received, during the previous reporting period, a $250 award for outstanding local community service, and an honorarium of $250 from the state university. The filer need not report either her husband's outside earned income or award because neither exceeded $1,000. She must, however, report the source of the honorarium because it exceeded $200.

(2) *Assets and investment income.* Each confidential financial disclosure report shall disclose the assets and investment income described in paragraph (c) of this section and held by the spouse or dependent child of the filer, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note to paragraph (h)(2): One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore, he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure report.

(3) *Liabilities.* Each confidential financial disclosure report shall disclose all information concerning liabilities described in paragraph (d) of this section and owed by a spouse or dependent child, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial responsibility, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

(4) *Gifts and travel reimbursements.* (i) Each annual confidential financial disclosure report shall disclose gifts and reimbursements described in paragraph (g) of this section and received by a spouse or dependent child which are not received totally independently of their relationship to the filer.

(ii) A filer who is a new entrant as described in § 2634.903(b) of this subpart is not required to report information regarding gifts and reimbursements received by a spouse or dependent child.

(5) *Divorce and separation.* A filer need not report any information about:

(i) A spouse living separate and apart from the filer with the intention of terminating the marriage or providing for permanent separation;

(ii) A former spouse or a spouse from whom the filer is permanently separated; or

(iii) Any income or obligations of the filer arising from dissolution of the filer's marriage or permanent separation from a spouse.

Example to paragraph (h)(5). A filer and her husband are living apart in anticipation of divorcing. The filer need not report any information about her spouse's sole assets and liabilities, but she must continue to report their joint assets and liabilities.

(i) *Trusts, estates, and investment funds*—(1) *In general.* (i) Except as otherwise provided in this section, each confidential financial disclosure report shall include the information required by this subpart about the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(ii) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a ''vested'' and a ''nonvested'' interest.

Note to paragraph (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a ''living trust'') with respect to which the filer, his spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, his spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(2) *Qualified trusts and excepted trusts.* (i) A filer should not report information about the holdings of any qualified blind trust (as defined in § 2634.403) or any qualified diversified trust (as defined in § 2634.404).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust's holdings. For purposes of this part, the term ''excepted trust'' means a trust:

(A) Which was not created directly by the filer, spouse, or dependent child; and

(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an ''excepted investment fund'' means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)(*1*) The fund is publicly traded or available; or

(*2*) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(iii) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(2) In lieu of entering data on a part of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c) of this subpart).

§ 2634.908 [Amended]

■ 22. Section 2634.908 is amended by removing the phrase ''twelve months ending September 30,'' in paragraph (a) and adding in its place the phrase ''calendar year,''.

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

■ 23. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2640.102 [Amended]

■ 24. Section 2640.102 is amended by adding the phrase ''and 2634.907(i)(3)'' after the citation ''5 CFR 2634.310(c)'' at the end of the fifth sentence in the note to paragraph (a).

[FR Doc. 06–4529 Filed 5–15–06; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 614

RIN 0578–AA16

Appeal Procedures

AGENCY: Natural Resources Conservation Service.

ACTION: Interim final rule with request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA) issues this interim final rule amending NRCS's informal appeals procedures as required by Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6991 *et seq.* (the 1994 Act). This interim final rule amends regulations promulgated by the interim final regulations published by the Secretary of Agriculture for NRCS on December 29, 1995 (60 FR 67313), and also includes new language to address statutory changes and make procedural and structural changes. Because of the substantive changes the agency is making to its informal appeal process under the current regulation, NRCS is publishing this rule as an interim final rule with request for comments.

NRCS has determined that issuing an interim final rule with request for comments rather than a proposed rule was justified in order to implement the changes required by statute as well as to institute procedural improvements. This interim final rule with request for comments puts the public on notice of the changes being made while affording an opportunity to comment. At the same time, much needed changes and improvements to the current regulation may be implemented immediately thereby better serving the public and the USDA.

DATES: *Effective Date:* May 16, 2006. Comments must be received by June 15, 2006.

NRCS invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods: Mail: Send comments to: Beth Schuler, Natural Resources Conservation Service, 1400 Independence Avenue, SW., 103, Washington, DC 20250, or E-Mail: Send comments to *beth.schuler@wdc.usda.gov*. You may also submit comments via facsimile transmission to: (615) 673–6705; or through the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

ADDRESSES: This interim final rule can be accessed via the internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/programs/appeals/interimfinalrule*.

FOR FURTHER INFORMATION CONTACT: Beth A. Schuler, Conservation Planning and Technical Assistance Division, Room 6015–S, 1400 Independence Ave, SW., 103, Washington, DC 20250. Telephone: (615) 646–9741; E-mail: *beth.schuler@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim final rule has been determined to be not significant under

Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity, or the costs to any small business to comply with these regulations, because it merely clarifies and establishes procedures for participants to use in filing appeals of adverse decisions. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against NRCS.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and NRCS has concluded that promulgation of this rule is categorically excluded from NEPA's requirement from an environmental impact analysis under the Department of Agriculture regulations, 7 CFR 1b.3(a)(1). Actions implemented under this rule fall in the category of policy development, planning and implementation which relates to routine activities and similar administrative functions and no circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12372

This regulation is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published June 24, 1983 (48 FR 29115).

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act as well as continued pursuit of providing all services electronically when practicable. This rule requires that a participant must make a written request to appeal a determination or decision issued to a participant for a program administered by NRCS. In part, the procedures in this rule lend themselves to electronic request and submission. NRCS will pursue, either solely or jointly with the Farm Service Agency, with whom NRCS shares some appeal procedures, 7 CFR part 780, the development of an application that will allow program participants to request an appeal online. It will also enable both FSA and NRCS to manage the requests and reporting aspects electronically.

Background and Purpose

On December 29, 1995, the Secretary of Agriculture published an interim final rule for the National Appeals Division (NAD) to implement Title II, Subtitle H of the 1994 Act, which rule established interim procedures, at 7 CFR part 11, for appeals of adverse decisions by USDA agency officials to the NAD (60 FR 67298). The interim final rule also included conforming changes relating to regulations governing agency informal appeals, including part 614. NAD published its final rule in the **Federal Register** on June 23, 1999 (64 FR 33367). At that time, it was expressly noted that the final rule for NAD did not include rules for agency appeal procedures and that those rules would be published separately by the respective agencies.

Section 275 of the 1994 Act, 7 U.S.C. 6995, requires USDA agencies to hold informal hearings at the request of a participant for the decisions they render. NRCS interprets the ''informal hearing'' requirement to require the agency to provide an opportunity for informal appeal at the agency level. This interim final rule amends the current NRCS appeal procedures as promulgated by the 1995 interim final rule to better conform to the requirements of the 1994 Act and subsequent legislation, as well as to make other substantive changes to clarify and improve the agency's informal appeals process.

NRCS's goal in promulgating these informal appeals procedures is to facilitate at the agency level the resolution of disputes arising from adverse technical determinations and program decisions. In contrast to the appeals process administered by NAD under part 11, NRCS's informal appeals process establishes several means through which participants can obtain review by NRCS personnel who have detailed knowledge of agricultural conservation operations as well as expertise in farm and ranch management. After a decision rendered by NRCS becomes final, participants may pursue the appeals processes set forth at 7 CFR part 780 and 7 CFR part 11, as appropriate.

Overview of Informal Appeals Options

Program disputes in NRCS vary in complexity, sums at stake, and feasibility of resolution. Therefore, the availability of effective, informal appeal procedures is central to NRCS's goal of achieving just, speedy, and cost-effective resolutions to program and technical disputes. Accordingly, this rule sets forth three separate means of informal appeal: Mediation, reconsideration, and hearing. The text of the rule provides appeal options in the alternative, meaning a participant must choose one avenue of appeal. This structure was adopted in order to facilitate efficient resolution of disputes. The sections below describe each of the appeal options available to participants.

Mediation: The mediation informal appeal option is available for both preliminary technical decisions and program decisions. This rulemaking incorporates additional guidelines that have become a part of the agency's

practice over the last several years regarding the use of the mediation to resolve NRCS program disputes. Under this rule, all mediations will be conducted by a ''qualified mediator,'' as defined at § 614.2. In a State that has a USDA certified mediation program, a ''qualified mediator'' is a person who is accredited as a mediator under relevant State law. In a State that does not have a USDA certified program, a ''qualified mediator'' is a person who meets certain core knowledge and training requirements set forth in the definition of the term. Additionally, this rule clarifies that all mediation requests are to be submitted to the appropriate State Conservationist, as indicated in the written decision notice received by the participant.

Under 7 U.S.C. 5103(a)(1)(A), NRCS must participate in good faith in any State mediation program certified under 7 U.S.C. 5101. NRCS is applying this good faith requirement to mediation generally, regardless of whether the dispute is being mediated under a State certified mediation program. This good faith policy is set forth in this rulemaking at § 614.11. NRCS demonstrates good faith in mediation by doing, among other things, the following:

—Designating a person to represent NRCS in mediation;
—Defining the NRCS representative's authority to bind NRCS to agreements reached in the mediation;
—Instructing NRCS's representative to ensure that any agreement reached during, or as a result of, the mediation is consistent with the statutory and regulatory provisions and generally applicable program policies and is mutually agreed to in writing by all affected parties;
—Authorizing NRCS's representative to assist in identifying and exploring additional options that may resolve the dispute;
—Assisting, as necessary, in making pertinent records available for review and discussion during the mediation;
—Directing NRCS's representative in the mediation to forward any written agreement proposed in mediation to the appropriate NRCS official for approval; and
—Considering, in a timely manner, dispute resolution proposals requiring actions or approvals.

The basic issue in mediation of an agency program dispute is whether one or more parties to the mediation meet program requirements. Parties mediating a dispute are not free to make their own law or policy, and mediation is not a means to obtain a result not otherwise permissible under statute, regulations, or generally applicable agency policy and program procedure. Within these parameters, mediation of disputes can produce benefits when the mediation reveals additional relevant facts and new insights. For example, NRCS program mediation may result in: identifying alternative means for a participant to comply with regulatory requirements, exploring alternative mitigation strategies when a wetland has been converted, or considering possible changes to a farming operation with regard to compatible uses of easement acreages. Additionally, when other private parties having an interest in the issue are involved in the mediation, the mediation may assist in identifying potential flexibility in the positions of these private parties which could lead to a more global resolution of the dispute.

NRCS will endeavor to ensure that the representative designated for NRCS in any mediation is a person with appropriate knowledge of the decision-making parameters implicated in the program dispute and who has the authority to bind the agency. However, in some cases, it may not be possible to have an agency representative present who has settlement authority. In those instances, NRCS will designate an NRCS representative who will be responsible for acting as a liaison to the authorized NRCS decision-maker and will be responsible for securing timely consideration of any settlement proposal.

Mediations occurring in the informal appeal process are confidential with some limited exceptions. For example, during the course of mediation, it is anticipated that NRCS's representative may need to communicate with other agency officials such as the deciding official. At the outset of the mediation, NRCS will outline the other possible NRCS officials who may need to be contacted in order to resolve the dispute and seek the concurrence of the other parties to the mediation for such exceptions to the general rule of confidentiality. In addition, any mediated final settlement agreement will not be confidential but will become a part of the official record. Once a dispute has been settled through an executed settlement agreement, the participant waives all further appeals as to that issue. All settlement agreements must be in writing and signed by the parties with the proper authority.

Reconsideration: Reconsideration is a review by the designated conservationist or State Conservationist of an NRCS preliminary technical determination. In contrast to the current regulation, this rule provides for reconsideration of a preliminary technical determination in conjunction with the field review. In addition, this rule establishes a two tiered review process. Specifically, under this rule, the designated conservationist conducts the field visit, supplements the agency record, and makes his or her reconsideration decision within 15 days of the field visit. If the reconsideration decision is favorable to the participant, then the designated conservationist issues the reconsideration as the final technical determination. If the reconsideration decision is still adverse to the participant, the designated conservationist forwards the reconsideration decision and the agency record to the State Conservationist for an independent review and final determination, unless the participant waives in writing further informal appeal. In cases of waiver, the designated conservationist issues the reconsideration decision as the final technical determination. Otherwise, the State Conservationist's reconsideration decision becomes the final agency technical determination upon receipt by the participant. This rule making does not set forth a specified time frame for the State Conservationist's decision in order to provide needed flexibility for any additional information gathering that may be necessary. However, it is the agency's intention that the State Conservationist's decision will be made as soon as practicable. This is in keeping with agency's commitment to ensuring an effective and efficient informal appeals process.

NRCS believes adding reconsideration to the field review process will improve the accuracy of technical determinations and sufficiency of the administrative record upon which the technical decision is based. Both the agency and the participant benefit from this change because it fosters the best possible technical decisions in accordance with law and policy and offers the participant a meaningful opportunity for appeal at the NRCS State level. These changes to the current appeal rule also ensure that the participant has the option of obtaining an impartial review of an adverse preliminary technical determination within the agency by an authority other than the original decision maker. A decision issued on reconsideration constitutes a final technical determination in accordance with the regulation at § 614.8, and as such, starts the running of time for any subsequent appeal to the FSA county committee pursuant to 7 CFR part 780,

if applicable, or NAD under 7 CFR part 11.

Hearing: The hearing appeal option is available for adverse program decisions, much like reconsideration is available for technical determinations. A hearing provides an informal opportunity for a participant to present testimony and/or documentary evidence before the appropriate State Conservationist to show why an adverse NRCS program decision is erroneous and why it should be reversed or how it should be modified. In this rulemaking, several changes have been made to the hearing process. First, language has been added to clarify that the Federal Rules of Evidence do not apply to these hearings. Second, this rule provides that only verbatim transcripts may serve as official transcripts of an NRCS hearing. And, lastly, this rule does not include the right of appeal to NAD which was included at § 614.204(c) in the current regulation since the participant will likely forgo that option by appealing to the State Conservationist. In lieu of an NRCS hearing, a participant may appeal a program decision to the FSA county committee pursuant to 7 CFR part 780, if it is a conservation program under Title XII of the Food Security Act of 1985, as amended, (Title XII) or to NAD pursuant to 7 CFR part 11.

FSA county committee appeals: Pursuant to 7 U.S.C. 6995 and 7 CFR part 780, a participant may seek an optional informal review by an FSA county committee of an NRCS final technical determination or program decision made under Title XII. A participant may also choose to forgo the FSA county committee appeal option and appeal directly to NAD under 7 CFR part 11.

This rule, at § 614.10, changes the current regulation by adding the FSA county committee appeal option for Title XII program decisions. In addition, the actions of the State Conservationist on remand from the FSA county committee have been changed from permissive to mandatory in this rule making to ensure uniformity.

Program Decisions and Technical Determinations

This section provides a general overview of technical determinations and program decisions, which are part of NRCS's program implementation and administration responsibilities.

Preliminary and final technical determinations are those determinations by an NRCS official that relates to the condition of the natural resources and cultural practices based on science and the best professional judgment of natural resource professionals concerning soils, water, air, plants, and animals.

A program decision is a decision reached by an NRCS official based on applicable regulations and program policy. Program decisions may relate to eligibility for program benefits, compatible use authorizations, compliance with program requirements, and other actions. Program decisions may be based on previously issued technical determinations, such as those program decisions issued by NRCS with regard to program eligibility, contract status, or practice installation. A program decision may also be issued solely for the purpose of program administration, such as a response to a request for equitable relief.

Non-Appealable Decisions and Determinations

Not all adverse decisions or determinations that affect program participants are appealable under this part. Section 614.4 provides a list of the types of decisions that are not appealable. Any notice transmitting an NRCS program decision or technical determination that is determined not to be appealable will provide the reason the decision or determination is not appealable.

For example, program decisions or technical determinations made pursuant to statutory provisions or regulations that are not dependent upon a unique set of facts are generally not appealable. Thus, a decision is not appealable if it is based upon general program policy, a statutory or regulatory requirement that is applicable to all similarly situated participants, or technical standards and equations. In addition, decisions of the NRCS Chief or State Conservationists on equitable relief made under the regulations implementing section 1613 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 7996, are discretionary decisions that do not afford participants any rights of appeal within NRCS or any right to judicial review.

This rulemaking includes a new provision, § 614.13, which affords the participant the opportunity to seek the review of the State Conservationist of an NRCS decision denying an appeal based upon appealability. Section 614.13 also informs the participant of the right to seek an appealability review from NAD.

Section-by-Section Analysis

NRCS is making significant changes to the organization and substance of the existing informal appeals regulation in order to address statutory changes and comments received since the 1995 rule making, as well as to improve the informal appeals process. The following text describes the changes made to each section of the rule.

Section 614.1 General

This section retains the same designation and remains substantially the same in content. This section explains the scope and purpose of the agency's informal appeal regulation.

Section 614.2 Definitions

This section remains the same in designation, but adds several new definitions and removes a few definitions that appear in the existing appeal procedures. Specifically, definitions have been added for the terms ''agency'', ''agency record'', ''appeal'', ''final technical determination'', ''hearing'', ''mediator'', ''participant'', ''program decision'', ''qualified mediator'', ''reconsideration'', and ''verbatim transcript.'' The definitions for ''adverse technical determination'' and ''decision'' have not been included in this rule.

The definitions for ''final technical determination'', ''reconsideration'' and ''program decision'' are added to provide precision and clarity in the use of those terms. The term ''agency record'' is defined in order to help improve the agency's decision making and documentation process. The term ''participant'' is broadly defined in this rulemaking to mean any individual or entity who has applied for, or whose right to participate in, a program or receive a payment or benefit in accordance with any program covered by this regulation has been affected by an adverse NRCS decision. The term ''participant'' does not include individuals or entities whose disputes arise under the items excluded in the definition of a participant set out in the NAD regulations at 7 CFR part 11. The broadening of the definition of ''participant'' removes the need to also use the term ''landowner'' as was done in the existing appeal regulation.

The term ''qualified mediator'' is provided by this rule so that there is a clear direction regarding the qualifications required in order to mediate an NRCS dispute.

The term ''verbatim transcript'' is added as part of agency's new policy providing that only verbatim transcripts constitute an official record of a hearing and that recordings are prohibited. This policy change ensures a uniform, accurate, and fair means of documenting NRCS hearings. In addition, this policy parallels NAD's policy.

The definition of ''adverse technical determination'' contained in the

existing appeal regulation is not included here because the meaning of the term has been adequately covered in the appealability section. The general term ''decision'' is not included here because the types of NRCS decisions are more precisely defined in this rule as noted above.

Section 614.3 Applicability of Appeal Procedures

This section sets forth the types of decision that are appealable. Section 614.3 addresses the applicability of the informal appeal process contained in sections 614.3, 614.100 and 614.200 of the current appeal regulation. The effect of this change is to streamline the regulation by reorganizing the informal appeals procedures based upon whether a technical determination or a program decision is being appealed.

In addition, since promulgation of the 1995 rule, new programs have been authorized under Title XII and some programs have been repealed. Consequently, this section amends the current regulation by updating the listing of programs to which these informal appeals apply.

Comments have been received on this section concerning FSA review of adverse NRCS technical determinations made under Title XII program authorities being limited to technical determinations. The commenters argued that all decisions, not just technical determinations, made for those programs authorized under Title XII may be appealed under 7 CFR part 780. NRCS agrees with these comments. 7 U.S.C. 6932(d) provides that the ''[u]ntil such time as an adverse decision described in this paragraph is referred to the National Appeals Division for consideration, the [Consolidated] Farm Service Agency shall have initial jurisdiction over any administrative appeal resulting from an adverse decision made under title XII of the Food Security Act of 1985 (16 U.S.C. § 3801 *et seq.*).'' Therefore, in this rulemaking, NRCS has changed the scope of the FSA county committee review to encompass all technical determinations and program decisions made under Title XII.

Section 614.4 Decisions Not Subject To Appeal

This section has been renumbered so that it follows directly after the section dealing with applicability. NRCS has expanded this section in order to provide additional clarification as to those decisions that are not subject to appeal. For example, this section adds new language which provides that the correction of errors on contract and other program documents by NRCS and the results of computations or calculations made by NRCS pursuant to the contract or agreement are not appealable.

Section 614.5 Reservation of Authority

This section remains the same in content. However, the number designation has been changed from § 614.4 so that the two sections addressing applicability in this rulemaking appear sequentially. Under this section, the Chief of NRCS, either as the head of the agency or as the Executive Vice President of CCC, and the Secretary reserve the authority to determine, at any time, any question arising under programs within their respective authority or from reversing or modifying any program decision or technical determination made by NRCS or CCC.

Section 614.6 Agency Records and Decision Notices

This section is new. It sets forth the agency's policy that all decisions under this part are based upon an agency record. The agency record is an administrative record comprised of all the documentation, including reports, maps, photographs, correspondence, etc., that the decision-maker relied upon when making his or her decision. In determining which documents are included in the agency record, the decision-maker will err on the side of inclusiveness. The agency is responsible for compiling the agency record and maintaining it. A copy of the agency record is available to the participant upon request. The completeness of the agency record, as well as the consideration of all relevant facts, is critical to an effective appeal process. Consequently, development of the agency record is being emphasized in this rulemaking.

This section also sets forth agency policy on decision notices, including content, deadlines, and methods of delivery. Specifically, NRCS policy requires that an adverse program decision or technical determination must: (1) Be in writing, (2) set forth its factual basis, and (3) explain its application of relevant statue, regulations, and policy. NRCS must send written notice of its decision to the participant via certified mail, return receipt requested, or hand delivery within 10 working days of rendering a technical determination or program decision. In this regard, this section conforms to section 6994 of the 1994 Act, which requires that the Secretary provide written notice of an adverse decision and notice of appeal rights no later than 10 working days after the decision is made.

Section 614.7 Preliminary Technical Determinations

This section was designated as Subpart B, Section 614.101—Notice of Preliminary Technical Determinations in the current appeal regulation. As described earlier in this preamble, two substantive changes are being made to this section. One change is that the field review appeal option is now combined with a reconsideration determination by either the designated conservationist or the State Conservationist. The other change is that the participant now has the option of waiving in writing the appeal process for the purpose of immediately implementing any actions required by NRCS.

In addition, in the current regulation, preliminary technical determinations include only those initial written technical determinations provided to a USDA program participant for the programs authorized under Title XII. However, NRCS also makes technical determinations for non-Title XII conservation programs. Consequently, NRCS is amending the regulation so that all technical determinations issued by the agency, regardless of statutory authority, will be issued first as a preliminary technical determination with appeal rights as set forth in this section. NRCS is making this change, in part, by eliminating the subpart structure which was organized around Title XII and non-Title XII decisions.

Comments have been received concerning whether waiting 30 days for a preliminary technical determination to become final prior to being able to appeal to the FSA county committee or to NAD is timely program administration. Given the technical nature of these types of agency decisions, the agency's experience is that issuing the technical decision as preliminary and then affording an adequate informal appeal process at the agency level where such expertise resides is essential to effective program administration. Consequently, the agency is making no significant changes to the regulation as a result of these comments. However, for those participants who want a final technical determination so that they may begin required actions as determined by NRCS (*e.g.*, wetland restoration), NRCS is providing at § 614.7(d) a new option to waive appeal.

Section 614.8 Final Technical Determinations

This section was designated in the current regulation as § 614.103—Final

Determinations. This section sets forth when technical determinations become final and the appeals procedures available. The content of this section remains similar to the current regulation. However, changes are being made to address finality for reconsideration appeals, to remove subsection (b), and to set forth the available appeal options.

Concern has been raised that participants should be advised of the basis for the technical determination (or program decision), as well as the procedure to be utilized to pursue review or appeal at the time of the notification of the preliminary technical determination.

NRCS notes that this type of requirement was generally addressed at § 614.103(b) in the current regulation. However, NRCS agrees with this concern and, as previously discussed, has included guidance in this rulemaking at § 614.7 ''Agency records and decision notices.'' In addition, NRCS has included further guidance regarding notification as part of the NRCS Appeals and Mediation policy document, Conservation Programs Manual, Part 510, Appeals and Mediation, (440–V–CPM).

Section 614.9 Program Decisions

This section sets forth the informal appeals procedures available for program decisions which were originally contained in subpart C of the current regulation. Program decisions are decisions issued for conservation programs administered by NRCS which relate to the administration of a conservation program. Unlike technical determinations, program decisions are issued as 'final decisions' meaning they may be appealed directly to NAD or the FSA county committee, if the program decision is made under a Title XII program.

The informal appeals options provided in this section are similar to those provided in the current regulation with three exceptions. First, language is included that addresses appeal to the FSA county committee for Title XII decisions. Second, § 614.203(b)(3) in the current regulation, which provided that the State Conservationist has up to 30 days to render a final decision if no mediated settlement has been reached, is not included in this rule making. This is consistent with the structure of informal appeal options set forth for technical determinations and makes sense given that the informal appeal options for an adverse program decisions are in the alternative, that is, participants choose either mediation or a hearing. Third, this section now provides a clear deadline within which the State Conservationist must render his or her opinion after the hearing.

Section 614.10 Appeals Before the Farm Service Agency County Committee

This section was designated as subpart B, § 614.104, Appeals of technical determinations, in the current regulation. The agency is changing the title of this section to ''Appeals before the Farm Service Agency county committee'' because both program and technical appeals may be appealed to the FSA county committee. Likewise, this section provides that technical determinations and program decisions made under Title XII may be appealed to the FSA county committee.

NRCS is also clarifying the appeal options available to participants for those programs authorized under Title XII. NRCS had initially interpreted 7 U.S.C. 6932 as mandating an informal appeal hearing before the county or area FSA committee of all Title XII conservation program technical determinations before a determination could be appealed to NAD. This rule corrects that misinterpretation by providing that appeal of Title XII decisions to the FSA county committees by the participant is optional and that a participant may appeal directly to NAD once a decision is final.

Finally, in contrast to the current regulation, this section makes mandatory the steps a State Conservationist takes if the FSA county committee requests the State Conservationist's review. This change is being made to ensure completeness of the agency record and uniformity in the appeals process.

Section 614.11 Mediation

This section encompasses those sections designated as § 614.102—Mediation of preliminary technical determinations and § 614.203—Mediation of adverse final decisions in the current regulation by setting forth agency policy regarding mediation for both preliminary technical decisions and program decisions. In addition to the organizational change, new policy is added to address the requirements for mediation in good faith, confidentiality, and mediator impartiality.

NRCS has removed the reference to ''qualified members of a local conservation district'' as a source of mediators because of its ambiguity. The new language provides that, in those states without a certified State Mediation Program, qualified mediators will be provided, when available, through a request by the participant to NRCS.

Section 614.12 Transcripts

This new section is added to provide uniform policy regarding how participants may obtain official transcripts of hearings before the State Conservationist under § 614.9. Only official transcripts will become a part of the agency record. This provision is similar to NAD's policy regarding transcripts as set forth in 7 CFR part 11.

Section 614.13 Appealability Review

This section of the rule is new and provides the participant with the option of seeking review by the appropriate State Conservationist of a decision to deny an appeal based upon appealability. The participant may choose to forgo this informal review option and seek the review of NAD under 7 CFR part 11.

Section 614.14 Computation of Time

This is a new section added to address computation of deadlines under this rule as part of the agency's efforts to clarify and improve the informal appeals process.

Section 614.15 Implementation of Final Agency Decisions

This is a new provision addressing implementation of final USDA decisions. This provision is similar to the decision implementation requirement set forth in the NAD rules of appeal. An NRCS decision must be implemented within 30 days after the agency decision becomes a final USDA decision. A program decision or technical determination becomes a final USDA decision when a participant allows the time to request appeal to expire without appealing the decision. Implementation of a final USDA decision must be initiated by the agency within the required period, but does not necessarily have to be completed within the 30 day period. For example, additional time may be required to obtain updated financial or other information relating to eligibility or feasibility, to obtain a new appraisal, or to reassess the wetland features on a tract of farmland.

Whether the final decision is implemented by NRCS may depend upon the availability of funds. If funds are not available, a final decision on appeal will not cause a payment to be issued immediately to a participant, notwithstanding a successful appeal. However, in such circumstances, the appeal is still an effective resolution of the issues related to the participant's compliance with the appealed program requirements. If funds later become available, and a participant's

circumstances remain unchanged, NRCS may make payment.

Section 614.16 Participation of Third Parties in NRCS Proceedings

This is a new section which parallels a similar provision in the NAD appeal regulations. This section provides that NRCS may invite third parties whose interests may be affected in the informal appeals process to join as a party to the appeal.

Section 614.17 Judicial Review

This section is new and was added to address when an NRCS participant can bring action in a court of competent jurisdiction against NRCS for disputes covered by this part. This section parallels the provision for judicial review contained in the NAD regulations at 7 CFR part 11.

List of Subjects in 7 CFR Part 614

Administrative practice and procedure, Agriculture, Agriculture commodities, Alternative Dispute Resolution, Appeal, Conservation programs, Contracts, Decisions, Determinations, Easements, Farmers, Farmland, Mediation, Soil conservation.

■ Accordingly, the regulations found at 7 CFR part 614 are revised in their entirety as follows:

PART 614—NRCS APPEAL PROCEDURES

Sec.

614.1 General.
614.2 Definitions.
614.3 Decisions subject to informal appeal procedures.
614.4 Decisions not subject to appeal.
614.5 Reservation of authority.
614.6 Agency records and decision notices.
614.7 Preliminary technical determinations.
614.8 Final technical determinations.
614.9 Program decisions.
614.10 Appeals before the Farm Service Agency county committee.
614.11 Mediation.
614.12 Transcripts.
614.13 Appealability review.
614.14 Computation of time.
614.15 Implementation of final agency decisions.
614.16 Participation of third parties in NRCS proceedings.
614.17 Judicial review.

Authority: 5 U.S.C. 301; 7 U.S.C. 6932 and 6995; and 16 U.S.C. 3822(a).

§ 614.1 General.

This part sets forth the informal appeal procedures under which a participant may appeal adverse technical determinations or program decisions made by officials of the Natural Resources Conservation Service (NRCS), an agency under the United States Department of Agriculture (USDA). These regulations reflect NRCS policy to resolve at the agency level, to the greatest extent possible, disputes arising from adverse technical determinations and program decisions made by NRCS. Once a decision is rendered final by NRCS, participants may appeal to the National Appeals Division (NAD) as provided for under 7 CFR part 11, or the FSA county committee pursuant to 7 CFR part 780 for decisions rendered under Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.* (Title XII).

§ 614.2 Definitions.

The following definitions are applicable for the purposes of this part:

(a) *Agency* means NRCS and its personnel.

(b) *Agency record* means all documents and materials, including documents submitted by the participant and those generated by NRCS, upon which the agency bases its program decision or technical determination. NRCS maintains the agency record and will, upon request, make available a copy of the agency record to the participant(s) involved in the dispute.

(c) *Appeal* means a written request by a participant asking for review (including mediation) of an adverse NRCS technical determination or program decision under this part. An appeal must set out the reason(s) for appeal and include any supporting documentation. An appeal is considered filed when it is received by the appropriate NRCS official as indicated in the decision notice.

(d) *Chief* means the Chief of NRCS or his or her designee.

(e) *Commodity Credit Corporation (CCC)* means a wholly owned Government corporation within USDA.

(f) *Conservation district* means any district or unit of State or local government developed under State law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil and water conservation district, natural resource district, conservation committee, or similar name.

(g) *County committee* means a Farm Service Agency (FSA) county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(h) *Designated conservationist* means the NRCS official, usually the district conservationist, whom the State Conservationist designates to be responsible for the program or compliance requirement to which this part is applicable.

(i) *Final technical determination* means a decision by NRCS concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resource professionals concerning soils, water, air, plants, and animals that has become final through the informal appeal process, the expiration of the time period to appeal, or waiver of the appeal process.

(j) *Hearing* means an informal appeal proceeding that affords a participant opportunity to present testimony and documentary evidence to show why an adverse program decision is in error and why the adverse decision should be reversed or modified.

(k) *Mediation* means a process in which a neutral third party, the mediator, meets with the disputing parties, usually the participant and the agency. Through mediation, the parties have the opportunity to work together with the assistance of the mediator to: Improve communications, understand the relevant issues, develop and explore alternatives, and reach a mutually satisfactory resolution.

(l) *Mediator* means a neutral third party who serves as an impartial facilitator between two or more disputants to assist them in resolving a dispute. The mediator does not take sides or render decisions on the merits of the dispute. The mediator assists the parties in identifying areas of agreement and encourages the parties to explore potential options toward resolution.

(m) *Participant* means any individual or entity who has applied for, or whose right to participate in or receive, a payment or other benefit in accordance with any program administered by NRCS to which the regulations in this part apply is affected by a decision of NRCS. The term does not include those individuals or entities excluded in the definition of participant published at 7 CFR 11.1.

(n) *Preliminary technical determination* means the initial written decision by NRCS on a technical matter concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resources professionals concerning soils, water, air, plants and animals, which has not become final under this part.

(o) *Program decision* means a written decision by NRCS concerning eligibility for program benefits, program administration or program

implementation and based upon applicable regulations and program instructions. Program decisions are issued as final decisions.

(p) *Qualified mediator* means a mediator who is accredited under State law in those States that have a mediation program certified by the USDA pursuant to 7 CFR part 785, or, in those States that do not have a mediation program certified by the USDA, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, by an accredited college or university, or by one of the following organizations: State Bar, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

(q) *Reconsideration* means a subsequent consideration of a preliminary technical determination by the designated conservationist or the State Conservationist.

(r) *Secretary* means the Secretary of Agriculture.

(s) *State Conservationist* means the NRCS official, or his or her designee, in charge of NRCS operations within a State.

(t) *Title XII* means Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq.

(u) *Verbatim transcript* means the official, written record of proceedings of a hearing of an adverse program decision appealable under this part.

§ 614.3 Decisions subject to informal appeal procedures.

(a) This part applies to NRCS adverse program decisions and technical determinations made with respect to:

(1) Conservation programs and regulatory requirements authorized under Title XII, including:

(i) Conservation Security Program;

(ii) Conservation Reserve Program and the Conservation Reserve Enhancement Program;

(iii) Environmental Quality Incentives Program;

(iv) Farm and Ranch Lands Protection Program;

(v) Grassland Reserve Program;

(vi) Highly Erodible Land Conservation;

(vii) Wetland Conservation;

(viii) Wetlands Reserve Program;

(ix) Wildlife Habitat Incentives Program; and

(x) Conservation Innovation Grants.

(2) Non-Title XII conservation programs or provisions, including:

(i) Agriculture Management Assistance Program;

(ii) Emergency Watershed Protection Program;

(iii) Soil and Water Conservation Program;

(iv) Water Bank Program;

(v) Watershed Protection and Flood Prevention Program; and

(vi) Healthy Forest Reserve Program.

(3) Any other program to which this part is made applicable.

(b) With respect to matters identified in paragraph (a) of this section, participants may appeal adverse decisions concerning:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program;

(4) Technical determinations made under Title XII;

(5) Technical determinations or program decisions that affect a participant's eligibility for USDA program benefits;

(6) The failure of an official of NRCS to issue a technical determination or program decision subject to this part; and

(7) Incorrect application of general policies, statutory or regulatory requirements.

(c) Only a participant directly affected by a program decision or a technical determination made by NRCS may invoke the informal appeal procedures contained in this part.

(d) Appeals of adverse final technical determinations and program decisions subject to this part are also covered by the NAD rules of procedure, set forth at 7 CFR part 11, and by the FSA county committee appeals process, set forth at 7 CFR part 780, for informal appeals of Title XII decisions.

§ 614.4 Decisions not subject to appeal.

(a) Decisions that are not appealable under this part include:

(1) Any general program provision, program policy, or any statutory or regulatory requirement that is applicable to all similarly situated participants, such as:

(i) Program application ranking criteria;

(ii) Program application screening criteria

(iii) Published soil surveys; or

(iv) Conservation practice technical standards included in the local field office technical guide or the electronic FOTG (eFOTG).

(2) Mathematical or scientific formulas established under a statute or program regulation and a program decision or technical determination based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions or implementing regulations that expressly make agency program decisions or technical determinations final;

(4) Decisions on equitable relief made by a State Conservationist or the Chief pursuant to Section 1613 of the Farm Security and rural Investment Act of 2002, 7 U.S.C. 7996;

(5) Disapproval or denials of assistance due to lack of funding or lack of authority;

(6) Decisions that are based on technical information provided by another federal or State agency, *e.g.*, lists of endangered and threatened species; or

(7) Corrections by NRCS of errors in data entered on program contracts, easement documents, loan agreements, and other program documents.

(b) Complaints involving discrimination in program delivery are not appealable under this part and are handled under the existing USDA civil rights rules and regulations.

(c) Appeals related to contractual issues that are subject to the jurisdiction of the Agriculture Board of Contract Appeals are not appealable under the procedures within this part.

(d) Enforcement actions under conservation easement programs administered by NRCS.

§ 614.5 Reservation of authority.

The Secretary of Agriculture, the Chief of NRCS, if applicable, or a designee, reserve the right to make a determination at any time on any question arising under the programs covered under this part within their respective authority, including reversing or modifying in writing, with sufficient reason given therefore, any decision or technical determination made by an NRCS official.

§ 614.6 Agency records and decision notices.

(a) All NRCS decisions under this part are based upon an agency record. NRCS will supplement the agency record, as appropriate, during the informal appeals process.

(b) NRCS notifies participants of the agency's preliminary and final technical determinations and program decisions through decision notices. By certified mail return receipt requested, NRCS will send to the participant a decision notice within 10 working days of rendering a technical determination or program decision. In lieu of certified

mail, NRCS may hand deliver notices to participants with written acknowledgment of delivery by the participant. Each decision notice contains the following:

(1) The factual basis for the technical determination or program;

(2) The regulatory, statutory, and/or policy basis for the technical determination or program decision; and

(3) Information regarding any informal appeal rights available under this part; the process for requesting such appeal; and the procedure for requesting further review before the FSA county committee pursuant to 7 CFR 780 or NAD pursuant to 7 CFR part 11, if applicable.

§ 614.7 Preliminary technical determinations.

(a) A preliminary technical determination becomes final 30 days after the participant receives the decision, unless the participant files an appeal with the appropriate NRCS official as indicated in the decision notice requesting:

(1) Reconsideration with a field visit in accordance with paragraphs (b) and (c) of this section; or

(2) Mediation as set forth in § 614.11.

(b) If the participant requests reconsideration with a field visit, the designated conservationist, participant, and, at the option of the conservation district, a district representative will visit the subject site for the purpose of gathering additional information and discussing the facts relating to the preliminary technical determination. The participant may also provide any additional documentation to the designated conservationist. Within 15 days of the field visit, the designated conservationist, based upon the agency record as supplemented by the field visit and any participant submissions, will reconsider his or her preliminary technical determination. If the reconsidered determination is no longer adverse to the participant, the designated conservationist issues the reconsidered determination as a final technical determination. If the preliminary technical determination remains adverse, then the designated conservationist will forward the revised decision and agency record to the State Conservationist for a final determination pursuant to paragraph (c) of this section, unless further appeal is waived in writing by the participant in accordance with paragraph (d) of this section.

(c) The State Conservationist will issue a final technical determination to the participant as soon as is practicable after receiving the reconsideration and agency record from the designated conservationist. The technical determination issued by the State Conservationist becomes a final NRCS decision upon receipt by the participant. Receipt triggers the running of the 30 day appeal period to NAD, or, if applicable, to the FSA county committee.

(d) In order to address resource issues on the ground immediately, a participant may waive, in writing to the State Conservationist, appeal rights so that a preliminary technical decision becomes final before the expiration of the 30 day appeal period.

§ 614.8 Final technical determinations.

(a) Preliminary technical determinations become final and appealable:

(1) 30 days after receipt of the preliminary technical decision by the participant unless the determination is appealed in a timely manner as provided for in this regulation.

(2) 30 calendar days after the beginning of a mediation session if a mutual agreement has not been reached by the parties; or

(3) Upon receipt by the participant of the final technical determination issued on reconsideration as provided above in § 614.7(c).

(b) The participant may appeal the final technical determination to:

(1) The FSA county committee pursuant to 7 CFR part 780 if the determination is made under Title XII; or

(2) NAD pursuant to 7 CFR part 11.

§ 614.9 Program decisions.

(a) Program decisions are final upon receipt of the program decision notice by the participant. The participant has the following options for appeal of the program decision:

(1) An informal hearing before NRCS as provided for in paragraphs (b) through (d) of this section;

(2) Mediation as provided for at § 614.11; or

(3) A hearing before NAD pursuant to 7 CFR part 11 or, if the program decision is made under Title XII, appeal before the FSA county committee pursuant to 7 CFR part 780.

(b) A program participant must file an appeal request for a hearing with the appropriate State Conservationist as indicated in the decision notice within 30 calendar days from the date the participant received the program decision.

(c) The State Conservationist may accept a hearing request that is untimely filed under paragraph (b) of this section if the State Conservationist determines that circumstances warrant such an action.

(d) The State Conservationist will hold a hearing no later than 30 days from the date that the appeal request was received. The State Conservationist will issue a written final NRCS decision no later than 30 days from the close of the hearing.

§ 614.10 Appeals before the Farm Service Agency county committee.

(a) In accordance with 7 CFR part 780, a participant may appeal a final technical determination or a program decision to the FSA county committee for those decisions made under Title XII.

(b) When the FSA county committee hearing the appeal requests review of the technical determination by the applicable State Conservationist prior to issuing their decision, the State Conservationist will:

(1) Designate an appropriate NRCS official to gather any additional information necessary for review of the technical determination;

(2) Obtain additional oral and documentary evidence from any party with personal or expert knowledge about the facts under review;

(3) Conduct a field visit to review and obtain additional information concerning the technical determination; and

(4) After the actions set forth in paragraphs (b)(1) through (3) of this section are completed, provide the FSA county committee with a written technical determination in the form required by § 614.6(b)(1) through (2) as well as a copy of the agency record.

§ 614.11 Mediation.

(a) A participant who wishes to pursue mediation must file request for mediation under this part with the NRCS official designated in the decision notice no later than 30 days after the date on which the decision notice was received. Participants in mediation may be required to pay fees established by the mediation program.

(b) A dispute will be mediated by a qualified mediator as defined at § 614.2(p).

(c) The parties will have 30 days from the date of the first mediation session to reach a settlement agreement. The mediator will notify the State Conservationist whether the parties have reached an agreement.

(d) Settlement agreement reached during, or as a result of, the mediation process must be in writing, signed by all parties to the mediation, and comport with the statutory and regulatory provisions and policies governing the program. In addition, the participant must waive all appeal rights as to the

issues resolved by the settlement agreement.

(e) At the outset of mediation, the parties must agree to mediate in good faith. NRCS demonstrates good faith in the mediation process by, among other things:

(1) Designating an NRCS representative in the mediation;

(2) Making pertinent records available for review and discussion during the mediation; and

(3) To the extent the NRCS representative does not have authority to bind the agency, directing the NRCS representative to forward in a timely manner any written agreement proposed in mediation to the appropriate NRCS official for consideration.

(f) *Mediator impartiality.* (1) No person may serve as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) No person serving as mediator in an adverse program dispute may thereafter serve as an advocate for a participant in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA or any other Federal agency.

(g) *Confidentiality.* Mediation is a confidential process except for those limited exceptions permitted by the Administrative Dispute Resolution Act at 5 U.S.C. 574. All notes taken by participants (Mediator, Management Representative, Disputants, and Disputants' Representative) during the mediation must be destroyed. As a condition of participation, the participants and any interested parties joining the mediation must agree to the confidentiality of the mediation process. The parties to mediation, including the mediator, will not testify in administrative or judicial proceedings concerning the issues discussed in mediation, nor submit any report or record of the mediation discussions, other than the mediation agreement or the mediation report, except as required by law.

§ 614.12 Transcripts.

(a) No recordings shall be made of any hearing conducted under § 614.9. In order to obtain an official record of a hearing, a participant may obtain a verbatim transcript as provided in paragraph (b) of this section.

(b) Any party to an informal hearing appeal under § 614.9 may request that a verbatim transcript is made of the hearing proceedings and that such transcript is made the official record of the hearing. The party requesting a verbatim transcript must pay for the transcription service and provide a copy of the transcript to NRCS at no charge.

§ 614.13 Appealability review.

A participant may request a review of a decision denying an appeal based upon appealability by submitting a written request to the appropriate State Conservationist as indicated in the decision notice. This written request must be received by the State Conservationist within 30 calendar days from the date the participant received notice from NRCS that a decision was not appealable. The State Conservationist will render a decision on appealability within 30 days of receipt of the participant's review request. In the alternative, the participant may request review of the appealability decision by NAD pursuant to 7 CFR part 11.

§ 614.14 Computation of time.

(a) The word ''days'' as used in this part means calendar days, unless specifically stated otherwise.

(b) Deadlines for any action under this part, including deadlines for filing and decisions, which fall on a Saturday, Sunday, federal holiday or other day on which the relevant NRCS office is closed during normal business hours, will be extended to close of business the next working day.

§ 614.15 Implementation of final agency decisions.

No later than 30 days after an agency decision becomes a final administrative decision of USDA, NRCS will implement the decision.

§ 614.16 Participation of third parties in NRCS proceedings.

When an appeal is filed under this part, NRCS will notify any party third party whose interests may be affected of the right to participate as an appellant in the appeal. If the third party declines to participate then NRCS's decision will be binding as to that third party as if the party had participated.

§ 614.17 Judicial review.

A participant must receive a final determination from NAD pursuant to 7 CFR part 11 prior to seeking judicial review.

Signed in Washington, DC, on May 8, 2006.

Bruce I. Knight,

Chief, Natural Resources Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–4572 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A75, et al.; DA–06–06]

Milk in the Northeast and Other Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; re-interpretation.

SUMMARY: This final rule amends the current ten Federal milk marketing orders issued under the Agricultural Marketing Agreement Act of 1937 (AMAA) to reflect a re-interpretation of the Milk Regulatory Equity Act of 2005, that was signed into law on April 11, 2006. Each order is amended to change the ''April 11, 2006'' in § 1___.7 to ''May 1, 2006.''

7 CFR parts	Marketing area	AO Nos.
1001 ...	Northeast	AO–14–A75
1005 ...	Appalachian	AO–388–A19
1006 ...	Florida	AO–356–A40
1007 ...	Southeast	AO–366–A48
1030 ...	Upper Midwest	AO–361–A41
1032 ...	Central	AO–313–A50
1033 ...	Mideast	AO–166–A74
1124 ...	Pacific Northwest ..	AO–368–A36
1126 ...	Southwest	AO–231–A69
1131 ...	Arizona	AO–271–A41

DATES: *Effective Date:* May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator for Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule re-interprets the provisions of the Milk Regulatory Equity Act of 2005 (Pub. L. 109–215, 120 Stat. 328), that amended the Agricultural Marketing Agreement Act of 1937 (AMAA).

Due to the ambiguity of the legislative language and the Congressional intent as reflected in the floor debate and elsewhere, the Department has determined that the Federal milk marketing orders should be amended to reflect the complete removal of Nevada from any marketing area.

Prior documents in this proceeding:

Final Rule: Issued April 25, 2006; Published May 1, 2006 (71 FR 25495).

List of Subjects in 7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered,* that on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as hereby amended.

■ For the reasons set forth in the preamble and under the authority set for in Public Law 109–215, 120 Stat. 328, 7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 are amended as follows:

■ 1. The authority citation for 7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, and P.L. 109–215, 120 Stat. 328.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

■ 2. Revise § 1001.7(d) introductory text to read as follows:

§ 1001.7 Pool plant.

* * * * *

(d) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1001.2;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 3. Revise § 1005.7(g) introductory text to read as follows:

§ 1005.7 Pool plant.

* * * * *

(g) Any distributing plant other than a plant qualified as a pool plant pursuant to paragraph § 1005.(7)(a) or paragraph (b) of this section or § ___.7(b) of any other Federal milk order or § 1005.(7)(e) or § 1000.(8)(a) or § 1000.(8)(e); located within the marketing area as described on May 1, 2006, in § 1005.2, from which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusion:

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 4. Revise § 1006.7(h) introductory text to read as follows:

§ 1006.7 Pool plant.

* * * * *

(h) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1006.2;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 5. Revise § 1007.7(h) introductory text to read as follows:

§ 1007.7 Pool plant.

* * * * *

(h) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1007.2;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ 6. Revise § 1030.7(d) introductory text to read as follows:

§ 1030.7 Pool plant.

* * * * *

(d) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1030.2;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

■ 7. Revise § 1032.7(i) introductory text to read as follows:

§ 1032.7 Pool plant.

* * * * *

(i) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1032.2;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

■ 8. Revise § 1033.7(j) introductory text to read as follows:

§ 1033.7 Pool plant.

* * * * *

(j) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1033.2;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ 9. Revise § 1124.7(e) introductory text to read as follows:

§ 1124.7 Pool plant.

* * * * *

(e) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1124.2;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

■ 10. Revise § 1126.7(h) introductory text to read as follows:

§ 1126.7 Pool plant.

* * * * *

(h) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1126.2;

* * * * *

PART 1131—MILK IN THE ARIZONA MARKETING AREA

■ 11. Revise the part heading for part 1131 to read as set forth above.

§ 1131.2 [Amended]

■ 12. Revise the section heading for § 1131.2 to read as follows:

§ 1131.2 Arizona marketing area.

■ 13. Revise § 1131.7(h) introductory text to read as follows:

§ 1131.7 Pool plant.

* * * * *

(h) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1131.2;

* * * * *

Dated: May 12, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4590 Filed 5–12–06; 10:25 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD; Amendment 39–14515; AD 2006–01–11 R1]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2006–01–11 R1, which published in the **Federal Register** on March 16, 2006 (71 FR 13538), and applies to all The Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. AD 2006–01–11 R1 requires the installation of a pilot assist handle and deicing boots on the cargo pod and landing gear fairings; and the incorporation of changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM). Current language in paragraph (e)(4) of AD 2006–01–11 R1 regarding the placard requirement inadvertently states: ''You may insert a copy of this AD into the appropriate sections of the POH to comply with this action.'' This does not meet the intent of the AD. This document corrects that paragraph by removing the language referenced above.

DATES: The effective date of this AD (2006–01–11 R1) remains February 22, 2006.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4157; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On March 10, 2006, the FAA issued AD 2006–01–11 R1, Amendment 39–14515 (71 FR 13538, March 16, 2006), which applies to all Cessna Models 208 and 208B airplanes. AD 2006–01–11 R1 requires the installation of a pilot assist handle and deicing boots on the cargo pod and landing gear fairings; and the incorporation of changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM). Current language in paragraph (e)(4) of AD 2006–01–11 R1 regarding the placard requirement inadvertently states: ''You may insert a copy of this AD into the appropriate sections of the POH to comply with this action.'' This does not meet the intent of the AD.

Need for the Correction

This correction is needed to not allow a method of compliance that was inadvertently included in the AD and does not address the unsafe condition.

Correction of Publication

■ Accordingly, the publication of March 16, 2006 (71 FR 13538), of Amendment 39–14515; AD 2006–01–11 R1, which was the subject of FR Doc. 06–2546, is corrected as follows:

§ 39.13 [Corrected]

On page 13540, in § 39.13 [Amended], in paragraph (e)(4), in the Procedures column, remove the following text:

''You may insert a copy of this AD into the appropriate sections of the POH to comply with this action.''

Action is taken herein to correct this reference in AD 2006–01–11 R1 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains February 22, 2006.

Issued in Kansas City, Missouri, on May 5, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4424 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19982; Directorate Identifier 2004–NM–142–AD; Amendment 39–14597; AD 2006–10–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–223, –321, –322, and –323 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A330–223, –321, –322, and –323 airplanes. This AD requires repetitive inspections of the firewall of the lower aft pylon fairing (LAPF), and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports of cracking of the LAPF firewall. We are issuing this AD to detect and correct this cracking, which could reduce the effectiveness of the firewall and result in an uncontrolled engine fire.

DATES: This AD becomes effective June 20, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 20, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the 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 all Airbus Model A330–223, –321, –322, and –323 airplanes. That NPRM was published in the **Federal Register** on January 4, 2005 (70 FR 317). That NPRM proposed to require repetitive inspections of the firewall of the lower aft pylon fairing (LAPF), and corrective actions if necessary.

Explanation of New Relevant Service Information

Since we issued the NRPM, Airbus has issued Service Bulletin A330–54–3022, dated May 25, 2005. That service bulletin describes procedures for replacing the existing LAPF assemblies with improved parts. Doing this replacement eliminates the need for the

inspections that were proposed in the NPRM. Airbus Service Bulletin A330–54–3022 refers to Pratt & Whitney Service Bulletin PW4G–100–54–7, dated July 1, 2005, as an additional source of service information for modifying the LAPF assemblies.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive F–2004–028 R2, dated October 26, 2005. (The NPRM refers to French airworthiness directive F–2004–028 R1, dated September 15, 2004, as the parallel French action.) French airworthiness directive F–2004–028 R2 adds replacement of the LAPF assemblies with improved assemblies as an optional terminating action for the repetitive inspections of the LAPF firewall. Accordingly, we have added a new paragraph (i) to this AD to provide for doing Airbus Service Bulletin A330–54–3022 as an optional terminating action for the repetitive inspections required by this AD. We have also revised various other paragraphs to refer to paragraph (i) of this AD. We have also not included Note 4 of the NPRM in this AD. (Note 4 of the NPRM states that there is no terminating action for the inspections specified in the NPRM.)

Airbus has also issued Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004. (The NPRM refers to Airbus Service Bulletin A330–54–3021, dated February 4, 2004, as the appropriate source of service information for the actions specified in the NPRM.) Revision 01 of the service bulletin adds airplanes with certain serial numbers to the effectivity listing and incorporates various other editorial changes. We have revised paragraphs (f), (g), (h), and (j) of this AD to refer to Airbus Service Bulletin A330–54–3021, Revision 01, as the appropriate source of service information for doing the actions required by those paragraphs. We have also added a new paragraph (k) to give credit for actions done before the effective date of this AD in accordance with the original issue of that service bulletin.

Airbus Service Bulletin A330–54–3021, Revision 01, refers to Pratt & Whitney Alert Service Bulletin PW4G–100–A54–5, currently at Revision 1, dated June 30, 2004, as an additional source of service information. We have revised Note 2 of this AD to acknowledge that the Pratt & Whitney service bulletin is currently at Revision 1.

Comments

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

Support for the NPRM

One commenter, the Air Line Pilots Association, supports the NPRM.

Request To Allow Flight With Repaired Crack

Two commenters, Airbus and Pratt & Whitney (P&W, the engine manufacturer), request that we revise the NPRM to allow continued flight (for a limited period of time) with a known crack that exceeds 1.2 inches.

The French airworthiness directive and Airbus Service Bulletin A330–54–3021 provide for stop-drilling and sealing a crack that is longer than 1.2 inches, then repairing the firewall within 500 flight hours. The NPRM would require repair or replacement of the firewall before further flight if any crack longer than 1.2 inches is found. Under ''Differences Among Proposed AD, DGAC Action, and Airbus Service Bulletin'' in the NPRM, we note that we do not have data showing that the fireproof capability of the firewall is adequate with a crack greater than 1.2 inches long.

Airbus comments that it considers the firewall having a crack greater than 1.2 inches to be adequately fireproof if the crack is stop-drilled and filled with fireproof sealant. Airbus recommends that operation with such a crack be allowed to continue for 500 flight hours, as given in the French airworthiness directive and the referenced service bulletin.

P&W states, based on its knowledge of the LAPF assembly and its engineering judgment, that stop-drilling a crack that is longer than 1.2 inches and filling it with sealant will be adequate to maintain the fire safety and capability of the firewall for up to 500 flight hours. P&W points out that the proposed requirement to repair or replace the firewall before further flight if a crack exceeds 1.2 inches could cause undue hardships for operators. P&W notes that it is not possible to repair the firewall quickly, nor is it possible to replace the firewall in situ. It is also not common for operators to have a spare firewall.

We partially agree with the commenters' request. We agree that the LAPF firewall is a fire barrier and is not intended to carry significant structural loads. Airbus and P&W state that fireproof capability is maintained with a crack longer than 1.2 inches, but neither present test data that substantiate this. Airbus informs us, however, that the fire test was performed on a firewall with an unrepaired 1.2-inch crack, and the test results show that fireproof capability was adequately maintained even without the crack being stop-drilled and sealed. Airbus also notes that there have been no findings of multiple cracks, and the maximum length of any crack was 1.5 inches. Based on these data, and the expected improvement in fireproof capability if the crack is stop-drilled and sealed, we agree to allow continued operation for up to 500 flight hours with a crack between 1.2 inches and 1.5 inches that has been stop-drilled and sealed. However, any crack that exceeds 1.5 inches must be addressed through repair or replacement of the firewall before further flight in accordance with paragraph (h) of this AD, or in accordance with an alternative method of compliance (AMOC) approved in accordance with the procedures specified in paragraph (l) of this AD. We have added a new paragraph (g)(2) to this AD and have reidentified paragraph (g)(2) from the NPRM as paragraph (g)(3) in this AD. We have also revised Note 3 of this AD.

Request To Address Multiple Cracks

Paragraph (g)(1)(ii) of the NPRM states that, during any repeat inspection, if any crack that was previously less than or equal to 1.2 inches long is found to have extended to be greater than 1.2 inches long, or if an additional crack is found, the firewall must be repaired or replaced before further flight. Northwest Airlines (NWA) requests that additional cracks be allowed as long as the total combined length of all cracks is less than 1.2 inches. NWA proposes a scenario in which a 0.25-inch crack is found during the initial inspection, and another 0.25-inch crack is found during a repeat inspection.

We agree with NWA's request. Although Airbus tells us that there have been no findings to date of multiple cracks in service, it is possible that multiple cracks could be found. We have determined that there would be no difference in the level of safety between one crack of 1.2 inches or shorter, and multiple cracks that are a combined total of 1.2 inches or shorter. We have revised paragraph (g)(1) of this AD accordingly.

Request To Clarify Repetitive Inspections of Repaired Firewall

NWA also requests that we revise paragraph (h) of the NPRM to require inspections of repaired firewalls. While paragraph (h) would require that a replaced firewall be inspected within 3,000 flight hours after replacement,

that paragraph states no such requirement for repaired firewalls. NWA believes that repaired firewalls should be inspected within 1,000 flight hours after the repair.

We partially agree with the commenter's request. The last sentence of paragraph (h) of the NPRM should have specified inspecting the firewall within 3,000 flight hours after repair or replacement. We inadvertently omitted the words ''repair or'' before ''replacement'' in that sentence. However, we do not agree with the commenter's belief that repaired firewalls must be inspected within 1,000 flight hours after the repair. Airbus has confirmed that, for the purposes of this AD, repairing the firewall using the instructions in P&W Alert Service Bulletin PW4G–100–A54–5, in accordance with Airbus Service Bulletin A330–54–3021, Revision 01, restores the repaired firewall to the status of a new firewall of the same part number. Thus, a repaired firewall must be inspected within 3,000 flight hours after repair, just as a replaced firewall of the same part number must be inspected within 3,000 flight hours after replacement, as we specified in paragraph (h) of the NPRM. We find that a compliance time of 3,000 flight hours for the initial inspection after repair will provide an acceptable level of safety. Accordingly, we have revised the last sentence of paragraph (h)(1) of this AD to state, ''within 3,000 flight hours after *repair or* replacement of the LAPF firewall, inspect the firewall in accordance with paragraph (f) of this AD.'' We find that this change does not expand the scope of the NPRM because our intent that a repaired firewall must be inspected should have been obvious considering the statement in Note 4 of the NPRM that, ''There is no terminating action at this time for the inspections required by this AD.'' (As explained previously, we have not included Note 4 of the NPRM in this AD because a terminating action is now available and is provided as an option in paragraph (i) of this AD.)

Request To Correct Compliance Time

Airbus and NWA request that we revise paragraph (g)(1)(i) to change the compliance time from 4,600 flight cycles to 4,600 flight hours. NWA points out that this change will make the NPRM consistent with the French airworthiness directive and the referenced service bulletins.

We agree. A typographical error resulted in the compliance time being specified in flight cycles not flight hours. We find that this change does not expand the scope of the NPRM because the error was obvious; all other compliance times in this AD are stated in terms of flight hours, not flight cycles, and we did not state that we intended to differ in this regard from either the French airworthiness directive or the referenced service bulletins. We have revised paragraph (g)(1)(i) in this AD accordingly.

Request To Revise Inspection Intervals To Match Maintenance Schedule

US Airways requests that we revise the grace period in paragraph (f) of the NPRM from 500 flight hours to 600 flight hours to align with its A-check interval. For the same reason, U.S. Airways requests that we revise the repeat inspection interval for an uncracked firewall from 1,000 flight hours to 1,200 flight hours, and the repeat interval for a cracked firewall from 500 flight hours to 600 flight hours.

We do not agree with US Airways request to extend the grace periods and repetitive intervals in this AD. We have determined that the specified times represent the maximum interval of time allowable for the affected airplanes to continue to safely operate between inspections. Since maintenance schedules vary among operators, revising the grace period and repetitive intervals would not ensure that all operators would be able to inspect their airplanes during a scheduled maintenance visit. We have not changed the AD in this regard.

Explanation of Additional Change to This AD

We have revised Note 1 of this AD to clarify the definition of a detailed inspection.

Clarification of AMOC Paragraph

We have revised paragraph (l) of this AD to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

This AD affects about 20 airplanes of U.S. registry. The required actions will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspections required by this AD for U.S. operators is $2,600, or $130 per airplane, per inspection cycle.

The optional terminating action, if done, will take about 14 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost $120,000. Based on these figures, the estimated cost of the optional terminating action provided by this AD is $120,910 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–10–13 Airbus: Amendment 39–14597. Docket No. FAA–2004–19982; Directorate Identifier 2004–NM–142–AD.

Effective Date

(a) This AD becomes effective June 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330–223, –321, –322, and –323 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracking of the firewall of the lower aft pylon fairing (LAPF). We are issuing this AD to detect and correct this cracking, which could reduce the effectiveness of the firewall and result in an uncontrolled engine fire.

Compliance

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

Repetitive Inspections

(f) Prior to the accumulation of 3,000 total flight hours on the LAPF, or within 500 flight hours after the effective date of this AD, whichever is later: Perform a detailed inspection for cracking of the LAPF firewall, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until paragraph (i) of this AD is accomplished.

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

Note 2: Airbus Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004, refers to Pratt & Whitney Alert Service Bulletin PW4G–100–A54–5, currently at Revision 1, dated June 30, 2004, as an additional source of service information for doing the inspection and corrective actions.

Corrective Actions and Repetitive Inspections (Cracking Found)

(g) If any crack is found during any inspection required by paragraph (f) of this AD, do paragraph (g)(1) or (g)(2) of this AD.

(1) If the crack is less than or equal to 1.2 inches long, or if multiple cracks are found with a combined total length less than or equal to 1.2 inches: Before further flight, stop-drill the crack or cracks and apply sealants, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004, or do paragraph (h) of this AD. If the crack is stop-drilled and sealants applied, then repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 500 flight hours, and do paragraph (g)(1)(i) or (g)(1)(ii) of this AD, as applicable.

(i) During the repeat inspections required by paragraph (g)(1) of this AD, if the existing crack does not extend to be longer than 1.2 inches, and the combined total length of all cracks is less than or equal to 1.2 inches: Within 4,600 flight hours after the crack is initially found, do paragraph (h) of this AD.

(ii) During any repeat inspection required by paragraph (g)(1) of this AD, if any crack that was previously less than or equal to 1.2 inches long is found to have extended to be greater than 1.2 inches long but less than or equal to 1.5 inches long; or if the total length of all cracks is greater than 1.2 inches but less than or equal to 1.5 inches long: Within 500 flight hours, do paragraph (h) of this AD.

(iii) During any repeat inspection required by paragraph (g)(1) of this AD, if any crack that was previously less than or equal to 1.5 inches long is found to have extended to be greater than 1.5 inches long; or if the total length of all cracks is greater than 1.5 inches: Before further flight, do paragraph (h) of this AD.

(2) If the crack is less than or equal to 1.5 inches long, or if multiple cracks are found with a combined total length less than or equal to 1.5 inches: Before further flight, stop-drill the crack or cracks and apply sealants, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004. Then, within 500 flight hours after the stop-drilling and sealing of the crack or cracks, do paragraph (h) of this AD.

(3) If any crack is greater than 1.5 inches long, or if multiple cracks are found with a combined total length greater than 1.5 inches: Before further flight, do paragraph (h) of this AD.

Note 3: This AD does not allow continued flight with a known crack that is greater than 1.5 inches long or with multiple cracks having a combined total length greater than 1.5 inches.

Repair or Replacement of Firewall

(h) If any crack is found: At the applicable time specified in paragraph (g) of this AD, do paragraph (h)(1) or (h)(2) of this AD.

(1) Repair the LAPF firewall or replace the LAPF firewall with a new firewall, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004. Then, within 3,000 flight hours after repair or replacement of the LAPF firewall, inspect the firewall in accordance with paragraph (f) of this AD.

(2) Do paragraph (i) of this AD.

Optional Terminating Action

(i) Replacing the LAPF assembly with an improved LAPF assembly, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3022, dated May 25, 2005, terminates the repetitive inspections required by this AD.

Note 4: Airbus Service Bulletin A330–54–3022 refers to Pratt & Whitney Service Bulletin PW4G–100–54–7, dated July 1, 2005, as an additional source of service information for modifying the LAPF assemblies.

Reporting Requirement

(j) If any crack is found during any inspection required by this AD: Submit a report of the findings to Airbus, Department AI/SE–E5, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Submit the report at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Submitting Appendix 01 of Airbus Service Bulletin A330–54–3021, Revision 01, dated June 16, 2004, is an acceptable means of accomplishing this requirement. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Actions Accomplished Previously

(k) Inspections and corrective actions done before the effective date of this AD in accordance with Airbus Service Bulletin A330–54–3021, including Appendix 01, dated February 4, 2004, are acceptable for compliance with the corresponding requirements of paragraphs (f), (g), (h), and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(m) French airworthiness directive F–2004–028 R2, dated October 26, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use Airbus Service Bulletin A330–54–3021, Revision 01, including Appendix 01, dated June 16, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. If you do the optional terminating action, you must use Airbus Service Bulletin A330–54–3022, dated May 25, 2005, to perform that action. 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4504 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24104; Directorate Identifier 2005–NM–231–AD; Amendment 39–14595; AD 2006–10–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–200 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 Airbus Model A310–200 and –300 series airplanes. This AD requires repetitive inspections for cracking of the flap transmission shafts, and replacing the transmission shafts if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports of longitudinal cracks due to stress corrosion in the transmission shafts between the power control unit (PCU) and the torque limiters of the flap transmission system. We are issuing this AD to detect and correct cracking of the flap transmission shaft, which could compromise shaft structural integrity and lead to a disabled flap transmission shaft and reduced controllability of the airplane.

DATES: This AD becomes effective June 20, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 20, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A310–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on March 9, 2006 (71 FR 12152). That NPRM proposed to require repetitive inspections for cracking of the flap transmission shafts, and replacing the transmission shafts if necessary. The NPRM also proposed to provide an optional terminating action for the repetitive inspections.

Comments

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

Change to NPRM

We inadvertently deleted reference to the reporting requirement stated in the Direction Générale de l'Aviation Civile (DGAC) Airworthiness Directive and the Airbus service bulletin. This AD does not require reporting the results of the inspection to Airbus, which is a difference among the DGAC Airworthiness Directive, the service bulletin, and this AD. We have added our non-requirement as paragraph (j) of this AD and reidentified subsequent paragraphs accordingly.

Conclusion

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

Costs of Compliance

This AD will affect about 59 airplanes of U.S. registry. The required inspections will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $3,835, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–10–11 Airbus: Amendment 39–14595. FAA–2006–24104; Directorate Identifier 2005–NM–231–AD.

Effective Date

(a) This AD becomes effective June 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category; except for airplanes on which Airbus Modification 12247 has been embodied in production.

Unsafe Condition

(d) This AD results from reports of longitudinal cracks due to stress corrosion in the transmission shafts between the power control unit (PCU) and the torque limiters of the flap transmission system. We are issuing this AD to detect and correct cracking of the flap transmission shaft, which could compromise shaft structural integrity and lead to a disabled flap transmission shaft and reduced controllability of the airplane.

Compliance

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

Inspection and Corrective Action

(f) At the earlier of the compliance times specified in paragraph (f)(1) or (f)(2) of this AD: Perform a detailed inspection for stress corrosion cracking of the flight transmission shafts located between the PCU and the torque limiters in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005. Thereafter, repeat the inspections as required by paragraph (g) of this AD. Before further flight, replace any cracked transmission shaft discovered during any inspection required by this AD with a new or reconditioned shaft, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2095, dated March 29, 2000.

(1) Within 2,000 flight hours after the last flap asymmetry protection test performed in accordance with Airbus A310 Maintenance Planning Document (MPD) Task 275600–01–1.

(2) Within 8,000 flight cycles after the last flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–02–1 or 800 flight cycles after the effective date of this AD, whichever comes later.

Note 1: Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, refers to Lucas Liebherr Service Bulletin 551A–27–624, Revision 1, dated August 18, 2000, as an additional source of service information for accomplishing the inspections.

Note 2: Airbus Service Bulletin A310–27–2092, Revision 02, refers to Airbus Service Bulletin A310–27–2095, dated March 29, 2000, as a source of service information for replacing the flap transmission shafts.

Note 3: Airbus Service Bulletin A310–27–2095 refers to Lucas Liebherr Service Bulletin 551A–27-M551–05, dated January 12, 2000, as an additional source of service information for replacing the flap transmission shafts.

Repetitive Inspections

(g) Repeat the inspection required by paragraph (f) of this AD at the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) Before further flight after any occurrence of jamming of the flap transmission system.

(2) At intervals not to exceed 2,000 flight hours after each flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–01–1.

(3) At intervals not to exceed 8,000 flight cycles after each flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–02–1.

Optional Terminating Action

(h) Replacing any flap transmission shaft with a new or reconditioned transmission shaft in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2095, dated March 29, 2000, ends the inspections required for that transmission shaft only.

Actions Performed Using Previously Issued Service Information

(i) Actions performed in accordance with Airbus Service Bulletin A310–27–2092, dated April 9, 1999; or Revision 01, dated December 11, 2001, are considered acceptable for compliance with the corresponding requirements of this AD.

No Reporting

(j) Although Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) French airworthiness directive F–2005–174, dated October 26, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005; and Airbus Service Bulletin A310–27–2095, dated March 29, 2000; 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for copies of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and

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

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4503 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24120; Directorate Identifier 2006–NM–021–AD; Amendment 39–14593; AD 2006–10–09]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes in operation. This AD requires replacing the protective tubes and conduits of the wiring harnesses of the refueling vent and pilot valves with non-conductive hoses; modifying the harness wiring and supports; and rerouting the harnesses to prevent interference with adjacent strobe light connectors; as applicable. This AD results from a fuel system review conducted by the manufacturer. We are issuing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion.

DATES: This AD becomes effective June 20, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 20, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–120( ) airplane models in operation. That NPRM was published in the **Federal Register** on March 14, 2006 (71 FR 13058). That NPRM proposed to require replacing the protective tubes and conduits of the wiring harnesses of the refueling vent and pilot valves with non-conductive hoses; modifying the harness wiring and supports; and rerouting the harnesses to prevent interference with adjacent strobe light connectors; as applicable.

Comments

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

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Costs of Compliance

This AD will affect about 180 airplanes of U.S. registry. The required actions will take between 4 and 24 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost between $555 and $6,179 per airplane. Based on these figures, which depend upon airplane configuration, the estimated cost of this AD for U.S. operators is between $146,700 and $1,393,020, or between $815 and $7,739 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–10–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14593. Docket No. FAA–2006–24120; Directorate Identifier 2006–NM–021–AD.

Effective Date

(a) This AD becomes effective June 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes in operation, certificated in any category.

Unsafe Condition

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

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.

Rerouting Harnesses and Replacing Harness Conduits

(f) Within 5,000 flight hours after the effective date of this AD, perform the actions specified in paragraph (f)(1) or (f)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–28–0014, Revision 01, dated November 4, 2004.

(1) For Group I airplanes as identified in paragraph 1.1.1(a) or for Group II airplanes as identified in paragraph 1.1.1(b) of the service bulletin, as applicable: Modify the supports and wiring of the refueling vent and pilot valves wiring harnesses; reroute the harnesses to prevent interference with adjacent strobe light connectors; and replace the protective tubes and conduits of the harnesses with non-conductive hoses; in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(2) For all remaining airplanes as identified in paragraph 1.1.2 of the service bulletin: Replace the protective tubes of the wiring harnesses of the refueling vent and pilot valves with non-conductive hoses; in accordance with Part II of the Accomplishment Instructions of the service bulletin.

Credit for Prior Revision of Service Information

(g) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 120–28–0014, dated April 19, 2004, are considered acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) Brazilian airworthiness directive 2005–12–04, effective January 19, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 120–28–0014, Revision 01, dated November 4, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. EMBRAER Service Bulletin 120–28–0014, Revision 01, dated November 4, 2004, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4	01	Nov. 4, 2004.
5–71	Original	April 19, 2004.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4502 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24118; Directorate Identifier 2006–NM–034–AD; Amendment 39–14594; AD 2006–10–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model BD–100–1A10 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model BD–100–1A10 airplanes. This AD requires an inspection for signs of arcing or heat damage of the electrical connections of the terminal blocks, ground studs, and the end of the wires and surrounding insulation for the windshield and side window anti-ice systems; and repairing any arced or damaged electrical connection. This AD also requires re-torquing electrical connections of the terminal blocks and ground studs for the windshield and side window anti-ice systems. This AD results from an in-service incident involving smoke and odor in the cockpit. We are issuing this AD to prevent loose electrical connections that could arc and overheat, and cause wiring damage of the windshield and side window anti-ice systems. Such wiring damage could result in smoke and/or fire in the flight compartment.

DATES: This AD becomes effective June 20, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 20, 2006.

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K

1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model BD–100–1A10 airplanes. That NPRM was published in the **Federal Register** on March 14, 2006 (71 FR 13053). That NPRM proposed to require an inspection for signs of arcing or heat damage of the electrical connections of the terminal blocks, ground studs, and the end of the wires and surrounding insulation for the windshield and side window anti-ice systems; and repairing any arced or damaged electrical connection. That NPRM proposed to also require re-torquing electrical connections of the terminal blocks and ground studs for the windshield and side window anti-ice systems.

Comments

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

Conclusion

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

Costs of Compliance

This AD will affect about 31 airplanes of U.S. registry. The required actions will take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $9,920, or $320 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–10–10 Bombardier, Inc.: Amendment 39–14594. Docket No. FAA–2006–24118; Directorate Identifier 2006–NM–034–AD.

Effective Date

(a) This AD becomes effective June 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model BD–100–1A10 airplanes, serial numbers 20006 through 20046 inclusive, 20048, 20051, and 20052; certificated in any category.

Unsafe Condition

(d) This AD results from an in-service incident involving smoke and odor in the cockpit. We are issuing this AD to prevent loose electrical connections that could arc and overheat, and cause wiring damage of the windshield and side window anti-ice systems. Such wiring damage could result in smoke and/or fire in the flight compartment.

Compliance

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

Inspection, Repair, and Re-Torque

(f) Within 90 days after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A100–30–03, Revision 01, dated December 21, 2005.

(1) Do a detailed inspection for signs of arcing or heat damage of the electrical connections of the terminal blocks, ground studs, and the end of the wires and surrounding insulation for the windshield and side window anti-ice systems. If any sign of arcing or heat damage is detected, before further flight, repair the arced or damaged electrical connection.

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

(2) Re-torque the electrical connections of the terminal blocks and ground studs for the windshield and side window anti-ice systems.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Canadian airworthiness directive CF–2006–01, dated January 20, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Bombardier Alert Service Bulletin A100–30–03, Revision 01, dated December 21, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4501 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24792; Directorate Identifier 2006–NM–102–AD; Amendment 39–14599; AD 2006–10–15]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

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 certain Learjet Model 45 airplanes. This AD requires a review of airplane maintenance records to determine whether inspections identified by certain inspection reference numbers (IRNs) have been done. If any IRN has not been done, this AD requires doing an inspection of the inside of the wet wing fuel areas and the fuel pump screens for tape and adhesive tape residue, cleaning the low pressure fuel filter, determining whether tape or adhesive residue is present, doing an inspection of the filter for damage before installation, and applicable corrective actions if necessary. In addition, this AD requires sending the review and inspection results to the FAA. This AD results from reports of tape found in the wing fuel tanks. We are issuing this AD to prevent blocked fuel passages and fuel pump screens and the inability of the flightcrew to transfer fuel from one wing tank to the other tank due to tape in the wing fuel tanks, which could result in a fuel imbalance and consequent failure of an engine; and to prevent contaminated fuel pump screens, engine fuel controls, and fuel nozzles, due to tape adhesive dissolving in the fuel, which could result in potential erroneous readings of the fuel quantity indication system.

DATES: This AD becomes effective May 31, 2006.

We must receive comments on this AD by July 17, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We have received four reports of tape found in the wing fuel tanks on Learjet Model 45 airplanes. In one case, the crew alert system (CAS) indication of a fuel filter impending bypass turned on in the cockpit, and in three cases, the tape was found during scheduled inspections. The cause of such fuel contamination has not been determined. Tape in the wing fuel tanks, if not corrected, could block fuel passages and fuel pump screens and could result in the inability of the flightcrew to transfer fuel from one wing tank to the other tank, which could result in a fuel imbalance and consequent failure of an engine. Tape adhesive dissolving in the fuel, if not corrected, could contaminate fuel pump screens, engine fuel controls, and fuel nozzles, which could result in potential erroneous readings of the fuel quantity indication system.

FAA's Determination and Requirements of this AD

The unsafe conditions described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent the identified unsafe conditions described previously. This AD requires a review of the airplane maintenance records to determine whether inspections identified by certain inspection reference numbers (IRNs) have been done. If any IRN has not been done, this AD requires doing an inspection of the inside of the wet wing fuel areas and the fuel pump screens for tape and adhesive tape residue, cleaning the low pressure fuel filter, determining whether tape or adhesive residue is present, doing an inspection of the filter for damage before installation, and applicable corrective actions if necessary. The corrective actions include cleaning any debris found in the wing fuel tank, returning any engine fuel control subjected to contaminated fuel for serving to the engine manufacturer, and repairing/replacing any damaged filter with a new filter; as applicable. In addition, this AD requires sending the review and inspection results to the FAA.

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 to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24792; Directorate Identifier 2006–NM–102–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD 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 that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

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 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, 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):

2006–10–15 Learjet: Amendment 39–14599. Docket No. FAA–2006–24792; Directorate Identifier 2006–NM–102–AD.

Effective Date

(a) This AD becomes effective May 31, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 45 airplanes, serial numbers 45–005 through 45–295 inclusive, and 45–2001 through 45–2044 inclusive; certificated in any category.

Unsafe Condition

(d) This AD results from reports of tape found in the wing fuel tanks. We are issuing this AD to prevent blocked fuel passages and fuel pump screens and the inability of the flightcrew to transfer fuel from one wing tank to the other tank due to tape in the wing fuel tanks, which could result in a fuel imbalance and consequent failure of an engine; and to prevent contaminated fuel pump screens, engine fuel controls, and fuel nozzles due to tape adhesive dissolving in the fuel, which could result in potential erroneous readings of the fuel quantity indication system.

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.

Review of Airplane Maintenance Records

(f) Within 50 flight hours or 30 days after the effective date of this AD, whichever occurs first, review the airplane maintenance records to determine whether inspections identified by the inspection reference numbers (IRNs) in paragraphs (f)(1) and (f)(2) of this AD have been done.

(1) IRN O2810001, Inspection/Service Requirement, ''Wing Tanks '' Perform Visual Inspection. Inspect for corrosion. (Refer to 5–10–00.),'' of Bombardier Learjet 45 M45 Maintenance Manual.

(2) IRN O2820000, Inspection/Service Requirement, ''Low Pressure Fuel Filter '' Remove and inspect for contamination. Clean if necessary. (Refer to 28–20–15.),'' of Bombardier Learjet 45 M45 Maintenance Manual.

General Visual Inspections and Cleaning

(g) During the records review required by paragraph (f) of this AD, if it cannot be positively determined whether both IRNs have been done: Except as provided by paragraph (h) of this AD, within 50 flight hours or 30 days after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Chapters 5–10–00 and 28–20–15, as applicable, of the Bombardier Learjet 45 M45 Maintenance Manual are approved methods.

(1) Do a general visual inspection of the inside of the wet wing fuel areas and the fuel pump screens for tape or adhesive tape residue.

(2) Clean the low pressure fuel filter, determining whether tape or adhesive tape residue is present, and do a general visual inspection of the filter for damage before installation.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of

inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(h) As of the effective date of this AD: If a crew alert system message of ''L FUEL FILTER, R FUEL FILTER, LR FUEL FILTER, L FUEL PRESS LOW, R FUEL PRESS LOW, or LR FUEL PRESS LOW'' occurs during flight or on the ground, do the actions required by paragraph (g) of this AD before further flight, unless those actions have already been done.

Corrective Actions

(i) If any tape or adhesive tape residue is found during the general visual inspection required by paragraph (g)(1) or during the cleaning required by paragraph (g)(2) of this AD, before further flight, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Clean the wing fuel tank in accordance with a method approved by the Manager, Wichita ACO. Chapter 20–71–00 of the Bombardier Learjet 45 M45 Maintenance Manual is one approved method.

(2) Service the affected engine fuel filter and return any engine fuel control subjected to contaminated fuel for servicing to Honeywell Engines. Coordinate the return of the engine fuel control with Honeywell Engines, Systems & Services, Customer Support Center, M/S 26–06/2102–323, P.O. Box 29003, Phoenix, Arizona 85038–9003; telephone (800) 601–3099 or (602) 365–3099; fax (602) 365–3343.

(j) If any damage is found during the general visual inspection required by paragraph (g)(2) of this AD, before further flight, do the applicable action specified in paragraph (j)(1) or (j)(2) of this AD in accordance with a method approved by the Manager, Wichita ACO. Chapter 28–20–15 of the Bombardier Learjet 45 M45 Maintenance Manual is one approved method.

(1) For damage that is repairable: Repair damaged filter.

(2) For damage beyond repair: Replace the damaged filter with a new filter.

Reporting Requirement

(k) Within 10 days after accomplishing the review required by paragraph (f) of this AD or the general visual inspection required by paragraph (g) of this AD if done, whichever occurs later, submit a report of the applicable review and inspection results to: James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; e-mail *james.galstad@faa.gov;* telephone (316) 946–4135; fax (316) 946–4107. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056. The report must include the following, as applicable:

(1) The airplane serial number;

(2) The number of flight hours on the airplane;

(3) The applicable review and inspection results (both positive and negative findings), including a description, pictures, and pertinent information for any tape or adhesive tape residue found in the wing tank(s); and

(4) Date of inspection of the wing tank(s).

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 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

(m) None.

Issued in Renton, Washington, on May 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4542 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 101 and 122

[USCBP–2005–0007; CBP Dec. 06–14]

Establishment of a New Port of Entry in the Tri-Cities; Area of Tennessee and Virginia and Termination of the User-Fee Status of Tri-Cities Regional Airport

AGENCY: Customs and Border Protection; DHS.

ACTION: Final rule.

SUMMARY: This document amends Department of Homeland Security regulations pertaining to the Bureau of Customs and Border Protection's field organization by establishing a new port of entry in the Tri-Cities area of the States of Tennessee and Virginia, including the Tri-Cities Regional Airport. The new port of entry includes the same geographical boundaries of the current Customs and Border Protection User Fee Port No. 2082, which encompasses Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia. The user-fee status of Tri-Cities Regional Airport, located in Blountville, Tennessee, is terminated. These changes will assist the Bureau of Customs and Border Protection in its continuing efforts to provide better service to carriers, importers and the general public.

DATES: *Effective Date:* June 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–344–2776.

SUPPLEMENTARY INFORMATION:

Background

In a Notice of Proposed Rulemaking published in the **Federal Register** (70 FR 43808) on July 29, 2005, the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP), proposed to amend 19 CFR 101.3(b)(1) by establishing a new port of entry at Tri-Cities Regional Airport and the area which it services in the states of Tennessee and Virginia. The new port of entry was proposed to include the same geographical boundaries of the current CBP User Fee Port No. 2082, which encompasses Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia. The boundaries were also to include Tri-Cities Regional Airport, located in Blountville, Tennessee, which currently operates, and is listed, as a user-fee airport at 19 CFR 122.15(b).

CBP proposed the establishment of the new port of entry because the Tri-Cities area satisfies the current criteria for port of entry designations as set forth in Treasury Decision (T.D.) 82–37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, CBP evaluates whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. The proposed rule set forth how the Tri-Cities area meets the criteria.

Analysis of Comments and Conclusion

CBP did not receive any comments in response to the Notice of Proposed Rulemaking. As CBP continues to believe that the establishment of a new port of entry at Tri-Cities Regional Airport, and the area which it services in the states of Tennessee and Virginia, will assist CBP in its continuing efforts to provide better service to carriers, importers and the general public, CBP is

establishing the new port of entry as proposed and Tri-Cities Regional Airport will lose its status as a user-fee airport. The change of status for Tri-Cities Regional Airport from a user-fee airport to inclusion within the boundaries of a port of entry will subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

Description of the New Port of Entry Limits

The geographical limits of the Tri-Cities, TNNA, port of entry are as follows:

The contiguous outer boundaries of Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia.

Authority

This change is made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624, and the Homeland Security Act of 2002, Public Law 107–296 (November 25, 2002).

The Regulatory Flexibility Act and Executive Order 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. This final rule is not a significant regulatory action within the meaning of Executive Order 12866. This action also will not have a significant economic impact on a substantial number of small entities. Accordingly, DHS certifies that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port of entry and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 122

Customs duties and inspection, Airports, Imports, Organization and functions (Government agencies).

Amendments to CBP Regulations

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101), and part 122, CBP Regulations (19 CFR part 122), are amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

■ 2. The list of ports in § 101.3(b)(1) is amended by adding, in alphabetical order under the state of Tennessee, ''Tri-Cities, TN/VA'' in the ''Ports of entry'' column and ''CBP Dec. 06–14'' in the ''Limits of Port'' column.

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

§ 122.15 [Amended]

■ 2. The list of user fee airports at 19 CFR 122.15(b) is amended by removing ''Blountville, Tennessee'' from the ''Location'' column and, on the same line, ''Tri-City Regional Airport'' from the ''Name'' column.

Dated: May 9, 2006.

Michael Chertoff,

Secretary.

[FR Doc. 06–4535 Filed 5–15–06; 8:45 am]

BILLING CODE 9111–14–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AG00

Rules for Helping Blind and Disabled Individuals Achieve Self-Support

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our regulations to implement section 203 of the Social Security Independence and Program Improvements Act of 1994. Section 203 of this law amended section 1633 of the Social Security Act to require us to establish by regulations criteria for time limits and other criteria related to plans to achieve self-support (PASS). The law requires that we establish criteria for a PASS and that when we set time limits for your PASS, we take into account the length of time that you need to achieve your employment goal, within a reasonable period.

A PASS allows some persons who receive or are eligible for Supplemental Security Income (SSI) disability benefits to set aside part of their income and/or resources to meet an employment goal. The income and/or resources you set aside under a PASS will not be counted in determining the amount of your SSI payment or eligibility.

DATES: These final rules are effective on June 15, 2006.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at: *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Mary Hoover, Policy Analyst, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call 410–965–5651 or TTY 1–800–325–0778 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of These Final Rules?

In these final rules, we are amending our regulations to implement section 203 of the Social Security Independence and Program Improvements Act of 1994 (Pub. L. 103–296). This law amended section 1633 of the Social Security Act to provide that, as of January 1, 1995, in establishing time limits and other criteria related to a PASS, we take into account the length of time that you will need to achieve your employment goal, within a reasonable period, and other factors as determined by the Commissioner to be appropriate. This requirement for a more individualized time limit changed the time limit requirements for PASS, which had provided for an initial period of not

more than 18 months, an extension of up to an additional 18 months, and a maximum of 48 months. We are revising our rules to take into account your individual needs and your employment goal in determining what a reasonable length of time is to achieve your employment goal. These revisions add language to some of our rules describing the information that must be contained in a PASS. They clarify requirements currently in our PASS rules and operating procedures. These revisions do not reflect a change in policy because after the enactment of Public Law 103–296, we updated our operating manual to reflect the need for a more individualized assessment of a PASS time limit.

What Is a Plan to Achieve Self-Support (PASS)?

A PASS allows persons who are blind or disabled and who receive, are eligible for, or are applying for SSI, to set aside income and/or resources for expenses needed in meeting an employment goal. We will not count the income and/or resources set aside under a PASS in determining your eligibility for and receipt of SSI. If you receive title II disability benefits, you may also use a PASS to meet an employment goal if you:

- Would meet all other income and resource eligibility requirements for SSI if some or all of your title II benefit was excluded;
- Apply for SSI; and
- Develop an approved PASS that sets aside some or all of your title II benefit towards meeting an employment goal.

The purpose of a PASS is to help persons who are blind or disabled become self-supporting. A PASS must meet specific requirements that are set out in our regulations at 20 CFR 416.1180 through 416.1182 and in chapter SI 00870 of our Program Operations Manual at: *http://policy.ssa.gov/poms.nsf/partlist?OpenView.* It must be individualized with an employment goal that is feasible and with a plan to reach that employment goal that is viable for you. It must be in writing, contain reasonable start and ending dates for meeting your employment goal, and establish target dates for milestones, i.e., intermediate steps towards attainment of your goal. It must be approved by us, and we will review your progress under the plan at least annually.

What Revisions Are We Making and Why?

As of January 1, 1995, section 1633(d) of the Act has required that, in establishing time limits and other criteria for a PASS, we consider the reasonable amount of time that you need to meet your employment goal and other factors that we determine are appropriate.

We are revising our rules to eliminate the current monthly time limits and to add rules that will take into account your individual needs and your employment goal in determining what a reasonable length of time is for you to achieve that goal. These revisions describe the requirements for and contents of a PASS to clarify requirements currently in our PASS rules and operating procedures. These revisions clarify that a PASS must have a feasible employment goal, a viable plan to reach that goal, and have reasonable beginning and ending dates, including target dates for milestones toward completion of the goal. The revisions state that we will review progress under a plan at least annually. We will help you establish a reasonable ending date for your PASS. We may adjust or extend the ending date of your PASS based on progress towards your goal and earnings level reached. We will review your PASS progress at least annually to determine if you continue to follow the provisions of your PASS.

Specific Changes

The following is an explanation of the specific changes we are making. We are revising § 416.1180 by adding that we will exclude income used to meet expenses that are reasonable and necessary to fulfill an approved PASS and to make a minor change in terminology. In addition, we are revising § 416.1225 to clarify that we will not count resources that are used for expenses that are reasonable and necessary to fulfill a PASS. Requiring that the expenses be reasonable and necessary to fulfill a PASS is not a change in policy. It is contained in our operating procedures.

We are revising § 416.1181 to list the requirements of a PASS that sets aside income to meet an employment goal and § 416.1226 to list the requirements of a PASS that sets aside resources to meet an employment goal. A PASS must be individualized, be in writing, specify an employment goal that is feasible, include a plan to reach the goal that is viable for you, and contain a start date, ending date and target milestone dates for meeting your employment goal. You must propose a reasonable ending date to your PASS. If necessary, we will help you establish an ending date, which may be different than the ending date that you propose. Before you begin your PASS, we must approve it. After your PASS is approved and you begin following your PASS, we may adjust or extend the PASS ending date based on progress towards your goal and earnings level reached. We will review your PASS progress at least annually to determine if you continue to follow the provisions of your PASS.

A PASS that sets aside income or resources must show anticipated expenses and explain how they are necessary for the employment goal. It must show anticipated income (or resources you have and will receive) and explain how the income or resources will be used to meet expenses towards the employment goal. It must show how the money or resources set aside under a PASS will be kept separate from other funds or resources. It must show how living expenses will be met while the PASS is in effect. If the employment goal is self-employment, it must include a plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

Public Comments

On July 11, 2005, we published proposed rules in the **Federal Register** (70 FR 39689) and provided a 60-day comment period. We received comments from five individuals and four advocacy organizations. All of the commenters support the implementation of these rules, although some requested further elaboration of specific terms used in the rules. Some of the commenters made recommendations that were outside the scope of these rules. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We have tried to present all views adequately and carefully address all of the issues raised by the commenters that are within the scope of these rules.

Comment: One commenter asked that we provide a better explanation of what we mean by a feasible employment goal and a viable plan in §§ 416.1181(a)(4) and 416.1226(a)(4).

Response: We are adopting this commenter's recommendation. We have expanded §§ 416.1181(a)(4) and 416.1226(a)(4) to define what we mean by a feasible employment goal. A feasible employment goal is one that you have a reasonable likelihood of achieving. Additionally, we have added

a new § 416.1181(a)(5) and § 416.1226(a)(5) to explain what we mean by a viable plan. A plan is viable if it sets forth attainable steps to reach your goal and if it is financially sustainable, that is, the plan will leave you with enough money to meet living expenses while you set aside income or resources to meet your goal. We have renumbered the remaining paragraphs.

Comment: Two commenters recommended that we provide an example of what we mean by a reasonable ending date for a PASS and that we delineate what we consider a reasonable period for completion of a PASS.

Response: The legislation requires that we establish time limits that take your needs into account. We will assess your current needs, education, work experience, income and resources, and compare that to your ultimate employment goal and plan for reaching that goal, to determine an appropriate ending date. This is a highly individualized assessment. We do not believe an example would be useful, given the wide variety of individual factors used to determine an appropriate ending date. For this reason, we are not adopting this commenter's recommendation.

Comment: Two commenters asked how much of a reduction is ''substantial'' when we say that the goal should generate sufficient earnings to substantially reduce or eliminate your dependence on SSI or eliminate your need for title II benefits. These commenters also recommended that we provide an example.

Response: The PASS employment goal should generate sufficient earnings to substantially reduce or eliminate your dependence on SSI or eliminate your need for title II disability benefits. The nature of a PASS is highly individualized and the specific financial and personal circumstances for each individual can vary widely; therefore, we have chosen not to place a numerical value on the meaning of ''substantially reduce your dependence on SSI'' that would apply in every situation. However, we agree that examples may help clarify what we mean by ''substantial.'' Therefore, we are adopting this recommendation with modifications.

Regulatory Procedures

Executive Order (E.O.) 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13256. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements at 416.1181 and 416.1226. SSA solicited public comment on the reporting burdens on July 11, 2005 in the **Federal Register** (FR) at 70 FR 39689 and provided a 60-day comment period. An Information Collection Request has been submitted to OMB to obtain clearance of the sections cited above. SSA will publish a notice providing the OMB number and expiration date once approved.

To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454. Comments should be submitted and/or faxed to OMB and SSA at the following address/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA. Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Room 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235–6401. Fax Number: 410–965–6400.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income, Reporting and recordkeeping requirements.

Dated: May 8, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts K and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

■ 1. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. The second, third and fourth sentences of § 416.1180 are revised to read as follows:

§ 416.1180 General.

* * * If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income (for example, your or a family member's wages, title II benefits, or pension income) that you use or set aside to use for expenses that we determine to be reasonable and necessary to fulfill an approved plan to achieve self-support. (See §§ 416.1112(c)(9) and 1124(c)(13).) You may develop a plan to achieve self-support on your own or with our help. * * *

■ 3. Section 416.1181 is revised to read as follows:

§ 416.1181 What is a plan to achieve self-support (PASS)?

(a) A PASS must—

(1) Be designed especially for you;

(2) Be in writing;

(3) Be approved by us (a change of plan must also be approved by us);

(4) Have a specific employment goal that is feasible for you, that is, a goal that you have a reasonable likelihood of achieving;

(5) Have a plan to reach your employment goal that is viable and financially sustainable, that is, the plan—

(i) Sets forth steps that are attainable in order to reach your goal, and

(ii) Shows that you will have enough money to meet your living expenses while setting aside income or resources to reach your goal;

(6) Be limited to one employment goal; however, the employment goal may be modified and any changes related to the modification must be made to the plan;

(7) Show how the employment goal will generate sufficient earnings to substantially reduce or eliminate your dependence on SSI or eliminate your need for title II disability benefits;

Example 1: A Substantial Reduction Exists. Your SSI monthly payment amount is $101 and your PASS employment goal earnings

will reduce your SSI payment by $90. We may consider that to be a substantial reduction.

Example 2: A Substantial Reduction Exists. You receive a title II benefit of $550 and an SSI payment of $73. Your PASS employment goal will result in work over the SGA level that eliminates your title II benefit but increases your SSI payment by $90. We may consider that a substantial reduction because your work will eliminate your title II payment while only slightly increasing your SSI payment.

Example 3: A Substantial Reduction Does Not Exist. Your SSI monthly payment amount is $603 and your PASS employment goal earnings will reduce your SSI payment by $90. We may not consider that to be a substantial reduction.

(8) Contain a beginning date and an ending date to meet your employment goal;

(9) Give target dates for meeting milestones towards your employment goal;

(10) Show what expenses you will have and how they are reasonable and necessary to meet your employment goal;

(11) Show what money you have and will receive, how you will use or spend it to attain your employment goal, and how you will meet your living expenses; and

(12) Show how the money you set aside under the plan will be kept separate from your other funds.

(b) You must propose a reasonable ending date for your PASS. If necessary, we can help you establish an ending date, which may be different than the ending date you propose. Once the ending date is set and you begin your PASS, we may adjust or extend the ending date of your PASS based on progress towards your goal and earnings level reached.

(c) If your employment goal is self-employment, you must include a business plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

(d) Your progress will be reviewed at least annually to determine if you are following the provisions of your plan.

Subpart L—[Amended]

■ 4. The authority citation for subpart L is revised to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 5. Section 416.1225 is revised to read as follows:

§ 416.1225 An approved plan to achieve self-support; general.

If you are blind or disabled, we will pay you SSI benefits and will not count resources that you use or set aside to use for expenses that we determine to be reasonable and necessary to fulfill an approved plan to achieve self-support.

■ 6. Section 416.1226 is revised to read as follows:

§ 416.1226 What is a plan to achieve self-support (PASS)?

(a) A PASS must—

(1) Be designed especially for you;

(2) Be in writing;

(3) Be approved by us (a change of plan must also be approved by us);

(4) Have a specific employment goal that is feasible for you, that is, a goal that you have a reasonable likelihood of achieving;

(5) Have a plan to reach your employment goal that is viable and financially sustainable, that is, the plan—

(i) Sets forth steps that are attainable in order to reach your goal, and

(ii) Shows that you will have enough money to meet your living expenses while setting aside income or resources to reach your goal;

(6) Be limited to one employment goal; however, the employment goal may be modified and any changes related to the modification must be made to the plan;

(7) Show how the employment goal will generate sufficient earnings to substantially reduce your dependence on SSI or eliminate your need for title II disability benefits;

Example 1: A Substantial Reduction Exists. Your SSI monthly payment amount is $101 and your PASS employment goal earnings will reduce your SSI payment by $90. We may consider that to be a substantial reduction.

Example 2: A Substantial Reduction Exists. You receive a title II benefit of $550 and an SSI payment of $73. Your PASS employment goal will result in work over the SGA level that eliminates your title II benefit but increases your SSI payment by $90. We may consider that a substantial reduction because your work will eliminate your title II payment while only slightly increasing your SSI payment.

Example 3: A Substantial Reduction Does Not Exist. Your SSI monthly payment amount is $603 and your PASS employment goal earnings will reduce your SSI payment by $90. We may not consider that to be a substantial reduction.

(8) Contain a beginning date and an ending date to meet your employment goal;

(9) Give target dates for meeting milestones towards your employment goal;

(10) Show what expenses you will have and how they are reasonable and necessary to meet your employment goal;

(11) Show what resources you have and will receive, how you will use them to attain your employment goal, and how you will meet your living expenses; and

(12) Show how the resources you set aside under the plan will be kept separate from your other resources.

(b) You must propose a reasonable ending date for your PASS. If necessary, we can help you establish an ending date, which may be different than the ending date you propose. Once the ending date is set and you begin your PASS, we may adjust or extend the ending date of your PASS based on progress towards your goal and earnings level reached.

(c) If your employment goal is self-employment, you must include a business plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

(d) Your progress will be reviewed at least annually to determine if you are following the provisions of your plan.

[FR Doc. 06–4530 Filed 5–15–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor; Fomepizole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) for fomepizole solution for injection from Orphan Medical, Inc., to Jazz Pharmaceuticals, Inc. The regulations are also being amended to reflect approval of a supplemental NADA to remove a vial of saline diluent from this product.

DATES: This rule is effective May 16, 2006.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Orphan Medical, Inc., 13911 Ridgedale Dr., suite 475, Minnetonka, MN 55305, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–075 for ANTIZOL-VET (fomepizole) to Jazz Pharmaceuticals, Inc., 3180 Porter Dr., Palo Alto, CA 94304. A supplement was also filed to NADA 141–075 to remove a vial of saline diluent from this product. The supplemental NADA is approved as of April 18, 2006, and the regulations are amended in 21 CFR 522.1004 to reflect the change of sponsorship, the removal of a vial of saline diluent from the product, and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

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

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Orphan Medical, Inc.'' and alphabetically add a new entry for ''Jazz Pharmaceuticals, Inc.''; and in the table in paragraph (c)(2) remove the entry for ''062161'' and numerically add a new entry for ''068727'' to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Jazz Pharmaceuticals, Inc., 3180 Porter Dr., Palo Alto, CA 94304.	068727
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
068727	Jazz Pharmaceuticals, Inc., 3180 Porter Dr., Palo Alto, CA 94304
* *	* * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 4. In § 522.1004, revise paragraphs (a), (b), (c)(1), and (c)(3) to read as follows:

§ 522.1004 Fomepizole.

(a) *Specifications.* Each vial contains 1.5 grams fomepizole (1.5 milliliter (mL) of 1.0 gram per mL solution).

(b) *Sponsor.* See No. 068727 in § 510.600(c) of this chapter.

(c) * * *

(1) *Amount.* 20 milligrams per kilogram (mg/kg) of body weight intravenously initially, followed by 15 mg/kg at 12 and 24 hours, and 5 mg/kg at 36 hours.

* * * * *

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

Dated: May 3, 2006.

Steven D. Vaughn,

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

[FR Doc. 06–4534 Filed 5–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9243]

RIN 1545–BA65

Revision of Income Tax Regulations Under Sections 367, 884, and 6038B Dealing With Statutory Mergers or Consolidations Under Section 368(a)(1)(A) Involving One or More Foreign Corporations, and Guidance Necessary To Facilitate Business Electronic Filing Under Section 6038B; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9243), that was published in the **Federal Register** on Thursday, January 26, 2006 (71 FR 4276). This final regulation amends the income tax regulations under various provisions of the Internal Revenue Code to account for statutory mergers and consolidations.

DATES: This correction is effective January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Christopher Trump (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 9243) that is the subject of this correction is under section 367 of the Internal Revenue Code.

Need for Correction

As published, TD 9243 contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

§ 1.367(b)–6 [Corrected]

■ **Par. 2.** Section 1.367(b)–6 is amended by removing the third sentence of

paragraph (a)(1) and adding the following sentence in its place to read as follows:

§ 1.367(b)–6 Effective dates and coordination rules.

(a) * * *

(1) * * * Section 1.367(b)–4(b)(1)(ii) applies to all triangular reorganizations and reorganizations described in section 368(a)(1)(G) and (a)(2)(D) occurring on or after January 23, 2006, although taxpayers may apply § 1.367(b)–4(b)(1)(ii) to triangular B reorganizations occurring on or after February 23, 2000, that is not closed by the period of limitations if done consistently with respect to all such triangular B reorganizations.* * *

* * * * *

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 06–4533 Filed 5–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 206

National Security Education Program (NSEP) Grants to Institutions of Higher Education

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document republishes 32 CFR part 206, ''National Security Education Program'' which was removed from the CFR in error. No changes have been made.

DATES: This rule is effective May 16, 2006.

FOR FURTHER INFORMATION CONTACT: L. Bynum 703–696–4970.

SUPPLEMENTARY INFORMATION: The removal was published in the **Federal Register** on Tuesday, May 9, 2006 (71 FR 26831).

List of Subjects in 32 CFR Part 206

Colleges and universities, Grant programs—education.

■ Accordingly, 32 CFR part 206 is added to read as follows:

PART 206—NATIONAL SECURITY EDUCATION PROGRAM (NSEP) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.

206.1 Major characteristics of the NSEP institutional grants program.
206.2 Eligibility.
206.3 Overall program emphasis.
206.4 Proposal development and review.
206.5 Final proposal process.

Authority: 20 U.S.C. 1141(a).

§ 206.1 Major characteristics of the NSEP institutional grants program.

(a) The Institutional Grants Program provides support in the form of grants to U.S. institutions of higher education. During the 1994–95 and 1995–96 academic years, a program of pilot grants is being initiated with an annual competition for grants held during the spring of each year. Grants to institutions will complement NSEP scholarship and fellowship programs. NSEP encourages the development of programs and curricula which:

(1) Improves the quality and infrastructure of international education;

(2) Addresses issues of national capacity; and

(3) Defines innovative approaches to issues not addressed by NSEP scholarship and fellowship programs.

(b) The NSEP Grants Program is designed to address a number of important objectives critical to the United States:

(1) To equip Americans with an understanding of less commonly taught languages and cultures and enable them to become integrally involved in global issues.

(2) To build a critical base of future leaders in the marketplace and in government service who have cultivated international relationships and worked and studied along-side foreign experts.

(3) To develop a cadre of professionals with more than the traditional knowledge of language and culture who can use this ability to help the U.S. make sound decisions and deal effectively with global issues; and

(4) To enhance institutional capacity and increase the number of faculty who can educate U.S. citizens toward achieving these goals.

(c) Grants will be awarded for initial 1- or 2-year periods. Potential follow-on commitments will be based on a rigorous evaluation and assessment process. Between 15 and 25 awards are expected to be made in the first year ranging from approximately $25,000 to $250,000. These are only estimates and do not bind the NSEP to a specific number of grants or to the amount of the grant.

(d) The following key characteristics will be emphasized in the NSEP Institutional Grants Program:

(1) *Programmatic in emphasis.* The purpose of the grants is to address weaknesses and gaps in programs and curricula. The grants should be used to strengthen the national capacity in international education. While ''operational'' support for already existing centers and projects may be a component of a grant, NSEP emphasizes commitment of its limited resources to projects that establish and improve educational programs available to students and teachers.

(2) *Demand and requirements oriented.* Grants are designed to address national needs. These needs must be clearly articulated and defended in a grant proposal. It must be clear that the following questions are addressed:

(i) Who will benefit from the program funded by the grant?

(ii) What need does the program address?

(iii) How will this program augment the capacity of the Federal Government or of the field of education in areas consistent with the objectives of the NSEP? How does it fit the national requirement?

(3) Cooperation and collaboration among institutions is mandated in order to ensure that a wider cross-section of colleges and universities benefit from a program funded under NSEP. NSEP is committed to providing opportunities to the widest cross-section of the higher education population as is feasible. Cooperation can be in the form of formal consortia arrangements or less formal but equally effective agreements among institutions. Both vertical (among different types of institutions) and horizontal (among similar institutions across functional areas) integration are encouraged. Outreach to institutions that do not normally benefit from such programs is also strongly favored.

(4) Complementary to other Federal programs such as Title VI of the Higher Education Act. NSEP is designed to address gaps and shortfalls in Higher Education and to build and expand national capacity. NSEP recognizes that base capacity currently exists in some foreign languages and area studies. It also recognizes that funding shortfalls and other factors have contributed to tremendous gaps and weaknesses. Funding for expansion of the international education infrastructure remains limited. Duplication of effort is not affordable. NSEP encourages new initiatives as well as expansion of existing programs to increase supply in cases where the demand cannot be met and encourages efforts that increase demand.

(5) NSEP encourages proposals that address two categories of issues relating to the mission of NSEP:

(i) Programs in specific foreign languages, countries or areas; and/or

(ii) Programs addressing professional, disciplinary and/or interdisciplinary opportunities involving international education.

(6) NSEP views student funding as portable and hopes that universities will develop ways to move students to programs and to provide credit with these programs. NSEP believes that programs need to be developed that are available to a wider cross-section of students. Thus, they need to be ''open'' to students from other institutions. Programs might also be ''transportable'' from one institution to another.

(7) NSEP emphasizes leveraging of funds and cost-sharing in order to maximize the impact of NSEP funding. It encourages institutions to seek other sources of funding to leverage against NSEP funding and to commit institutional resources in support of the program as well. NSEP also emphasizes burden sharing between the institution and the Program. NSEP encourages institutions to demonstrate a commitment to international education and to present a plan for how funding for the proposed program will be achieved over a 3–5 year period so that NSEP can reduce its financial commitment to programs. The funds requested from NSEP should minimize costs allocated to unassigned institutional ''overhead.'' NSEP institutional grants are assumed to be for training programs. Consequently, university/college indirect costs associated with training programs should be used as a general benchmark for determining appropriate overhead rates.

(8) NSEP encourages creativity and is responsive to the needs of higher education to expand the capacity to provide more opportunities for quality international education. We do not suggest that the guidelines presented in the grant solicitation will cover all problems and issues. Quite to the contrary, we encourage careful consideration of issues confronting international education in the U.S. and thoughtful proposals that address these issues, consistent with the overall mission of the NSEP.

§ 206.2 Eligibility.

Any accredited U.S. institution of higher education, as defined by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)), may apply for and receive a grant. This includes 2- and 4-year colleges and universities, both public and private. Other organizations, associations, and agencies may be included in proposals but may not be direct recipients of a grant. Foreign institutions may also be included in a proposal but may not be direct recipients of a grant. Only U.S. citizens and U.S. institutions may receive funds through a grant awarded by the NSEP.

§ 206.3 Overall program emphasis.

(a) The NSEP grants to institutions program focuses on two broad program areas that reflect the challenges to building the infrastructure for international education in U.S. higher education:

(1) Development and expansion to quality programs in overseas locations.

(i) Programs that offer important opportunities for U.S. students, both undergraduate and graduate, to study in critical areas under-represented by U.S. students, and

(ii) Development of meaningful competencies in foreign languages and cultures.

(2) Development and implementation of programs and curricula on U.S. campuses that provide more opportunities for study of foreign languages and cultures and the integration of these studies into overall programs of study.

(b) *Addressing the need for improving study abroad infrastructure.* The NSEP encourages the study of foreign cultures and languages typically neglected or under-represented in higher education. In the foreign language field these are generally referred to as less commonly taught languages. In area studies, these are generally defined as non-Western European in focus. An integral part of any student's international education is a quality study abroad experience that includes a significant portion devoted to gaining functional competence in an indigenous language and culture. Unfortunately, there are only limited opportunities to study abroad in many foreign areas. In addition, many programs lack a quality foreign language component as well as significantly experiential components. Historically, more attention has been paid to the development of programs in Western Europe where the student demand has been greater. NSEP hopes to encourage, through institutional grants, the development and/or expansion of infrastructure for study abroad in critical areas of the world where capacity does not currently exist. Programs are encouraged that:

(1) Expand program opportunities in critical countries where limited opportunities currently exist.

(2) Establish program opportunities in critical countries where no opportunities exist.

(3) Enhance meaningful opportunities for foreign language and foreign culture acquisition in conjunction with study abroad.

(4) Create and expand study abroad opportunities for students from diverse disciplines. In all cases, grants to develop study abroad infrastructure must address issues of demand (how to increase demand for study in the proposed countries or regions) and diversity (how to attract a diverse student population to study in the proposed countries or regions). Grants may support start-up of programs or the expansion of a program's capacity to benefit more and/or different student or to improve the quality of study abroad instruction. Proposals can address issues concerning either or both issues. of undergraduate and graduate education.

(c) Addressing the infrastructure for international education in U.S. higher education. While studying abroad is an integral part of becoming more proficient in one's understanding of another culture and in becoming more functionally competent in another language, the NSEP also emphasizes the development and expansion of programs that address serious shortfalls that provide a stronger domestic program base in areas consistent with the NSEP mission. The NSEP encourages grant proposals that address infrastructure issues. While not limited to these areas, programs might address the following issues:

(1) Enhancing foreign language skill acquisition through innovative curriculum development efforts. Such efforts may involve intensive language study designed for different types of students. Less traditional approaches should be considered as well as ways to provide foreign language instruction for the student who may not otherwise have an opportunity to pursue such instruction. Functional competency should be stressed but defined as meaningful for the particular discipline or field.

(2) Expanding opportunities for international education in diverse disciplines and fields and in issues that are cross-area or cross-national in character. Efforts are encouraged that offer opportunities for meaningful international education for those in fields where opportunities are not generally available. There are many fields and disciplines that are rapidly becoming international in scope, yet the educational process does not include a meaningful international component. In many cases this is due to a rigid structure in the field itself that cannot accommodate additional requirements, such as language and culture study. There are also issues that involve cross-

area or cross-national education or are studied in comparative terms. Students in these areas also need quality opportunities in international education.

(3) Provide opportunities for programmatic studies throughout an undergraduate or graduate career. Students frequently study a foreign language or pursue study abroad opportunities as adjuncts to their overall program of study. Innovations in curriculum are needed to more thoroughly integrate aspects of international education into curriculum throughout a student's undergraduate or graduate career. The NSEP encourages institutions to address these overall international education curriculum issues in their proposals.

(4) Provide opportunities to increase demand for study of foreign areas and languages. Efforts to develop educational programs that offer innovative approaches to increasing demand to include a meaningful international component are encouraged. Proposals are encouraged to address issues of diversity: How to attract students who have historically not pursued opportunities involving international education. Diversity includes geographical, racial, ethnic, and gender factors.

(5) Improve faculty credentials in international education. Efforts to create more opportunities for teachers to become competent in foreign cultures and languages are encouraged. While NSEP is a higher education program, it is interested in the potential dynamics of collaborative efforts that recognize the shared responsibility of all educational levels for promoting international education.

(6) Uses of new technologies. During the last decade tremendous advances have been made in the application of new educational technologies. Such technologies have enhanced our capacity to improve instruction, broaden access, and assess student learning. NSEP's objective is not to support large technology oriented projects. However, NSEP encourages efforts that integrate innovative uses of technology emphasizing how proposed programs will have significance beyond a local setting. Proposals that include proposed uses of technology will be required to demonstrate detailed knowledge of the technology, how it is to be developed and applied and how student learning will be impacted.

§ 206.4 Proposal development and review.

The purpose of this section is to explain the NSEP review process. [Note: A number of important approaches to proposal development and review have been adapted from guidelines developed by the Department of Education's Office of Postsecondary Education for its ''Fund for the Improvement of Postsecondary Education (FIPSE)''.] This information if intended to aid institutions in the development of proposals and to provide guidance concerning the criteria that may be used in reviewing and evaluating proposals.

(a) The grants to institutions program will be administered by the National Security Education Program Office (NSEPO). However, the NSEPO will function as an administrative office much in the same manner as the Institute of International Education and the Academy for Educational Development function in administering NSEP scholarship and fellowship programs, respectively. The NSEPO will not review or evaluate proposals. The proposals will be reviewed and evaluated by national screening panels.

(b) The NSEP will use a two-stage review process in order to evaluate a broad range of proposal ideas. In the first stage, applicants will submit a five-page summary (double-spaced) of their proposal. An institution may submit more than one proposal, but each proposal should be submitted and will be evaluated separately and independently.

(c) NSEP expects competition for grants to be intense. By implementing a two-stage process, potential grantees are given an opportunity to present their ideas without creating a paperwork burden on both the proposal authors and the reviewers.

(d) *The preliminary review process.* The review of preliminary proposals will be undertaken by panels of external reviewers, not members of the NSEPO. Panels of not less than three will be assembled to review preliminary proposals. Panel members will be drawn primarily from faculty and administration in higher education but might also include representatives from the research, business, and government communities. Every effort will be made to ensure balance (geographical, ethnic, gender, institutional type, subject matter) across the entire competition.

(e) Panel members will reflect the nature of the grants program. Each panel will include a recognized expert in a field of international education. Other panelists may include experts in area studies, foreign language education, and other fields and disciplines with an international focus.

(f) Preliminary proposals will be reviewed according to a set of criteria developed in consultation with representatives from higher education, and provided to the panels. The applicant shall, at a minimum, deal with the following issues in the preliminary proposal:

(1) How the proposal addresses issues of national capacity in international education.

(2) What area(s), language(s), and discipline(s) the proposal addresses and the importance of these to U.S. national capacity.

(3) What the applicant is proposing to do.

(4) How the proposal deals with the key characteristics of the NSEP.

(5) Demonstration of thorough knowledge of the state of the art in the particular area of the proposal and how this proposal develops or builds capacity, not duplicates existing capacity.

(g) The applicant must also include a budget estimate. This budget estimate, for the first year of the proposal, must include the following:

(1) A summary of anticipated direct costs including professional salaries, funds for students, travel, materials and supplies, consultants, etc., and how or why these costs are needed.

(2) An estimate of institutional indirect costs. The budget estimate must also indicate whether funding is also being requested for a second year and, if so, an estimate of the amount to be requested.

(h) Panelists will review and rank proposals and forward their recommendations to the NSEPO. NSEPO will review and analyze these recommendations and inform all applicants of decisions.

§ 206.5 Final proposal process.

NSEPO will provide detailed comments on proposals to all applicants who are invited to prepare a final proposal.

(a) Final proposals should be limited to no more than 25 double-spaced pages. Proposals will be reviewed by national panels constructed similarly to those designed to review preliminary proposals. In addition to a field review process, panelists will be assembled in Washington D.C. to discuss and review the independent and competing merits of proposals.

(b) Proposals will be evaluated in two basic categories:

(1) Proposals that address study abroad infrastructure and

(2) Proposals that address domestic infrastructure. Should proposals deal with both of these issues, they will be evaluated in a third category. This grouping of proposals will ensure that all categories of proposals receive funding consideration.

(c) In general, final proposals will be considered on the following selection criteria:

(1) *Importance of the problem.* Each proposal will be evaluated according to the merit of how it addresses issue(s) of national capacity. The proposal must articulate the importance of the problem it addresses, how the proposal addresses issues of national capacity in international education, and how it is consistent with the objectives of the NSEP.

(2) *Importance of proposed foreign language(s), foreign area(s), field(s) or discipline(s).* The proposal will be evaluated according to how well it articulates the need for programs in the proposed areas, languages, fields, or disciplines.

(3) *Identification of need and gaps/shortfalls.* The proposal will be evaluated according to its persuasiveness in identifying where the needs exist and where serious shortfalls exist in the capacity to fill the need. The proposal should clearly identify why these gaps exist and provide a strong indication of familiarity with the state of the field in the proposal area.

(4) *Cost effectiveness.* Proposals will be evaluated on the basis of ''educational value for the dollar.'' NSEP is interested in funding proposals in areas where other funding is limited or in areas where NSEP funding can significantly augment or complement other sources. NSEP is not interested in replacing funds available from other sources or in duplicating other efforts. Also, NSEP is interested in projects whose dollar levels and long-range budget plans provide for realistic continuation by the grantee institution and adaptation by other institutions. NSEP is interested in proposed approaches to leveraging other funds against the proposed project.

(5) *Evaluation plans.* Proposals will be evaluated on their approach to measuring impact. What impact will the proposed program have on national capacity? How will the proposed program deal with assessing language and foreign cultural competency? In the case of study abroad programs, how will the success and impact of study abroad experiences be assessed. Proposals should not defer the consideration of these issues to a latter stage of the effort. Evaluation and assessment should be an integral part of the entire proposal effort.

(6) *Prospects for wider impact.* Proposals must address national needs and will be evaluated according to how well they are likely to address these needs. What component of the higher education community does the proposal address? How diverse a student population will the proposed program address? What applications to other institutions will be made available, either directly or indirectly, because of the proposed program?

(7) *Capacity and commitment of the applicant.* The proposal will be evaluated according to the evidence provided on the commitment of the institution, and other institutions, to the proposed project. What other institutions are involved and what is their commitment? If there are commitments from foreign institutions, what is the evidence of this commitment? Are their plans for the institution to integrate the efforts of the proposed program into the educational process? What plans are there for eventual self-support? As with many other similar programs, NSEP is particularly interested in the degree to which the institution is willing to bear a reasonable share of the direct and indirect costs of the proposed project.

(d) Applicants should also indicate if they currently receive or are seeking support from other sources. Applicants should indicate why support from NSEP is appropriate, if other sources are also being sought.

Dated: May 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–4532 Filed 5–15–06; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0272; FRL–8159–7]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality, Pima County Department of Environmental Quality, and Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Arizona Department of Environmental Quality (ADEQ), Pima County Department of Environmental Quality (PCDEQ), and Pinal County Air Quality Control District (PCAQCD) portions of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open burning. We are approving local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 17, 2006 without further notice, unless EPA receives adverse comments by June 15, 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–2006–0272, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov.*
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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 *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, 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: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that the amended rules were adopted by the local air agencies and submitted by the ADEQ.

TABLE 1.—SUBMITTED RULES FOR DIRECT FINAL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
ADEQ	R18–2–602	Unlawful Open Burning	03/16/04	12/30/04
ADEQ	R18–2–1501	Definitions	03/16/04	12/30/04
ADEQ	R18–2–1502	Applicability	03/16/04	12/30/04
ADEQ	R18–2–1503	Annual Registration, Program Evaluation and Planning	03/16/04	12/30/04
ADEQ	R18–2–1504	Prescribed Burn Plan	03/16/04	12/30/04
ADEQ	R18–2–1505	Prescribed Burn Requests and Authorization	03/16/04	12/30/04
ADEQ	R18–2–1506	Smoke Dispersion and Evaluation	03/16/04	12/30/04
ADEQ	R18–2–1507	Prescribed Burn Accomplishment; Wildfire Reporting	03/16/04	12/30/04
ADEQ	R18–2–1508	Wildland Fire Use: Plan, Authorization, Monitoring; Inter-Agency Consultation; Status Reporting.	03/16/04	12/30/04
ADEQ	R18–2–1509	Emission Reduction Techniques	03/16/04	12/30/04
ADEQ	R18–2–1510	Smoke Management Techniques	03/16/04	12/30/04
ADEQ	R18–2–1511	Monitoring	03/16/04	12/30/04
ADEQ	R18–2–1512	Burner Qualifications	03/16/04	12/30/04
ADEQ	R18–2–1513	Public Notification Program; Regional Coordination	03/16/04	12/30/04
PCDEQ	17.12.480	Open Burning Permits	10/19/04	12/30/04
PCAQCD	3–8–700	General Provisions	10/27/04	12/30/04
PCAQCD	3–8–710	Permit Provisions and Administration	10/27/04	12/30/04

On June 30, 2005, the submittal of ADEQ Rule R18–2–602, ADEQ Rules R18–2–1501 through R18–2–1513, PCDEQ Rule 17.12.480, and PCAQCD Rules 3–8–700 and 3–8–710 were determined by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved versions of ADEQ Rule R18–2–602 into the SIP on October 19, 1984 (49 FR 41026) and April 23, 1982 (47 FR 17485) as Rule R9–3–402. We approved a version of combined ADEQ Rules R18–2–1501 through R18–2–1513 into the SIP on April 23, 1982 (47 FR 17485) as Rule R9–3–403.

We approved versions of PCAQCD Rules 3–8–700 and 3–8–710 into the SIP on April 28, 2004 (69 FR 23103).

We approved a version of PCDEQ Rule 17.12.480 into the SIP as combined Rules 204, section A; 204, section B; and Table 204 on April 16, 1982 (47 FR 16328).

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local air district's programs to control these pollutants.

The purposes of the revisions of ADEQ Rule R18–2–602 relative to the SIP rule are as follows:

- 602.B: The rule adds 11 definitions for improved clarity.
- 602.D.1: The rule adds a list of types of burning that may be permitted, to include construction burning, agricultural burning, residential burning, prescribed burning, weed abatement, prevention of fire hazard, and air curtain destructor operation.
- 602.D.3.e: The rule adds a requirement for an applicant to state the emission reduction techniques that will be used to minimize fire emissions.
- 602.D.3.f: The rule adds a requirement for daily reporting on burns.
- 602.D.3.g: The rule adds a requirement for notification before ignition of the burn.
- 602.D.3.h–o: The rule adds requirements to start burning without black smoke, to attend the fire at all time, to have fire extinguishing equipment on-site, to locate a waste burner over 50 feet from any structure, to have a copy of the burn permit on site, to not burn during a stagnation advisory or a time when Class I areas might be affected, to not burn during an air pollution episode, and to allow the Director or a public officer to extinguish the fire during unfavorable conditions.
- 602.D.3.p: The rule adds a provision that failure to obtain or comply with a permit is subject to civil or criminal penalties.
- 602.G: The rule adds the option for the Director to delegate burn permitting authority to a county, town, air pollution control district, or fire district.
- 602.H: The rule adds a requirement for the Director to hold an annual public meeting to discuss the open burning program and emission reduction techniques.

The purposes of the revisions of Rules R18–2–1501 through R18–2–1513 relative to the SIP rule are as follows:

- 1501: The rule adds 23 definitions for improved clarity.
- 1502: The rule extends the authority of ADEQ to regulate prescribed burning to all areas of the state, all federal and state land managers, and all private or municipal burners, except Indian Trust lands.
- 1503: The rule adds to the information required for the annual burn permits for planned burning. The rule adds a requirement for annual evaluation meetings on past burn projects.
- 1504: The rule adds extensive requirements for a burn plan to be submitted to ADEQ at least 14 days prior to ignition of the burn.
- 1505: The rule adds extensive requirements for a daily burn plan to be submitted to ADEQ by at least 2 p.m. of the previous business day. ADEQ may

approve or modify the burn plan based on a change in weather conditions and potential impact on the public.

• 1506: The rule adds 12 additional factors for ADEQ to evaluate daily burn plans for smoke dispersion on which ADEQ may approve, approve with conditions, or disapprove the daily burn plan.

• 1507: The rule adds a requirement for the burner to submit a burn accomplishment form to ADEQ by 2 p.m. the next day. Wildfires burning more than 100 acres per day in timber or slash or more than 300 acres per day of brush or grass must be reported by the entity with jurisdiction for the area of the fire.

• 1508: The rule adds extensive requirements for reporting to ADEQ the beneficial use of a wildland fire incident exceeding 40 acres of timer or 250 acres of brush or grass.

• 1509: The rule adds the requirement that as many emission reduction techniques (ERTs) as possible be used. A list of 16 potential ERTs is provided.

• 1510: The rule adds the requirement that as many smoke management techniques (SMTs) as possible be used. A list of 11 potential SMTs is provided.

• 1511: The rule adds extensive requirements for monitoring air quality before or during a prescribed burn or a wildland fire beneficial use incident, if necessary to assess smoke impacts.

• 1512: The rule adds a requirement for a prescribed-fire boss to have formal training in fire and smoke management techniques.

• 1513: The rule adds a requirement for the ADEQ Director to conduct a public education and awareness program in smoke management.

The purposes of the revisions of PCDEQ Rule 17.12.480 relative to the SIP versions are as follows:

• 480.A: The rule adds one definition, deletes three definitions, and changes the rule number.

• 480.C.1.f: The rule adds an exemption from permitting for ceremonial destruction of flags.

• 480.C.2.a: The rule adds an exemption from permitting for control of an active wildfire by a public official.

• 480.C.4: The rule adds an exemption from permitting for prescribed burning by federal and state agencies.

• 480.D.1: The rule adds the allowance to burn with a permit for agricultural burning and prescribed burning in the absence of a federal or state land manager.

• 480.F: The rule adds the allowance to burn with a permit and an approved waste burner household waste where no household waste collection or disposal service is available on either farms of at least 40 acres or on a site where the nearest dwelling unit is at least 500 feet away.

• 480: The revised rule deletes an exemption from permitting for the training of government officials in criminal-enforcement or national-defense activities and deletes an exemption from permitting for safety flares.

The purposes of the PCAQCD Rule 3–8–700 revisions relative to the SIP rule are as follows:

• 700.A.4: The rule receives exemption provisions from section 710.E for subterranean detonation of explosives, fireworks and pyrotechnics, and adds an exemption provision for ceremonial destruction of flags.

• 700.A.5: The rule adds the provision that fires set for the disposal of materials shall be presumed to be larger than ''*de minimis*.''

• 700.B: The rule adds 12 definitions for improved clarity.

• 700.C.1.c,d: The rule adds limitations on the amount to be burned in one month for small-scale residential permits to less than 10 cubic yards of uncompacted material and for large-scale residential permits to less than 20 cubic yards.

• 700.C.2.b,c: The rule adds limitations on the amount to be burned in one month for small-scale commercial permits to less than 10 cubic yards of uncompacted material and for large-scale commercial permits to less than 20 cubic yards.

• 700.C.2.d: The rule adds various requirements and restrictions for commercial land-clearing permits of greater than 20 cubic yards. The rule also adds requirements for the use of air curtain destructors for land clearing.

• 700.C.7: The rule adds a restriction of 20 cubic yards for a bonfire permit at civic events.

• 700.D.2: The rule receives provisions for permit terms from section 710.D and adds provisions for permit terms for training exercises, commercial land clearing, and bonfires.

• 700.D.3: The rule adds the requirement that permits may be suspended due to air stagnation advisory, air pollution emergency episode, excessive visibility impairment, or extreme fire danger.

• 700.D.4: The rule adds the requirement for an applicant to state the emission reduction techniques that will be used to minimize fire emissions.

• 700.D.5: The rule adds permit conditions to limit burn times, limit wind speed, constantly attend the fire, completely extinguish the fire, start burning without black smoke, have fire extinguishing equipment on-site, have a waste burner over 50 feet from any structure, notify the fire agency of commencement of burning, prevent smoke dispersion into a populated area, prevent visibility impairment, not create a public nuisance, not burn when Class I areas might be affected, not cause uncontrollable spreading of the fire, not burn during a stagnation advisory, and not burn during an air pollution episode.

• 700.E: The rule adds requirements for daily reporting on burns.

• 700.G.1: The rule adds a ''no-burn'' restriction whenever monitoring and forecasting indicates that the carbon monoxide ambient standard is likely to be exceeded.

• 700.G.2: The rule adds a ''no-burn'' restriction by operation of law whenever Maricopa Environmental Services Department or Arizona Department of Environmental Quality declares a ''no-burn'' restriction in neighboring Maricopa County.

• 700.H: The rule adds a provision that failure to obtain or comply with a permit is subject to civil or criminal penalties.

The purposes of the PCAQCD Rule 3–8–710 relative to the SIP rule are as follows:

• 710.C: The rule adds a prohibition against storing materials subject to spontaneous combustion, except coal, without adequate fire-fighting facilities.

• 710.D. The rule transfers provisions for the term of a permit to section 700.D.2.

• 710.E. The rule transfers provisions for exemptions to section 700.A.4.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

SIP rules in PM–10 nonattainment areas must require for major sources reasonably available control measures (RACM), including reasonably available control technology (RACT), in moderate PM–10 nonattainment areas (see section 189(a)) or must require for major sources best available control measures (BACM), including best available control technology (BACT), in serious PM–10 nonattainment areas (see section 189(b)). ADEQ regulates a moderate PM–10 nonattainment area (see 40 CFR

part 81), so ADEQ Rules R18–2–602 and combined Rules R18–2–1501 through R18–2–1513 must fulfill the requirements of RACM/RACT. PCDEQ regulates a moderate PM–10 nonattainment area (see 40 CFR part 81), so PCDEQ Rule 17.12.480 must fulfill the requirements of RACM/RACT. PCAQCD regulates a serious PM–10 nonattainment area (see 40 CFR part 81), so combined PCAQCD Rules 3–8–700 and 3–8–710 must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Do the Rule Revisions Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, BACM/BACT, and RACM/RACT. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve a Rule

The TSD describes additional revisions to PCAQCD Rule 3–8–700 that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving ADEQ Rule R18–2–602, ADEQ Rules R18–2–1501 through R18–2–1513, PCDEQ Rule 17.12.480, and PCAQCD Rules 3–8–700 and 3–8–710 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 15, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 17, 2006. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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. section 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. section 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 July 17, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 22, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(131) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(131) The following amended rules were submitted on December 30, 2004, by the Governor's designee.

(i) *Incorporation by reference.* (A) Arizona Department of Environmental Quality.

(*1*) Rule R18–2–602, adopted effective on May 14, 1979 and amended effective on March 16, 2004.

(*2*) Rules R18–2–1501, R18–2–1502, R18–2–1503, R18–2–1504, R18–2–1505, R18–2–1506, R18–2–1507, R18–2–1508, R18–2–1509, R18–2–1510, R18–2–1511, R18–2–1512, and R18–2–1513, adopted effective on October 8, 1996 and amended effective on March 16, 2004.

(B) Pima County Department of Environmental Quality.

(*1*) Rule 17.12.480, amended on October 19, 2004.

(C) Pinal County Air Quality Control District.

(*1*) Rules 3–8–700 and 3–8–710, adopted effective on June 29, 1993 and amended on October 27, 2004.

* * * * *

[FR Doc. 06–4516 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–0563; FRL–8171–1]

Approval and Promulgation of Implementation Plans; Wisconsin; Wisconsin Construction Permit Permanency SIP Revision; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule which published on February 28, 2006, pertaining to revisions to the Wisconsin State Implementation Plan which make permanent all terms of Wisconsin's permits to construct, reconstruct, replace or modify sources unless the terms are revised through a revision of the construction permit or issuance of a new construction permit.

EFFECTIVE DATE: This correcting amendment is effective on May 16, 2006.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–8328, or by e-mail at *panos.christos@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a document on February 28, 2006, (71 FR 9934) adding § 52.2587, when § 52.2587 was already reserved by a previous rulemaking action. This document corrects this error by redesignating § 52.2587 as § 52.2589.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore 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)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, 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 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This 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 governments, as specified by 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 technical correction action 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 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) 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 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 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice

and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of May 16, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR part 52 for Minnesota is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: May 5, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, title 40, chapter I of the Code of the 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.*

§ 52.2587 [Redesignated]

■ 2. Section 52.2587 is redesignated as § 52.2589.

[FR Doc. 06–4551 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–8169–5]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by Bayer Material Science LLC (Bayer) to exclude (or delist) a certain solid waste generated by its Baytown, TX plant from the lists of hazardous wastes. This final rule responds to the petition submitted by Bayer to delist K027, K104, K111, and K112 spent carbon generated from the facility's waste water treatment plant.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 7,728 cubic yards per year of the spent carbon.

DATES: *Effective Date:* May 16, 2006.

ADDRESSES: The public docket for this final rule is located at the EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA's Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is [R6–TXDEL–FY06–Bayer–Spent Carbon]. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Michelle Peace, EPA Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–7430, or *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
- A. What Action Is EPA Finalizing?
- B. Why Is EPA Approving This Action?
- C. What Are the Limits of This exclusion?
- D. How Will Bayer Manage the Waste, If It Is Delisted?
- E. When Is the Final Delisting Exclusion Effective?
- F. How Does this Final Rule Affect States?

II. Background
- A. What Is a Delisting?
- B. What Regulations Allow Facilities To Delist a Waste?
- C. What Information Must the Generator Supply?

III. EPA's Evaluation of the Waste Information and Data
- A. What Waste Did Bayer Petition EPA To Delist?
- B. How Much Waste Did Bayer Propose To Delist?
- C. How Did Bayer Sample and Analyze the Waste Data in This Petition?

IV. Public Comments Received on the Proposed Exclusion
- Who Submitted Comments on the Proposed Rule?

V. Statutory and Executive Order Reviews

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petition, EPA proposed, on February 14, 2006, to exclude the waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 71 FR 7704). EPA is finalizing the decision to grant Bayer's delisting petition to have its spent carbon generated from treating waste waters at the plant subject to certain continued verification and monitoring conditions.

B. Why Is EPA Approving This Action?

Bayer's petition requests a delisting from the K027, K104, K111, and K112, waste listings under 40 CFR 260.20 and 260.22. Bayer does not believe that the petitioned waste meets the criteria for which EPA listed it. Bayer also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from Bayer's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Baytown, TX facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, appendix IX, Table 2 and the conditions contained herein are satisfied.

D. How Will Bayer Manage the Waste, If It Is Delisted?

Bayer will dispose of the spent carbon in a Subtitle D landfill.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective May 16, 2006. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective less than six months after the rule is published 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 waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's requirements, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Bayer transports the petitioned waste to or manages the waste in any state with delisting authorization, Bayer must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA 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 or his delegate must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Bayer Petition EPA to Delist?

On September 26, 2003, Bayer petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, spent carbon generated from its facility located in Baytown, Texas. The waste falls under the classification of a listed waste under § 261.30.

B. How Much Waste Did Bayer Propose to Delist?

Specifically, in its petition, Bayer requested that EPA grant a conditional exclusion for 7,728 cubic yards per year of the spent carbon.

C. How Did Bayer Sample and Analyze the Waste Data in This Petition?

To support its petition, Bayer submitted:

(1) Analytical results of the toxicity characteristic leaching procedure (TCLP) and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for six spent carbon samples;

(2) Analytical results from multiple pH leaching of metals; and

(3) Descriptions of the waste water treatment process and carbon regeneration process.

IV. Public Comments Received on the Proposed Exclusion

Who Submitted Comments on the Proposed Rule?

There were no comments submitted on the proposed rule.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review '' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is 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, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal

implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. 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 as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. 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 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (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. 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: May 3, 2006.

Carl E. Edlund,

P.E., Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is to be 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, and 6938.

■ 2. In Table 2 of Appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Bayer Material Science LLC ...	Baytown, TX ...	Spent Carbon (EPA Hazardous Waste Nos. K027, K104, K111, and K112) generated at a maximum rate of 7,728 cubic yards per calendar year after May 16, 2006. For the exclusion to be valid, Bayer must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Spent Carbon Leachable Concentrations (mg/l): Antimony–0.251; Arsenic–0.385, Barium–8.93; Beryllium–0.953; Cadmium–0.687; Chromium–5.0; Cobalt–2.75; Copper–128.0; Cyanide–1.65; Lead–5.0; Mercury–0.0294; Nickel–3.45; Selenium–0.266; Tin–2.75; Vanadium–2.58; Zinc–34.2; Aldrin–0.0000482; Acetophenone–87.1; Aniline–2.82; Benzene–0.554; Bis(2-ethylhexyl)phthalate–0.342; Benzyl alcohol–261; Butylbenzylphthalate–3.54; Chloroform–0.297; Di-n-octyl phthalate–0.00427; 2,4-Dinitrotoluene–0.0249; 2,6-Dinitrotoluene–0.0249 Diphenylamine–1.43; 1,4-Dioxane–14.6; Di-n-butylphthalate–2.02; Kepone–0.000373; 2-Nitrophenol–87.9; N-Nitrodiphenylamine–3.28; Phenol–52.2; 2,4-Toluenediamine–0.00502; Toluene diisocyanate–0.001. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for spent carbon has occurred for two consecutive quarterly sampling events and the reports have been approved by EPA. (B) If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1) for the spent carbon, Bayer must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) manage and dispose the spent carbon as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Bayer must perform quarterly analytical testing by sampling and analyzing the spent carbon as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the spent carbon at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the spent carbon must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, Bayer will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the spent carbon do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Bayer can manage and dispose the non-hazardous spent carbon according to all applicable solid waste regulations. (B) Annual Testing: (i) If Bayer completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Bayer can begin annual testing as follows: Bayer must test two representative composite samples of the spent carbon for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to 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 samples of the Bayer spent carbon are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report must include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If Bayer significantly changes the process described in its petition or starts any process that generates the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Bayer must submit the information described below. If Bayer fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bayer must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." (6) Reopener:

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) If, anytime after disposal of the delisted waste Bayer possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Bayer must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) If Bayer fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/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 requires action, EPA will notify the facility in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.
*	*	* * * * *

[FR Doc. 06–4514 Filed 5–15–06; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–05–24109; Notice 2]

RIN 2127–AJ83

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulation on civil penalties by increasing the maximum civil penalties for violations of the National Traffic and Motor Vehicle Safety Act, as amended (Vehicle Safety Act). This action is taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires NHTSA to review and, as warranted, adjust penalties based on inflation at least every four years. In addition, this document codifies amendments to the penalty provisions of the Vehicle Safety Act by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) and makes a technical correction to the text of the agency's penalty regulation.

DATES: This rule is effective on June 15, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This rule amends NHTSA's regulations on civil penalties under the Vehicle Safety Act, 49 U.S.C. Chapter 301. As explained below, it makes four changes to 49 CFR Part 578 *Civil and Criminal Penalties*. These changes were proposed and explained in our March 9, 2006 Notice of Proposed Rulemaking (''NPRM'') at 71 FR 12156. There were no comments on that notice.

First, this rule adjusts for inflation the maximum available penalties codified at 49 CFR 578.6(a). In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996, (Pub. L. 104–134) (referred to collectively as the ''Adjustment Act'' or, in context, the ''Act''), requires us and other Federal agencies to regularly adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA is adjusting the maximum penalty for a single violation of the Vehicle Safety Act. The agency last published a rule stating the maximum civil penalty for a single violation or a single violation per day under 49 U.S.C. Chapter 301 on November 14, 2000, 65 FR 68108. This rule incorporated amendments to 49 U.S.C. 30165(a) in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Pub. L. 106–414, 114 Stat. 1800. In the TREAD Act, Congress set the maximum penalty for a single violation of the Vehicle Safety Act or a regulation thereunder at $5,000. The TREAD Act also set the maximum penalty for a violation of 49 U.S.C. 30166 or a regulation thereunder at $5,000 per violation per day. The agency codified these amounts at 49 CFR 578.6(a)(1) and (a)(2), respectively. In today's rule, NHTSA is adjusting these amounts from $5,000 to $6,000 based on the Adjustment Act, for the reasons set forth in the NPRM.

Additionally, the agency is adjusting the maximum penalty amounts for a related series of violations of the Vehicle Safety Act or a regulation thereunder and for a related series of

daily violations of 49 U.S.C. 30166 or a regulation thereunder. Both penalty amounts were last adjusted in amendments to 49 CFR 578.6(a) on September 28, 2004. 69 FR 57864. After applying the formulation set out in the NPRM, the adjusted civil penalty amounts for these violations are being adjusted from $16,050,000 to $16,375,000. The basis for these adjustments is set forth in the NPRM.

Second, this rule codifies the penalties added to the Vehicle Safety Act by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Pub. L. 109–59, 119 Stat. 1144, 1942–43 (2005). As explained in the NPRM, SAFETEA–LU added prohibitions related to the acquisition of noncomplying 15-passenger vans for school use and provided for associated penalties. *See* 71 FR at 12157. *See also* Pub. L. 109–59, 119 Stat. at 1942–43. Consistent with the agency's practice of codifying civil penalties available under statutes that it administers in Part 578, NHTSA is adding a new provision that includes the SAFETEA–LU penalties. As added in a new Section 578.6(a)(2), a single violation may result in a maximum penalty amount of $10,000, while a related series of violations may result in a maximum penalty amount of $15,000,000. We have written the new penalty provision to parallel the language in 49 CFR 578.6(a). The new regulation has the meaning of the penalty provision in SAFETEA–LU.

Third, this rule reorganizes 49 CFR 578.6(a). As adopted in 2000, the structure of 49 CFR 578.6(a) paralleled the structure of 49 U.S.C. 30165(a), as amended by the TREAD Act. SAFETEA–LU amended 49 U.S.C. 30165(a) by inserting the new penalties related to school bus violations as 49 U.S.C. 30165(a)(2) and by redesignating 49 U.S.C. 30165(a)(2), which relates to violations of 49 U.S.C. 30166 or a regulation thereunder, as 49 U.S.C. 30165(a)(3). 119 Stat. at 1942. To make the regulations parallel with 49 U.S.C. 30165(a), as amended by SAFETEA–LU, the current Section 578.6(a)(2), which was based on 49 U.S.C. 30165(a)(2), is being redesignated as 49 CFR 578.6(a)(3).

Fourth, this rule amends the language in 49 CFR 578.6(a) to conform it to the current statutory text. Specifically, §§ 578.6(a)(1) and (3), as redesignated, referred to violations of 49 U.S.C. 30123(d), which addresses the treatment of regrooved tires. On June 9, 1998, this statutory provision was redesignated as paragraph (a). *See* Pub. L. 105–178, 112 Stat. 107, 467. Accordingly, we are changing the regulation to reflect this redesignation.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''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.

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures and has determined that it is not significant. This action is limited to the adoption of statutory adjustments of civil penalties under statutes that the agency enforces and codification in 49 CFR 578.6(a) of other statutory amendments, raises no novel issues, and does not otherwise interfere with other actions. This final rule does not impose any costs that would exceed the $100 million threshold or otherwise materially impact entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The agency has therefore determined this final rule to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The amendments almost entirely potentially affect manufacturers of motor vehicles and motor vehicle equipment.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification (''SIC'') Codes. SIC Code 336211 ''Motor Vehicle Body Manufacturing'' applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System (''NAICS''), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.[1]

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapter 301 (Vehicle Safety Act) and therefore may be affected by the adjustments in this final rule. For example, based on comprehensive reporting pursuant to the early warning reporting (EWR) rule under the Motor Vehicle Safety Act, 49 CFR Part 579, of the more than 60 light vehicle manufacturers reporting, over half are small businesses. Also, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. Furthermore, there are about 98 registered importers. Equipment manufacturers are also subject to penalties under 49 U.S.C. 30165.

As noted throughout this preamble, this rule only increases the maximum penalty amounts that the agency could obtain for a single violation and a related series of violations of the Vehicle Safety Act and codifies changes that are otherwise effective based on statutory amendments. The rule does not set the amount of penalties for any particular violation or series of violations. Under the Vehicle Safety Act, the penalty provision requires the agency to take into account the size of a business when determining the appropriate penalty in an individual

[1] For example, according to the new SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. *See http://www.sba.gov/size/sizetable.pdf* for further details.

case. *See* 49 U.S.C. 30165(b). The agency would also consider the size of a business under its civil penalty policy when determining the appropriate civil penalty amount. *See* 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (''SBREFA'')). The penalty adjustments that are being made do not affect our civil penalty policy under SBREFA.

Since this regulation does not establish penalty amounts, this rule will not have a significant economic impact on small businesses.

Small organizations and governmental jurisdictions are not significantly affected as the price of motor vehicles and equipment ought not change as the result of this final rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

We have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12988 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702.

Paperwork Reduction Act

NHTSA has determined that this rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995. This rulemaking action will not impose any filing or record keeping requirements on any manufacturer or any other party.

Privacy Act

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

List of Subjects in 49 CFR Part 578

Motor vehicle safety, Penalties.

■ In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for 49 CFR part 578 continues to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 109–59, 49 U.S.C. §§ 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

■ 2. Section 578.6 is amended by redesignating paragraph (a)(2) as (a)(3), adding a new paragraph (a)(2), and revising paragraph (a)(1) and newly designated paragraph (a)(3), to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) *Motor vehicle safety*—(1) *In general.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than $6,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is $16,375,000.

(2) *School buses.* Notwithstanding paragraph (a)(1) of this section, a person who:

(i) Violates section 30112(a)(1) of Title 49 United States Code by the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in 49 U.S.C. § 30125(a)); or

(ii) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is $15,000,000.

(3) *Section 30166.* A person who violates section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum

penalty under this paragraph is $6,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is $16,375,000.

* * * * *

Issued on: May 11, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–4580 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 051006C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan (BDTRP) Regulations; Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Notice of workshops.

SUMMARY: NMFS published a final rule on April 24, 2006, to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP) and amend the Mid-Atlantic large mesh gillnet rule. NMFS is announcing workshops on these new regulations. The purpose of the workshops is to provide opportunities for commercial fishermen who are affected by the new regulations to learn about and understand any new requirements. The workshops will consist of presentations on the components of the final rule and gear research related to the BDTRP, as well as an opportunity to ask questions. Eleven workshops are planned from New Jersey through the east coast of Florida, which is the geographic scope of the BDTRP.

DATES: See **SUPPLEMENTARY INFORMATION** under the heading ''Workshop Dates, Times, and Locations'' for the dates and locations of the workshops.

ADDRESSES: Copies of the final rule, Environmental Assessment, Final Regulatory Flexibility Analysis, the Bottlenose Dolphin Take Reduction Team meeting summaries, and the complete citations for all references used in this rulemaking may be obtained from the persons listed under **FOR FURTHER INFORMATION CONTACT** or online at *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm*.

FOR FURTHER INFORMATION CONTACT: Stacey Carlson, NMFS, Southeast Region, 727–824–5312, *Stacey.Carlson@noaa.gov;* Kristy Long, NMFS, Office of Protected Resources, 301–713–2322, *Kristy.Long@noaa.gov;* or David Gouveia, NMFS, Northeast Region, 978–281–9300, *David.Gouveia@noaa.gov*. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: NMFS issued the final rule (71 FR 24776, April 24, 2006) to implement the regulatory management measures of the BDTRP to reduce the incidental mortality and serious injury (bycatch) of the western North Atlantic coastal bottlenose dolphin stock (dolphin) (*Tursiops truncatus*) in the Mid-Atlantic coastal gillnet fishery and eight other coastal fisheries operating within the dolphin's range. The final rule also revises the large mesh size restriction under the Mid-Atlantic large mesh gillnet rule for conservation of endangered and threatened sea turtles to provide consistency among Federal and state management measures. The measures contained in the final rule will implement gillnet effort reduction, gear proximity requirements, and gear or gear deployment modifications to reduce dolphin bycatch below the marine mammal stock's potential biological removal level. In addition to the regulatory measures contained in the final rule, the BDTRP includes non-regulatory aspects, such as outreach and education measures.

Workshop Dates, Times, and Locations

May 8, 2006, 7–9 p.m., Manahawkin, NJ - 151 Route 72 East, Manahawkin, NJ 08060.

May 9, 2006, 7–9 p.m., Ocean City, MD - Clarion Resort, Fontainbleau Hotel, 10100 Coastal Highway, Ocean City, MD 21842.

May 15, 2006, 7–9 p.m., Virginia Beach, VA - Virginia Aquarium and Marine Science Center, 717 General Booth Boulevard, Virginia Beach, VA 23451.

May 16, 2006, 7–9 p.m., Chincoteague, VA - The Chincoteague Center, 6155 Community Drive, Chincoteague, VA 23336.

May 17, 20006, 7–9 p.m., Manteo, NC - Roanoke Island Festival Park, One Festival Park, Manteo, NC 27954.

May 18, 2006, 7–9 p.m., Morehead City, NC - Joslyn Hall Auditorium, Carteret Community College, 3505 Arendell Street, Morehead City, NC 28557.

May 19, 2006, 7–9 p.m., Wilmington, NC - Southern District Office, North Carolina Division of Marine Fisheries, 127 Cardinal Drive, Wilmington, NC 28405.

May 22, 2006, 7–9 p.m., Beaufort, SC - Beaufort County Clemson Extension Service Office, 102 Beaufort Industrial Village, Suite 101, Beaufort, SC 29901.

May 23, 2006, 7–9 p.m., Midway, GA - Holton's Restaurant, 13711 Oglethorpe Highway (off I–95 exit 76), Midway, GA 31320.

May 24, 2006, 7–9 p.m., Mayport, FL - Marine Science Educational Center, 1347 Palmer Street, Mayport, FL 32233.

May 25, 2006, 7–9 p.m., Fort Pierce, FL - Fort Pierce Branch Library, 101 Melody Lane, Fort Pierce, FL 34950.

Dated: May 10, 2006.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–7441 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060216043–6123–02; I.D. 021306C]

RIN 0648–AS70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 17 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 17) and Amendment 25 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 25) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a limited access system for charter vessel/headboat (for-hire) permits for the reef fish and coastal

migratory pelagic fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico and will continue to cap participation at current levels. In addition, this final rule incorporates a number of minor revisions to remove outdated regulatory text and to clarify regulatory text. The intended effect of this final rule is to provide for biological, social, and economic stability in these for-hire fisheries.

DATES: This final rule is effective June 15, 2006.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) are available from Jason Rueter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *Jason.Rueter@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone: 727–570–5305; fax: 727–570–5583; e-mail: *Jason.Rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) prepared by the Council. The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendments 17 and 25 on May 8, 2006. NMFS published the proposed rule to implement Amendments 17 and 25 and requested public comment on the proposed rule through April 27, 2006 (71 FR 12662, March 13, 2006). The rationale for the measures in Amendments 17 and 25 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received one comment on the proposed rule.

Comment: One commenter requested the Council create a new permit for catch and release fishing only for small charter operators (four or less passengers).

Response: The purpose of this rule is to continue the cap on participation in the for-hire sector of the respective fisheries. This comment is beyond the scope of the proposed rule and, therefore, is not addressed. NMFS will forward this comment to the Council for consideration of future management actions.

Classification

The Administrator, Southeast Region, NMFS, determined Amendments 17 and 25 are necessary for the conservation and management of the reef fish and coastal migratory pelagic fisheries and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

A FRFA was prepared for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) and a summary of the analyses completed to support the action. No public comments were received regarding the IRFA or economic issues. A summary of the analyses follows.

The Magnuson-Stevens Act provides the statutory basis for the final rule. The final rule will establish a limited access system on for-hire reef fish and coastal migratory pelagics (CMP) permits. In effect, this rule will extend indefinitely the current moratorium on these permits, which is set to expire on June 16, 2006.

The main objective of the final rule is to control increases in for-hire fishing vessels or passenger capacity while the Council determines an appropriate management strategy for the for-hire fishery. Such strategy would be in the nature of stabilizing or reducing for-hire fishing mortality for reef fish and CMP stocks that have rebuilding plans or are overfished or undergoing overfishing.

Permitting of for-hire vessels has been required since 1987 for CMP and 1996 for reef fish. It is estimated that, when the current moratorium was established in 2003, NMFS issued for-hire moratorium permits to 1,857 vessels but at the same time excluded 510 to 899 vessels. Some of the excluded vessels left the fishery before the moratorium took effect. Some of those that were still in operation but inadvertently excluded from the moratorium were allowed to re-enter the fishery through an emergency action. Both included and excluded vessels may be considered to comprise the universe of vessels affected by the final rule.

For-hire vessels with initial moratorium permits operate as charter vessels only, headboats only, or charter vessel/headboat combination. Some for-hire vessels also operate as commercial fishing vessels at certain times of the year. However, most (66.7 percent) operate as charter vessels only, and a great majority of these vessels (87.7 percent) operate in both the CMP and reef fish fisheries. About 69 percent of these vessels are individually owned and operated; 27 percent have corporate ownership; and the rest are in some other form of ownership.

Florida is the homeport state of most vessels, followed in order by Texas, Alabama, Louisiana, Mississippi, and other states. In the absence of relevant information, vessels excluded from the moratorium are deemed to have the same characteristics as those that obtained moratorium permits.

For-hire vessel costs and revenues are not routinely collected. For the purpose of this amendment, data from two previous studies (Holland et al., 1999; Sutton et al., 1999) were pooled to characterize the financial performance of for-hire vessels. Charter vessels charge their fees on a group basis while headboats do it on a per-person (head) basis. On average, a charter vessel generates $76,960 in annual revenues and $36,758 in annual operating profits. An average headboat, on the other hand, generates $404,172 in annual revenues and $338,209 in annual operating profits. Excluding fixed and other non-operating expenses, both types of for-hire operations generate positive profits. On average, both charter vessels and headboats operate at about 50 percent of their passenger capacity per trip.

The financial performance of charter vessels and headboats varies according to the size of operation (passenger capacity) and geographic areas. For headboats, revenues range from $298,812 ($263,062 profits) for 13 to 30 maximum passenger capacity to $570,376 ($460,760 profits) for 61 or greater maximum passenger capacity. For charterboats, revenues range from $70,491 ($34,949 profits) for the 6 and under maximum passenger capacity to $129,813 ($86,502 profits) for the 7–12 maximum passenger capacity vessels. Florida charter vessels generate annual revenues of $68,233 ($30,249 profits), while their counterparts in other areas earn $106,118 in annual revenues ($43,494 profits). Florida headboats generate annual revenues of $318,512 ($249,103 profits), while their counterparts in the other areas earn revenues of $630,046 ($542,425 profits). In general, then, larger for-hire vessels generate larger profits, and for-hire vessels in Florida earn lower profits than those in other areas.

A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of $6 million in the case of for-hire entities. Given the data on revenues and profits, the for-hire vessels affected by the final

rule are determined to be small business entities, so the issue of disproportionality does not arise. In general, headboat operations are larger than charter vessel operations in terms of revenues and costs as well as vessel and crew sizes and passenger capacity. There are also variations in the size of operations within the charter vessel and headboat classes.

There are two types of effects on profitability depending on whether a vessel is included or excluded in the for-hire fishery. Those included are expected to either maintain or increase their returns from for-hire operations as they face less competition. Those excluded would continue to forgo all their profits from for-hire operations related to reef fish or CMP fisheries in the EEZ, although they may still earn profits from their state water for-hire operations or commercial fishing operations. For those that mainly depend on fishing trips in the EEZ, their profits would be substantially reduced. For those that can still operate as commercial fishing vessels or for-hire vessels in state waters, the reduction in profits may be deemed to be proportionate to their operations in the EEZ. It is likely that profits from EEZ operations are either a major component of these vessels' total profits or are crucial profit components to remain viable business operations. The final rule is, therefore, expected to significantly reduce the profits of excluded for-hire vessels. Hence, the final rule is expected to significantly reduce the profits of a substantial number of small entities. However, three issues are worth noting here. First, the emergency rule to re-open the charter permit process allowed the re-entry of some vessels excluded by the initial moratorium. Second, vessels that remain in the for-hire fishery would be in a better position to experience profit increases. Whether such profit increases would totally compensate for profit losses from excluded vessels cannot be determined. Third, future entrants into the fishery would have to expend an additional fixed cost in the form of purchase cost of the charter permit. This cost would have to be explicitly considered by new entrants as an integral part of their decision to invest in the for-hire fishery.

Because the final rule simply extends the current moratorium on the issuance of new for-hire permits, it would not impose any additional record keeping or reporting requirements. Also, all the compliance requirements currently in place will remain the same. Similarly, the final rule will not affect current permitting, certifications, and other requirements by other Federal agencies, and thus it would not in any way conflict or be duplicative of any relevant Federal rules.

The other alternatives considered in this amendment are the no action alternative, which would allow the moratorium to expire in 2006; extension of the moratorium by 5 years; and extension of the moratorium by 10 years. The alternatives that would extend the moratorium by 5 years or 10 years have similar effects as the final rule, although the magnitudes involved are lower. The no action alternative would benefit vessel operations re-entering the for-hire fishery as well as new entrants because they would not have to expend the additional cost of purchasing permits. But their entrance into the for-hire fishery would impinge on the profitability of existing vessel operations as well as potentially increase the harvest and discards of certain species that are overfished or undergoing overfishing. A reversion to open access in the for-hire fishery would also complicate the management measures the Council might adopt for the fishery to address overfishing issues. Moreover, the no action alternative would only exacerbate the excess capacity problem in the for-hire fishery, especially that portion under the present moratorium: for-hire vessels that are operating at about half their capacity.

Certain measures have already been adopted to mitigate the adverse economic impacts of the moratorium. These include (1) relatively liberal qualifying eligibility criteria for the moratorium permits, such as the inclusion of most historical participants, historical captains, and those who already committed money for the construction of vessels; (2) liberal provision for renewing for-hire permits; (3) transferability of for-hire permits, except historical captain permits; and, (4) an emergency action re-opening the moratorium permit application process to participants inadvertently excluded from the moratorium. Additionally, re-entrants and new entrants can participate in the for-hire fishery by purchasing permits from current permit holders. These features are preserved under the final rule.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 11, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.3, paragraph (b) is revised to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such sanctuaries or parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Florida Keys National Marine Sanctuary (15 CFR part 922, subpart P).

(2) Gray's Reef National Marine Sanctuary (15 CFR part 922, subpart I).

(3) Monitor National Marine Sanctuary (15 CFR part 922, subpart F).

(4) Everglades National Park (36 CFR 7.45).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Fort Jefferson National Monument (36 CFR 7.27).

* * * * *

■ 3. In § 622.4, paragraphs (a)(1)(ii) and (r) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) * * *

(ii) See paragraph (r) of this section regarding a limited access system for charter vessel/headboat permits for Gulf reef fish and Gulf coastal migratory pelagic fish.

* * * * *

(r) *Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the

restrictions on transfer in paragraph (r)(1) of this section, and are subject to the renewal requirements in paragraph (r)(2) of this section.

(1) *Transfer of permits*—(i) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See paragraph (g)(1) of this section for additional transfer-related requirements applicable to all permits issued under this section.

(2) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the approved fishing data surveys. Surveys include, but are not limited to—

(A) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(2)(i)(A),(B), or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(3) *Requirement to display a vessel decal.* Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

§ 622.42 [Amended]

■ 4. In § 622.42, paragraph (a)(3) is removed.

[FR Doc. 06–4554 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 051006A]

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Plaice 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; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the Alaska plaice initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective May 16, 2006 through 2400 hrs, Alaska local time, December 31, 2006. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, May 26, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Officer. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX: 907–586–7557;
- E-mail: *bsairelakpl@noaa.gov* and include in the subject line of the e-mail comment the document identifier: bsairelakpl. Email comments with or without attachments are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

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

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

The 2006 ITAC of Alaska plaice in the BSAI was established as 6,800 metric tons by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006). The Administrator, Alaska Region, NMFS, has determined that the ITAC for Alaska plaice in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 7,000 metric tons from the non-specified reserve of groundfish to the Alaska plaice ITAC in the BSAI for a revised total of 13,800 mt. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch (71 FR 10894, March 3, 2006).

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) and 50 CFR 679.20(b)(3)(iii)(A) as such a 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 apportionment of the non-specified reserves of groundfish to the Alaska plaice fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 3, 2006.

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

Under 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until May 26, 2006.

This action is required by 50 CFR 679.20 and is exempt from review under Executive Order 12866.

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

Dated: May 10, 2006.

James P. Burgess,

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

[FR Doc. 06–4553 Filed 5–11–06; 1:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 94
Tuesday, May 16, 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 39

[Docket No. FAA–2006–24255; Directorate Identifier 2006-CE–25–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Model DG–1000S Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all DG Flugzeugbau GmbH Model DG–1000S sailplanes. This proposed AD would require you to modify the elevator control at the stabilizer assembly, replace a placard on the fin, and incorporate changes in the FAA-approved sailplane flight manual. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are proposing this AD to prevent the rigging of the horizontal stabilizer without properly connecting the elevator, which, if not prevented, could lead to an inoperative elevator.

DATES: We must receive comments on this proposed AD by June 12, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- 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.

For service information identified in this proposed AD, contact DG-Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257 890; facsimile: ++45 7257 8922; e-mail: *www.dg-flugzeugbau.de*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–24255; Directorate Identifier 2006–CE–25–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA that an unsafe condition may exist on all DG Flugzeugbau GmbH Model DG–1000S sailplanes. The LBA reports that a user succeeded in assembling the horizontal stabilizer without connecting the elevator.

The design of this assembly should be such that this is not possible. DG Flugzeugbau has developed a modification to prevent such assembly.

Such assembly, if not prevented, could result in an inoperative elevator.

Relevant Service Information

We have reviewed DG Flugzeugbau GmbH Technical Note No. 413/3, dated April 28, 2004.

The service information describes procedures for:

- Modifying the elevator control at the stabilizer assembly;
- Replacing the placard on the fin; and
- Incorporating changes in the FAA-approved sailplane flight manual (SFM).

Foreign Airworthiness Authority Information

The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–300, dated June 15, 2004, to ensure the continued airworthiness of these sailplanes in Germany.

These DG Flugzeugbau GmbH Model DG–1000S sailplanes are manufactured in Germany 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 LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we have examined the LBA's findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would require you to modify the elevator control at the stabilizer assembly and incorporate changes in the FAA-approved sailplane flight manual.

Costs of Compliance

We estimate that this proposed AD would affect 8 sailplanes in the U.S. registry.

We estimate the following costs to do the proposed modification and replacement of the placard on the fin:

Labor cost	Parts cost	Total cost per sail-plane	Total cost on U.S. operators
2 workhours × $80 per hour = $160	$60	$220	8 × $220 = $1,760.

We estimate the following costs to do the proposed incorporation of changes in the FAA-approved SFM:

Labor cost	Parts cost	Total cost per sail-plane	Total cost on U.S. operators
1 workhour × $80 per hour = $80	[1] N/A	$80	8 × $80 = $640.

[1] Not applicable.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

DG Flugzeugbau GmbH: Docket No. FAA–2006–24255; Directorate Identifier 2006–CE–25–AD.

Comments Due Date

(a) We must receive comments on this proposed airworthiness directive (AD) action by June 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects all Model DG–1000S sailplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the rigging of the horizontal stabilizer without properly connecting the elevator, which, if not prevented, could lead to an inoperative elevator.

Compliance

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

Actions	Compliance	Procedures
(1) Modify the elevator control at the stabilizer assembly as follows:. (i) Replace the rod-end 5St94 (or FAA-approved equivalent part) with a rod-end 5St94 modified to part number 10St97/1 (or an FAA-approved equivalent part); (ii) Install deflector part number 10St97/2 (or an FAA-approved equivalent part); and (iii) Replace the placard on the fin	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	Follow DG Flugzeugbau GmbH Technical Note No. 413/3, dated April 28, 2004.

Actions	Compliance	Procedures
(2) The parts that this AD requires to be replaced as well as those to be installed could have replacement parts approved under 14 CFR 21.303. Any such parts approved per this regulation and installed are subject to thee actions of this AD. In addition, nothing in this AD prevents the installation of such alternatively approved parts provided they meet current airworthiness standards including those actions cited in this AD..	Not Applicable	Not Applicable.
(3) Incorporate changes in the FAA-approved sailplane flight manual, as specified in paragraph 6a) of the Instructions section of DG Flugzeugbau GmbH Technical Note No. 413/3, dated April 28, 2004.	Within the next 25 hours TIS after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual change requirement of this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(4) Do not install any rod end 5St94 (or FAA-approved equivalent part) unless it is modified to DG Flugzeugbau GmbH rod-end part 10St97/1 (or FAA-approved equivalent part)..	As of the effective date of this AD.	Not Applicable.

Alternative Methods of Compliance (AMOCS)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Gregory Davison, Glider Project Manager, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) German AD Number D–2004–300, dated June 15, 2004, also addresses the subject of this AD. To get copies of the service information referenced in this AD, contact DG-Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257 890; facsimile: ++45 7257 8922; e-mail: *www.dg-flugzeugbau.de*. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–24255; Directorate Identifier 2006–CE–25–AD.

Issued in Kansas City, Missouri, on May 9, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7394 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0272; FRL–8159–8]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality, Pima County Department of Environmental Quality, and Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the Arizona Department of Environmental Quality (ADEQ), Pima County Department of Environmental Quality (PCDEQ), and Pinal County Air Quality Control District (PCAQCD) portions of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open burning. We are proposing to approve local rules that help regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 15, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0272, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions.
- E-mail: *steckel.andrew@epa.gov*.
- Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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 *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, 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: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ADEQ Rule R18–2–602, ADEQ Rules R18–2–1501 through R18–2–1513, PCDEQ Rule 17.12.480, and PCAQCD Rules 3–8–700 and 3–8–710. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 22, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 06–4515 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 182–4196b; FRL–8170–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Proposed Rule; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a proposed rule published on June 6, 2002, pertaining to Pennsylvania's timing in incorporating on-board diagnostic (OBD) checks as an element of its motor vehicle inspection and maintenance (I/M) program. EPA's I/M requirements rule, or I/M rule, established deadlines by which states were to add OBD checks to their I/M programs (*i.e.*, no later than January 1, 2002). However, EPA's I/M rule provided states the option to submit a request to EPA to delay OBD testing for no more than one additional year. Pennsylvania submitted a SIP revision requesting this optional one-year deadline extension on December 14, 2001.

On June 6, 2002, EPA published a direct final rule (67 FR 38894) to approve Pennsylvania's request to delay OBD testing as a revision to the Pennsylvania State Implementation Plan (SIP). EPA received adverse comments during the comment period established for that rule. On August 5, 2002 EPA published a withdrawal notice (67 FR 50602) of its June 2002 direct final rule. As stated in EPA's direct final rule, upon EPA's withdrawal of the direct final rule, a proposed rulemaking action remained in place. EPA never took final action upon that proposed rule.

Pennsylvania subsequently submitted two SIP revisions (on December 1, 2003 and January 30, 2004) that revised its I/M program in its entirety—including the incorporation of OBD checks as an element of its program. EPA published a final rule fully approving the Commonwealth's revamped I/M program on October 6, 2005 (70 FR 58313).

Since EPA has fully approved the Commonwealth's I/M program (including the OBD check component of the program), EPA's proposed rule to grant the Commonwealth's request for an extension of the deadline to incorporate OBD checks is no longer necessary. On November 17, 2005, Pennsylvania formally requested withdrawal of its December 14, 2001 SIP revision from EPA. Therefore, EPA is today withdrawing its proposed rule (67 FR 38924) to grant the Commonwealth's OBD deadline extension.

DATES: The proposed rule is withdrawn as of May 16, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Air Quality Planning Branch, Mailcode 3AP21, 1650 Arch Street, Philadelphia, PA 19103. Phone (215) 814–2176, or e-mail *rehn.brian@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 5, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–7409 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0225; FRL–8170–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District's (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and oxides of sulfur (SOx) emissions from facilities emitting 4 tons or more per year of NO_X or SOx in the year 1990 or subsequent year under the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 15, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0225, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov*.
3. Mail or deliver: Andrew Steckel (Air–4), 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 *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, 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: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	2000	General	05/06/05	10/20/05
SCAQMD	2001	Applicability	05/06/05	10/20/05
SCAQMD	2002	Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_x).	01/07/05	12/21/05
SCAQMD	2005	New Source Review for RECLAIM	05/06/05	10/20/05
SCAQMD	2007	Trading Requirements	05/06/05	10/20/05
SCAQMD	2010	Administrative Remedies and Sanctions	01/07/05	07/15/05
SCAQMD	2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions.	01/07/05	07/15/05
SCAQMD	2011 Protocol Appendix A	Appendix A: Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions.	05/06/05	10/20/05
SCAQMD	2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	01/07/05	07/15/05
SCAQMD	2012 Protocol Appendix A	Appendix A—Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	05/06/05	10/20/05

Prior to the submittal of the rules in Table 1, SCAQMD also adopted and submitted other revisions of these rules. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals. EPA's technical support document (TSD) has more information about these interim superseded rules.

On August 18, 2005, November 22, 2005, and March 20, 2006, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

Table 2 lists the previous versions of these rules approved into the SIP.

TABLE 2.—CURRENT SIP APPROVED VERSION OF RULES

Rule #	Rule title	Adopted	Submitted	Approved FR citation
2000	General	05/11/01	05/31/01	09/04/03, 68 FR 52512.
2001	Applicability	05/11/01	05/31/01	09/04/03, 68 FR 52512.
2002	Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X).	05/11/01	05/31/01	09/04/03, 68 FR 52512.
2005	New Source Review for RECLAIM	04/20/01	10/30/01	09/04/03, 68 FR 52512.
2007	Trading Requirements	12/05/03	02/20/04	07/26/04, 69 FR 44461.
2010	Administrative Remedies and Sanctions	05/11/01	05/31/01	09/04/03, 68 FR 52512.
2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	12/05/03	02/20/04	07/26/04, 69 FR 44461.
2011 Protocol Appendix A	Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	03/16/01	05/31/01	09/04/03, 68 FR 52512.
2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	12/05/03	02/20/04	07/26/04, 69 FR 44461.
2012 Protocol Appendix A	Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	03/16/01	05/31/01	09/04/03, 68 FR 52512.

C. What is the purpose of the submitted rule revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. The RECLAIM program was initially adopted by SCAQMD in October 1993. The program established for many of the largest NO_X and SO_X facilities in the South Coast Air Basin regional NO_X and SO_X emissions caps which decline over time. The program was designed to provide incentives for sources to reduce emissions and advance pollution control technologies by giving sources added flexibility in meeting emission reduction requirements. A RECLAIM source's emissions may not exceed its holding of RECLAIM Trading Credits (RTCs) in any compliance year. A RECLAIM source may comply with this requirement by installing control equipment, modifying their activities, or purchasing RTCs from other facilities.

The primary purposes of the 2005 amendments to the RECLAIM rules were to:

(1) Lower the regional NO_X emissions cap. Beginning with the 2007 compliance year, the regional NO_X emissions cap would be lowered by 4 tons per day from the 2003 emissions levels to achieve additional NO_X emission reductions for attainment. This program modification would also address California Health and Safety Code requirements on Best Available Retrofit Control Technology (BARCT).

(2) Remove the remaining trading restrictions placed on the power producers.

(3) Modify the monitoring, recordkeeping, and reporting requirements and protocols, including: adding a new NO_X emission factor for micro-turbines, requiring large sources and process units equipped with stack flow monitors to measure exhaust flow rate, clarifying the required operating parameters for large sources and process units, clarifying the corresponding emission rates that are to be measured and reported, establishing missing data provisions on an hourly basis versus the previous daily requirement, allowing an alternative test to demonstrate compliance with RECLAIM NO_X concentration limits, allowing a delay in the due date for Relative Accuracy Test Audits (RATA) for equipment that is operated intermittently, adding alternative methods of compliance testing for natural gas combustion sources with high oxygen content in the exhaust stream, allowing the reporting of emissions through the SCAQMD's Internet Web site, specifying that emission reports are due every quarter from sources that are not listed on the Facility Permit (such as contractor equipment, various location equipment, and equipment covered under applications), correcting typographical errors, and adding rule language clarifications.

(4) Modify the NSR requirements for RECLAIM sources to allow sources to sell unused RTCs at the end of a quarter instead of the end of the compliance year, provided the source accepts an enforceable permit condition which establishes a quarterly emissions limitation.

(5) Implement other administrative and clarifying changes. While ship emissions are not counted toward the applicability thresholds to determine if the source is subject to RECLAIM, the rule amendments clarify that ship emissions at a new or relocated RECLAIM facility subject to New Source Review is to be counted as part of the total emissions which must be offset. Because of recent changes in the state that requires the permitting and regulation of agricultural sources, the rule was amended to clarify that agricultural sources are exempt from the RECLAIM program.

EPA's TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates a 1-hour ozone nonattainment area (see 40 CFR 81), so Regulation XX (Rules 2000 to 2020) must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R01–001, (the EIP guidance) January 2001.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. While some of rule amendments could arguably be viewed as a rule relaxation (*e.g.* allowing sources to sell unused RTCs at the end of a quarter instead of at the end of the year), other rule amendments are strengthening (*e.g.* requiring such sources to be subject to a quarterly emissions limit in their permit, and clarifying that ship emissions, at a new or relocated RECLAIM facility subject to New Source Review, are part of total emissions which must be offset). Also, the amendments result in significant additional emission reductions through the lowering of the emissions cap in the year 2007. Consequently, EPA believes that the amendments on balance are strengthening. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

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 proposed 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 (Pub. L. 104–4).

This proposed 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 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 (''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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 27, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E6–7411 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF21

Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service) are extending the comment for the proposed rule re-opening the public comment period on the proposal to remove the bald eagle from the List of Threatened and Endangered Wildlife under the Endangered Species Act. We are also extending the comment period on the proposed rule to establish a regulatory definition of ''disturb'' under the Bald and Golden Eagle Protection Act, and on the draft National Bald Eagle Management Guidelines via two additional notices published separately in today's issue of the **Federal Register**. Comments previously submitted need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final decision and rule.

DATES: The public comment period is extended to June 19, 2006. Any comments received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: You may submit comments and other information, identified by RIN 1018-AF21, by any of the following methods:

- Mail: Michelle Morgan, Chief, Branch of Recovery and Delisting, Endangered Species Program, U.S. Fish and Wildlife Service, Headquarters Office, 4401 N. Fairfax Drive, Room 420, Arlington, Virginia 22203. Attn: RIN 1018–AF21.
- Hand Delivery/Courier: Same address as above.
- E-mail: *baldeagledelisting@fws.gov.* Include ''RIN 1018–AF21'' in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received for this rule will be available for public inspection, by appointment, during normal business hours at the above address after the close of the comment period. Call (703) 358–2061 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Mary Klee, Biologist, at the Headquarters Office (see **ADDRESSES** section), or via e-mail at *Mary_Klee@fws.gov*; telephone (703) 358–2061.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2006, the U.S. Fish and Wildlife Service (Service) published a re-opening of the comment period on our proposal to remove the bald eagle in the 48 contiguous States from the List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.) (71 FR 8238). In anticipation of possible removal (delisting) of the bald eagle from the list of threatened and endangered species under the ESA, the Service concurrently proposed two other related actions: (1) A notice of availability of draft National Bald Eagle Management Guidelines (71 FR 8309, February 16, 2006); and (2) a proposed regulatory definition of ''disturb'' under the Bald and Golden Eagle Protection Act (BGEPA) to guide post-delisting bald eagle management (71 FR 8265, February 16, 2006). Due to the complexity of these related actions, we are extending the comment period for each action for an additional 30 days.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500).

Dated: May 10, 2006.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 06–4606 Filed 5–12–06; 1:17 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

RIN 1018–AT94

Protection of Bald Eagles; Definition; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), are extending the comment for the proposed rule to establish a regulatory definition of ''disturb'' under the Bald and Golden Eagle Protection Act. We are also extending the comment period on the proposed rule re-opening the public comment period on the proposal to remove the bald eagle from the List of Threatened and Endangered Wildlife under the Endangered Species Act, and on the draft National Bald Eagle Management Guidelines, via two additional notices published separately in today's issue of the **Federal Register**. Comments previously submitted need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final decision and rule.

DATES: The public comment period is extended to June 19, 2006. Any comments received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: You may submit comments and other information, identified by RIN 1018-AT94, by any of the following methods:

- Mail: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MBSP–4107, Arlington, Virginia 22203. Attn: RIN 1018–AT94.
- Hand Delivery/Courier: Same address as above.
- E-mail: *BaldEagle_ProposedRule@fws.gov.* Include ''RIN 1018-AT94'' in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, 4501 North Fairfax Drive, Room 4107, Arlington, Virginia 22203–1610. Please call 703–358–1714 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, (see **ADDRESSES** section); or via e-mail at: Eliza_Savage@fws.gov; telephone: (703) 358–2329; or facsimile: (703) 358–2217.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2006, in anticipation of possible removal (delisting) of the bald eagle in the 48 contiguous States from the List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service (the Service) proposed a regulatory definition of ''disturb'' under the Bald and Golden Eagle Protection Act (BGEPA) to guide post-delisting bald eagle management (71 FR 8265). The Service concurrently proposed two other related actions: (1) a notice of availability of draft National Bald Eagle Management Guidelines (71 FR 8309, February 16, 2006); and (2) a re-opening of the comment period on our proposal to remove the bald eagle from the list of threatened and endangered species under the ESA (71 FR 8238, February 16, 2006). Due to the complexity of these related actions, we are extending the comment period for each action for an additional 30 days.

Authority

The authority for this action is the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

Dated: May 10, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–4607 Filed 5–12–06; 1:17 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 031006D]

Endangered and Threatened Species: Notice of Public Hearing on Proposed Listing Determination for Puget Sound Steelhead

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

ACTION: Notice of public hearing.

SUMMARY: On March 29, 2006, we (NMFS) proposed to list steelhead (*Oncorhynchus mykiss*) populations in Puget Sound (Washington) as threatened under the Endangered Species Act (ESA). In this notice we are announcing a public hearing to be held in Seattle (Washington) on June 22, 2006, regarding the subject proposal.

DATES: Written comments on the proposed listing determination must be received by June 27, 2006. See **SUPPLEMENTARY INFORMATION** for the public meeting time and location.

ADDRESSES: You may submit comments on the proposed listing determination for Puget Sound steelhead by any of the following methods. Please identify submittals as pertaining to the ''Puget Sound Steelhead Proposed Listing.''

- E-mail: *PS.Steelhead.nwr@noaa.gov*. Include ''Puget Sound Steelhead Proposed Listing'' in the subject line of the message.
- Internet: Comments may also be submitted electronically through the Federal e-Rulemaking portal at: *http://www.regulations.gov*.
- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. You may hand-deliver written comments to our office during normal business hours at the street address given above.
- Hand Delivery/Courier: NMFS, Protected Resources 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.
- Fax: 503–230–5441

FOR FURTHER INFORMATION CONTACT: For further information regarding the public meeting is available on the Internet at: *http://www.nwr.noaa.gov.* Alternatively, you may contact Dr. Scott Rumsey, NMFS, Northwest Region, (503) 872-2791, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2006, we published a proposed threatened determination for Puget Sound steelhead (71 FR 15666). Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In this notice we are announcing a public meeting regarding the Puget Sound steelhead proposed threatened listing to be held in Seattle (Washington) on June 22, 2006.

This public meeting is not the only opportunity for the public to provide input on this proposal. As part of the proposed threatened listing for Puget

Sound steelhead, we announced a public comment period extending through June 27, 2006. The public and stakeholders are encouraged to continue to comment and provide additional information on the proposals (see **ADDRESSES**, above) up until the close of the comment period.

Meeting Format

In our recent updated ESA listing determinations for West Coast salmon and steelhead (70 FR 37160, June 28, 2005; and 71 FR 834, January 5, 2006), we employed a new ''open house'' approach to conducting public hearings. This new approach proved successful in allowing all interested members of the public to more effectively engage in the rulemaking process. We will be employing the open house format, described further below, for the Puget Sound steelhead public meeting in Seattle on June 22, 2006.

The open house format provides the general public with an opportunity to meet with NMFS staff in small groups on specific topics in order to learn more about the proposal and its possible impacts on their communities. This evening meeting will also provide any interested individuals with the opportunity to make formal recorded comments on the proposal. In addition, blank ''comment sheets'' will be provided at the evening meeting for those without prepared written comments. The preferred means of providing public comment for the official record, however, is via written testimony.

The meeting will be held in the evening from 6:30 p.m to 9:30 p.m. For those who are interested, there will be a brief introductory presentation at 6:30 p.m. regarding the Puget Sound steelhead proposal and the ESA rulemaking process. After the introductory remarks, attendees can move freely from ''station'' to ''station'' to discuss items of particular interest with knowledgeable NMFS staff. We believe that this format is respectful of the public's valuable time, allowing busy community members to participate without necessarily attending the entire evening. There is no need to register; just drop in anytime during the course of the evening event.

Meeting Time & Location

The public meeting regarding the Puget Sound steelhead proposed threatened listing will be held from 6:30 p.m. to 9:30 p.m., June 22, 2006, at the Radisson Hotel (SeaTac Airport), 18118 International Blvd., Seattle WA 98188. Directions to the meeting location can be obtained on the Internet at *http://www.nwr.noaa.gov*.

References

Copies of the **Federal Register** notices and related materials cited in this document are available on the Internet at http://www.nwr.noaa.gov or upon request (see **ADDRESSES** section above).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 10, 2006.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–7430 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 71, No. 94

Tuesday, May 16, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 11, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Foreign Market Development Cooperator Program and the Market Access Program.

OMB Control Number: 0551–0026.

Summary of Collection: The authority for the Foreign Market Development Cooperator Program and the Market Access Program (MAP) is contained in Title VII and section 203 of the Agricultural Trade Act of 1978, U.S.C. 5721, *et seq*. The primary objective of the Foreign Market Development Cooperator Program and the Market Access Program is to encourage and aid in the creation, maintenance and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. The programs are a cooperative effort between the Commodity Credit Corporation and the eligible trade organizations. Personnel of the Foreign Agricultural Service (FAS) administer the programs. Prior to initiating program activities, each Cooperator or MAP participant must submit a detailed application to FAS.

Need and Use of the Information: The information collected will be used by FAS to manage, plan, evaluate, and account for government resources. Without the submission of information, the programs could not be implemented.

Description of Respondents: Not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 71.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 91,070.

Foreign Agricultural Service

Title: Technical Assistance for Specialty Crops Program.

OMB Control Number: 0551–0038.

Summary of Collection: The Technical Assistance for Specialty Crops (TASC) program is authorized by section 3205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). This section provides that the Secretary of Agriculture shall establish a program to address unique barriers that prohibit or threaten the export of U.S. specialty crops. The Foreign Agricultural Service (FAS) administers the program for the Commodity Credit Corporation. The TASC is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, and technical barriers that prohibit or threaten the export of U.S. specialty crops.

Need and Use of the Information: FAS collects data for fund allocation, program management, planning and evaluation. FAS will collect information from applicant desiring to receive grants under the program to determine the viability of requests for funds. The program could not be implemented without the submission of project proposals, which provide the necessary information upon which funding decisions are based.

Description of Respondents: Not-for-profit; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 1600.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–7457 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0084]

U.S. Department of Agriculture, Agricultural Research Service; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Plum Genetically Engineered for Resistance to Plum Pox

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the U.S. Department of Agriculture's Agricultural Research Service seeking a determination of nonregulated status for plum designated as transformation event C5, which has been genetically engineered to resist infection by plum pox virus (PPV). The petition has been submitted in

accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this plum presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive on or before July 17, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0084 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0084.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Michael Watson, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0486. To obtain copies of the petition or the environmental assessment (EA), contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov*. The petition and the EA are also available on the Internet at: *http://www.aphis.usda.gov/brs/aphisdocs/04_26401p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/04_26401p.ea.pdf,* respectively.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On September 9, 2004, APHIS received a petition (APHIS Petition Number 04–264–01p) from the U.S. Department of Agriculture (USDA), Agricultural Research Service (ARS), Appalachian Fruit Research Station in Kearneysville, WV, requesting a determination of nonregulated status under 7 CFR part 340 for plum (*Prunus domestica* L.) designated as transformation event ARS–PLMC5–6 (C5) which has been genetically engineered to resist infection by *plum pox virus* (PPV). The ARS petition states that the subject plum should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, the C5 plum has been genetically engineered with a sequence from the PPV. This sequence was derived from the viral coat protein gene. The resistance to plum pox infection appears to be conferred through post transcriptional gene silencing. As a result of this mechanism, no detectable viral coat protein is found in the subject plum.

Event C5 has been considered a regulated article under the regulations in 7 CFR part 340 because it was originally engineered with sequences derived from plant pathogens. This plum event has been field tested since 1995 in the United States under APHIS permits. It has also been field tested in Poland, Romania, and Spain, where plum pox virus is present in the environment. In the process of reviewing the permits for field trials of the subject plum, APHIS determined that the permit conditions provided for appropriate confinement and would not present a risk of plant pest introduction or dissemination.

In § 403 of the Plant Protection Act (7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The Food and Drug Administration (FDA) published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. ARS is consulting with FDA on the subject plum line.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for ARS–PLMC5–6 plum, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding

the petition for a determination of nonregulated status from interested persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the EA prepared to examine any environmental impacts of the proposed determination for the subject plum event. The petition, the EA, and any comments we receive are available for public review on the Regulations.gov Web site or in our reading room (instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice). Copies of the petitions and the EA are also available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of ARS–PLMC5–6 plum and the availability of APHIS' written decision.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of May 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–7402 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Creek Vegetation Treatment Project, Wasatch-Cache National Forest, Rich County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Wasatch-Chache National Forest gives notice of the agency's intent to prepare an environmental impact statement on a proposal for vegetation treatment over approximately 4,000 acres of vegetation in the 21,000 acre Big Creek project area in the Bear River Range in northeastern Utah. The project area is approximately 50 miles northeast of Ogden, Utah and is located at the headwaters of the Big Creek watershed. The vegetation types to be treated include aspen-conifer, conifer, and sagebrush communities that are not in properly functioning condition. Methods include prescribed fire, timber harvest, mechanical treatment, and herbicide application.

DATES: Comments concerning the scope of the analysis must be received by June 15, 2006. The draft environmental impact statement is expected in November, 2006 and the final environmental impact statement is expected April, 2007.

ADDRESSES: Send written comments to District Ranger, Ogden Ranger District, 507 25th Street, Suite 103, Ogden, Utah 84401, Attn: Big Creek Project. Or, e-mail comments to: *comments-intermtn-wasatch-chache-ogden@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Chip Sibbernsen, Ogden Ranger District, 507 25th Street, Suite 103, Ogden, UT 84401, (801) 625–5112.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this project is three-fold: (1) To develop variation in vegetation age and type across the landscape, consistent with the properly functioning condition as described in the Revised Forest Plan; (2) to enhance ecosystem resiliency and maintain desired fuel levels with fire operating within historical fire regimes as described in the Revised Forest Plan; and, (3) to provide commercial timber that contributes to a sustainable level of goods and services consistent with the Revised Forest Plan.

Proposed Action

The proposed project includes treatment of approximately 4,000 acres of aspen-conifer, conifer, and sagebrush communities within the Big Creek project area. This would include the following: (1) About 700 acres (primarily aspen-conifer communities) would be treated with prescribed fire in a mosaic pattern; (2) approximately 1,300 acres of sagebrush would be treated by prescribed fire, mechanical means, or application of herbicides, depending on specific site characteristics and desired results; (3) timber harvest would be the method of treatment over approximately 1,000 acres of the conifer type, including partial and selective cutting scattered over about 850 acres of Engelmann spruce/subalpine fir, Douglas-fir, and mixed conifer to regenerate aspen and conifer trees, and about 150 acres of clearcutting in lodgepole pine to incorporate existing, small clearcut units into larger patches more resembling historic landscape patterns; and (4) approximately 1,000 acres of the conifer-aspen type would have a timber harvest of commercial conifer trees followed by prescribed burning to reduce fuels and facilitate aspen regeneration.

Accessing the vegetation treatment areas would potentially require the construction of approximately 12 miles of temporary roads. These roads would be obliterated (returned to contour and revegetated) upon completion of the project. Approximately 2 miles of roads would be constructed to access conifer harvest units that are partially cut (to allow for future access). Referred to as ''intermittent service roads'', these roads would be gated closed and seeded, but the road prism would be kept in place for future administrative use.

Possible Alternatives

A no action alternative will be considered as well as any other alternatives that may be developed in response to significant issues.

Responsible Official

The Responsible Official is Faye Krueger, Forest Supervisor, Wasatch-Cache National Forest, 8236 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

Nature of Decision To Be Made

The decisions to be made include whether or not to implement the proposed prescribed fire, timber harvest, mechanical and chemical treatments in aspen, conifer, and sagebrush communities, and if so, where and to what degree.

Scoping Process

The forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service welcomes any public comments on the proposal.

Preliminary Issues

Preliminary issues include effects of treatments on wildlife habitat and

threatened, endangered, and sensitive plant and wildlife populations, effects of prescribed fire on soils, protection of springs, streams, and riparian areas, potential for invasive species following treatments, and effective closure of roads after treatments.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: May 10, 2006.

Faye L. Krueger,

Forest Supervisor.

[FR Doc. 06–4539 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet on June 22, 2006.

DATES: The Davy Crockett National Forest RAC meeting will be held on June 22, 2006.

ADDRESSES: The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile west of FM 227 in Houston County, Texas. The meeting will begin at 6 p.m. and adjourn at approximately 9 p.m. There will be a public comment period.

FOR FURTHER INFORMATION CONTACT: Raoul Gagne, District Ranger, Davy Crockett National Forest, Rt. 1, Box 55 FS, Kennard, Texas 75847: Telephone: 936–655–2299 or e-mail at: *rgagne@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under section 203 of the Secure Rural Schools and Community Self Determination Act of 2000. The purpose of the June 22, 2006 meeting is to review the status of approved projects, review a Title III proposal, and prepare to receive additional project proposals to submit to the Forest Supervisor for the National Forests and Grasslands in Texas. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: May 10, 2006.

Raoul W. Gagne,

Designated Federal Officer, Davy Crockett National Forest RAC.

[FR Doc. 06–4544 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss the 2007 project submittal process and timeline regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on June 20th from 6:30 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the High Sierra Ranger District, 29688 Auberry Road, Prather, California 93651. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by June 14, 2006 will have the opportunity to address the Committee at

those sessions. Agenda items to be covered include: (1) Call for new projects process; (2) Review of funded projects and (3) Public comment.

Dated: May 9, 2006.

Ray Porter,

District Ranger.

[FR Doc. 06–4545 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2007 Economic Census Covering the Retail Trade and Accommodation and Food Services Sectors.

Form Number(s): Too numerous to list here.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,165,100 hours.

Number of Respondents: 1,418,690.

Avg Hours Per Response: 48 minutes.

Needs and Uses: The 2007 Economic Census Covering the Retail Trade and Accommodation and Food Services Sectors will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 1.7 million establishments classified in the North American Industry Classification System (NAICS). The retail trade sector comprises establishments primarily engaged in selling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The accommodation and food services sector comprises establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption. The information collected will produce basic statistics by kind of business on number of establishments, sales, payroll, and employment. It will also yield a variety of subject statistics, including sales by product line, sales by class of customer, and other industry-specific measures, such as number of prescriptions filled by drug stores and number of guestrooms provided by hotels. Basic statistics will be summarized for the United States, states, metropolitan areas, counties, places, and ZIP code areas. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census was not conducted, the Federal Government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making, planning, and program administration.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; State, local or Tribal governments.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 11, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–7419 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census Coverage Measurement, Person Followup Interview and Person Followup Reinterview Operations.

Form Number(s): DD–1301, DD–1302.2(PFU–RI).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 807 hours.

Number of Respondents: 2,420.

Avg Hours per Response: 20 minutes.

Needs and Uses: In preparation for the 2010 Census, the U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the Person Followup (PFU) Interview and the Person Followup Reinterview (PFURI) as part of the 2006 Census Coverage Measurement (CCM) test. The CCM test, which includes the CCM Person Interview (PI), PI Reinterview, person matching, PFU and PFURI operations, is to occur during the 2006 Census Test to evaluate new approaches that would improve measures of coverage error for persons. The 2006 CCM test will occur in Travis County, Texas; and on the Cheyenne River Reservation in South Dakota.

The 2006 CCM test will be comprised of two overlapping samples, a population sample (P sample) and a sample of census records. The P sample will be obtained by independently rostering persons in housing units within the CCM sampled block clusters. The independent roster is obtained

during the CCM PI, the results of which will be matched to census enumerations in the sample blocks, in surrounding blocks and across the entire site. A separate OMB package was previously prepared for the PI operations. After the CCM PI and matching operations have taken place, some cases will receive the CCM PFU interview. Generally, these will be cases where additional information is needed to determine residence status or where inconsistencies were observed during the matching operations. We also will conduct a quality control operation of the PFU called the Person Followup Reinterview (PFURI).

The purpose of the 2006 CCM test is not to measure the coverage of the 2006 Census Test per se, but rather to test ways of improving previous coverage measurement methods. In particular, the focus of the 2006 CCM test is to test improved matching operations and data collection efforts designed to obtain more accurate information about where a person should have been enumerated according to Census residence rules. This focus is motivated by: (1) Problems encountered with coverage measurement in 2000 in determining a person's residence (relative to Census residence rules), (2) the significant number of duplicate enumerations in Census 2000, and (3) expanded goals for coverage measurement in 2010. The latter refers to our objective of producing, for the first time, separate estimates of coverage error components—omissions and erroneous enumerations including duplicates. The data collection and matching methodologies for previous coverage measurement programs were designed primarily to measure net coverage error, which reflects the difference between omissions and erroneous enumerations (*see* Definition of Terms). In order to produce separate estimates of these coverage error components, we need to develop and test changes to our data collection and matching methods. In particular, the 2006 CCM efforts will focus on ways to obtain better information about addresses where people should have, and could have, been enumerated during the census.

An additional objective for the 2006 Census Test is to determine if we can conduct coverage measurement interviews before all census data collection is complete, and do so without contaminating the census and adversely affecting coverage measurement. There are several operational and data quality advantages of conducting coverage measurement interviews as close to census day as possible, but we do not want to do this if it will seriously affect measurement of coverage error.

A main goal of the 2006 CCM test is to test our underlying assumption that our enhanced data collection procedures adequately determine a person's residence status. In order to move towards attaining this goal in 2010, we must learn more about the usefulness of changes made to the PFU questionnaire since 2000. Since the 2006 CCM test will feature many new matching procedures, we also hope to gain a better understanding of how the new matching operations affect the PFU universe.

As part of the 2006 CCM PFU operations, we will also conduct the quality control operation PFURI. For this operation a sample of the CCM PFU cases will be selected for a reinterview. The purpose of the reinterview is to determine if the source of the CCM PFU data (*e.g.*, a household member; a specific proxy respondent) can be confirmed.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: 13 U.S.C. 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 11, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–7420 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2007 Economic Census Covering the Wholesale Trade Sector.

Form Number(s): WH–42301 through WH–42503 (42 report forms in total).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 675,000 hours.

Number of Respondents: 450,000.

Avg Hours per Response: 1.5 hours.

Needs and Uses: The 2007 Economic Census covering the Wholesale Trade sector will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 450,000 wholesale establishments classified in the North American Industry Classification System (NAICS).

The Wholesale Trade sector comprises establishments primarily engaged in the selling or arranging the purchase or sale of durable nonconsumer goods, selling goods for resale, and the sale of other goods from establishments that operate from a warehouse or office and do not normally advertise directly to the general public. The economic census will produce basic statistics by kind of business on number of establishments, sales, payroll, employment, inventories, and operating expenses. It also will yield a variety of subject statistics, including sales by product line; sales by class of customer; employment by primary function; measures of gross margin and gross profit; and other industry-specific measures, such as bulk storage capacity by type of facility for petroleum bulk stations and terminals. Basic statistics will be summarized for the United States, states, metropolitan areas, counties, and places. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic

indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census were not conducted, the Federal Government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making, planning, and program administration.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; State, local or Tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: 13 U.S.C. 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 11, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–7421 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 American Community Survey Methods Panel Testing

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 17, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Wendy D. Hicks, U.S. Census Bureau, Room 2027, SFC 2, Washington, DC 20233, (301) 763–2431 (or via the Internet at *Wendy.Davis.Hicks@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade data collection approach of a decennial census is no longer acceptable. To meet the needs and expectations of the country, the Census Bureau developed the American Community Survey (ACS). The ACS collects detailed socio-economic data every month and provides tabulations of these data on a yearly basis. In the past, these sample data were collected only at the time of each decennial census. The ACS allows the Census Bureau to focus only on the basic demographic content in the 2010 Census, thus reducing operational risks in the Decennial census as well as improving the accuracy and timeliness of the detailed housing and demographic items by collecting those data as part of the ongoing ACS.

The ACS includes an annual sample of approximately three million residential addresses a year in the 50 states and District of Columbia and another 36,000 residential addresses in Puerto Rico each year. This large sample of addresses permits production of single year estimates for areas with a population of 65,000 or more annually. Producing estimates at lower levels of geography requires aggregating data over three- and five-year periods. The ability to produce estimates at low levels of geography makes the ACS an incredibly useful source of data for Federal agencies for monitoring progress, administering programs and so forth. However, collecting data from such a large sample of addresses also requires that the Census Bureau continues to review and test methods for containing costs of data collection. The 2007 ACS Methods Panel will include two tracks of research, one addressing content and another addressing cost containment strategies.

The first track of the 2007 Methods Panel will test a new question that collects information about a person's primary field of study for their bachelor's degree. Additionally, this track of the Methods Panel will include modifications to the basic demographic questions in all three modes of data collection—mail, Computer Assisted Telephone Interviewing (CATI) and Computer Assisted Personal Interviewing (CAPI). In the mail operation, the test will include a comparison of two different layouts of the basic demographic questions, a sequential person design and a matrix design. The sequential person design repeats each question and answer category for each person. The matrix layout lists people down the left side of the form and questions across the top. The modifications to the CATI and CAPI basic demographic questions reflect the first test implementation of the draft Decennial Census guidelines for improving the consistency of the basic demographic question across modes of collection (*i.e.*, mail, CATI, CAPI). The modifications to the CATI and CAPI instruments will include a comparison of a topic-based approach versus a person-based approach to collecting the basic demographic questions. A topic-based implementation asks a question for everyone in the household prior to moving to the next question. For example, the interviewer would ask the gender of the first person, the second person, the third person, etc. for everyone in the household. Once answered for everyone, the interviewer moves to the next question and asks that question for each person in the household. In contrast, a person-based

implementation asks all the basic demographic questions for a person then proceeds to the next person, repeating all of the basic demographic questions.

The second track of the 2007 Methods Panel will include two components, both of which test different methods for increasing mail response in the ACS, the least expensive mode of data collection. The first component tests whether the ACS can increase mail response by sending an additional mailing piece to mail nonrespondents for whom we don't have a phone number and thus, cannot include in the CATI operation. The second component of this track tests whether we can increase mail response in Puerto Rico or targeted areas of the United States with the lowest levels of mail cooperation by mailing a brochure or other mailing piece that incorporates motivational messages and other promotional or outreach techniques.

First Track

As noted, in this first track, the ACS will test one new content item in all three modes of collection, as well as modifications to the basic demographic questions in the CATI and CAPI instruments. Testing of the new content item reflects the recent ACS Content Policy developed jointly by the Census Bureau and the Office of Management and Budget (OMB). As stated in that policy (available upon request), OMB works with the Census Bureau to determine whether new content proposed by the Federal agencies will be considered for inclusion in the ACS. If the OMB and the Census Bureau determine the ACS may be an appropriate vehicle for collecting the information, then the Census Bureau will design and implement a testing program to assess the quality of the data collected by the proposed question. OMB will consider the results of that testing in deciding whether the ACS should include the proposed content, and when the ACS should add the new content, if accepted.

In 2007, the ACS Methods Panel will test a question designed to identify the field of study in which a person received his or her bachelor's degree. The National Science Foundation proposed the addition of this content for the purpose of creating a sampling frame for the National Survey of College Graduates (NSCG) which historically used educational attainment and industry and occupation data from the decennial long form to build the sample frame. The ACS would facilitate more recent updates to the sampling frame for the NSCG. Additionally, the inclusion of a 'field of degree' question on the ACS would reduce some of the noise in the subsequent sampling frame that resulted from using the proxy measure, occupation type, from the decennial census. Lastly, including a 'field of degree' question on the ACS would allow the Department of Education, specifically the National Center for Education Statistics, to create direct estimates of specific fields of study useful to NCES programs.

As noted, this test will also include a comparison of a sequential person design for the basic demographic questions on the mail form, which is comparable to the person-based approach in the CATI/CAPI modes, and a matrix layout on the mail form which is comparable to the topic-based approach to collecting the basic demographic questions in the CATI/CAPI operations. (The 'field of degree' question falls in the detailed demographic section of the instrument, and thus is not impacted by the topic- versus person-based comparison.) Testing both a topic- and person-based instrument for the basic demographic questions reflects alternative implementations of the draft Census Bureau guidelines for writing questions in a manner that should facilitate consistent responses regardless of the mode in which a person participates. This test will also include a few other slight modifications to the CATI and CAPI versions of the questions. For example, the CATI and CAPI questions will also manipulate how examples and long lists of response categories are provided in interviewer-administered modes of collection.

Testing in this track includes four phases: (1) Question proposal; (2) question development and pretesting; (3) field test implementation, and; (4) recommendation for final content. The first stage represents the proposal from the National Science Foundation and accepted by the Census Bureau and the OMB to include a 'field of degree' question for testing on the ACS. The second stage reflects a series of cognitive laboratory pretesting studies conducted by the Statistical Research Division within the Census Bureau as well as through NSF contracts with outside experts. These pretesting studies will identify two versions of the 'field of degree' question and the topic-based and person-based versions of the CATI/CAPI implementation of the basic demographic questions.

In the third stage, the field test will include a national sample field test (excluding Hawaii, Alaska and Puerto Rico) of approximately 30,000 residential addresses. (The test will not include Group Quarters.) Half of these addresses will receive one version of the 'field of degree' question and the other half will receive a second version of the question. Within each of those treatments, half the sample will receive a matrix layout in the mail mode or the topic-based implementation of the basic demographic questions in the CATI/CAPI modes. The other half will receive the sequential person design in the mail mode or the person-based implementation in the CATI/CAPI modes.

The data collection methodology for this test will very closely replicate the current ACS data collection methodology. This test will use the same mailing strategy (advance letter, first questionnaire mailing package, reminder postcard, replacement questionnaire mailing package and availability of Telephone Questionnaire Assistance (TQA)), the same CATI data collection operational methods and the same CAPI data collection operational methods as the current ACS. Mail data collection will occur in March of 2007, followed by CATI in April and CAPI in May, using the same data collection schedules as the March ACS panel. The automated instruments will include both English and Spanish language versions.

However, unlike the ACS, the test will not include the Telephone Edit Follow-Up (TEFU) operation used to follow-up with mail respondents who did not fully complete their form or who have households with six or more people. For evaluation purposes, we will follow-up with all respondents to complete a CATI Content Follow-Up (CFU) interview, and if we also conducted a TEFU operation we could potentially contact the same household three times for one survey. Thus, since the CFU better serves the analytical needs of the project, we will drop TEFU and only conduct the CFU operation. The CFU will reask the same version of the basic demographic questions as asked in the initial collection (topic-or person-based), as well as the same ACS education questions, including the field of degree question, and some additional probing questions regarding the reported field of degree for each person with a bachelor degree or higher.

The final stage in this track of the 2007 Methods panel research includes data analysis and the recommendations to OMB regarding whether or not the tested content has sufficient data quality for inclusion in the ACS. While OMB will make the final decision whether or not to include the proposed content on the ACS, the results of this research will help inform that decision.

Second Track

As noted above, the second track of the 2007 Methods Panel will include two components, both of which test different methods for increasing mail response in the ACS, the least expensive mode of data collection. The first component tests whether the ACS can increase mail response by sending an additional mailing piece to mail nonrespondents for whom we do not have a phone number and thus, cannot include in the CATI operation. Since we do not have a phone number for these sample cases, the ACS can only collect data from them via CAPI, the most expensive mode of data collection. This study will test three different types of mailing pieces and measure which type yields the highest increase in response for the non-CATI eligible universe, given the cost of the additional mailing piece. We will mail to approximately 18,000 sample housing-unit addresses, 6,000 in each treatment, sampling only from addresses for which our frame does not include a phone number. This study will not include the CATI or CAPI data collection. Rather the test will assess whether we get enough response to offset the costs of the additional mailing. The timing of this test will coincide with the May 2007 ACS panel.

The second component of this track tests whether we can increase mail response in Puerto Rico or targeted areas of the United States with the lowest levels of mail cooperation by mailing a brochure or other mailing piece as part of the questionnaire mailing package that incorporates motivational messages and other promotional or outreach techniques. The test will manipulate the content of the motivational messages (for both Puerto Rico and the U.S.). We will test the motivational messages for all of Puerto Rico, but for the stateside component we will apply targeting criteria that considers characteristics such as proportion of city-style addresses, population size, proportion of linguistically isolated (*i.e.*, persons who do not speak English well) and vacancy rates. We anticipate selecting three to four targeted areas for inclusion in the stateside component of the test.

In terms of the motivational messages we will include one of two versions of an insert in the questionnaire mailing packages that provides information about how information from the ACS will benefit their community or has already benefited their community. For the U.S., one version will reflect wording tailored specifically to the targeted geographic area. The second version may use slightly more general language that could apply to a larger geographic area, or may focus on different benefits for the targeted geographic area. For Puerto Rico, we will test two versions relevant to the entire island. Staff from the Census Bureau will work with the state and local data users to identify how information from the survey has benefited or will benefit the targeted area in order to develop the insert. Additionally, we will conduct focus groups to help identify the most meaningful content for the messages.

Like the previous test in this track, this test aims to increase mail response as a way to help contain data collection costs. Thus, this test will only collect data in the mail phase. We will first implement the test in targeted areas of the U.S., coinciding with the July ACS panel, using the same timing for each of the mailing pieces. Implementation in Puerto Rico will coincide with the September Puerto Rico Community Survey (PRCS) panel, again using the same timing for each of the mailing pieces. For both Puerto Rico and the targeted U.S. locations, the comparison group will come from the production ACS/PRCS in the same geographic area.

We anticipate mailing to about 6,000 addresses in Puerto Rico with 3,000 in each of the different treatment groups for the motivational message. (The monthly sample in Puerto Rico is about 3,000.) While the difference in response rate, if any, will likely not reach significance with a sample of only 3,000 housing units, we did not want to test this with a sample larger than the current monthly sample of 3,000 for the production PRCS. Rather, we will estimate the impact on the annual PRCS response and associated costs, based on what we observe in this single panel test.

In the U.S., we will identify several areas based on our targeting criteria for implementing the test. The exact number of areas included in the test will depend on the population size for each area fitting our targeting criteria. We anticipate needing about 10,000 sampled addresses for each of the treatment conditions (*i.e.*, types of motivational messages). However, 10,000 sampled addresses in any one area for a single panel month will likely impact eligibility for production ACS sampling in that area. Thus, we anticipate selecting several areas that meet the targeting criteria, selecting a sample close in size to the ACS sample for the area, and then combining the analysis across the selected areas to reach a sample of about 10,000 for each treatment condition. Since we will combine the analysis across several selected areas meeting the targeting criteria, the motivational message treatments will reflect the same general type of message across the areas, but we will tailor the specifics of the message to each of the areas. In other words, if we identify four different areas for inclusion in the test, all four areas will receive an insert in their questionnaire mailing packages that identifies how the ACS has benefited their specific community. The other treatment group in those areas will receive an insert in their questionnaire mailing packages reflecting any alternative message content suggested by the focus group pretesting (*e.g.*, how the ACS benefits the state in general).

II. Method of Collection

As noted above, the testing in the first track will include all three modes of data collection—mail, CATI and CAPI—as well as a Content Follow Up (CFU) reinterview. Respondents in any of the three modes of data collection for whom we have a telephone number will go to the CFU approximately 2 weeks after receiving their initial response. The start and duration of the mail, CATI and CAPI data collection stages will mirror the production ACS. The CFU reinterview will start approximately two weeks after receipt of the first mail returns and continue for approximately two weeks after the closeout of the CAPI operations.

In the second track, both tests are mail only tests, excluding the CATI and CAPI data collection operations. The test of an additional contact for those mail nonrespondents for whom we do not have a phone number will differ from the production mailing strategy in that we will mail one of three different additional pieces to the test universe. The test of the motivational messages will use the same timing and number of mail contacts as the production ACS, but this test will include one of two different motivational inserts sent as part of both the initial and replacement questionnaire mailing packages.

III. Data

OMB Number: Not available.

Form Number: First track will use ACS–1(X)C1(2007) and ACS–1(X)C2(2007). Second track, additional contact test will use the following: ACS–1(X)M1(2007) for the questionnaire; ACS–0018(L)M1(2007) for a letter and ACS–0019(P)M1(2007) for a postcard. Second track, motivational messages will use ACS–1(X)M2(2007) for the mail questionnaire, ACS–0091(L)M2(2007) for one type of insert, substituting 0091 with the number 0092–0099 for each of the treatments.

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: In the first track, during the period March 1 through May 31, 2007 we plan to contact 30,000 residential addresses and approximately 20,000 responding addresses will be contacted for Content Follow-up. In the second track, we plan to mail to 18,000 households in the U.S. in April 2007; We will mail to 6,000 households in Puerto Rico in July 2007; In September 2007, we will mail to 20,000 households in the U.S.

Estimated Time per Response: Estimated 38 minutes per residential address, 12 minutes per residential address for Content Follow-Up.

Estimated Total Annual Burden Hours: 50,867.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Authority: 13 U.S.C. 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 11, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–7423 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Economic Census Covering the Construction Sector

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 17, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mary S. Bucci, U.S. Census Bureau, Manufacturing and Construction Division, (301) 763–4639, Room 2231, Building #4, Washington, DC 20233 (or via the Internet at *mary.susan.bucci@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13, United States Code, is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 2007 Economic Census covering the Construction Sector (as defined by the North American Industry Classification System (NAICS) is a sample survey that will measure the economic activity of almost 700,000 establishments engaged in building construction and land subdivision and land development, heavy construction (except buildings), such as highways, power plants, pipelines; and construction activity by special trade contractors.

The information collected from businesses in this sector of the economic census will produce basic statistics by industry for number of establishments, value of construction work, payroll, employment, selected costs, depreciable assets, inventories, and capital expenditures. It also will yield a variety of subject statistics, including estimates of type of construction work done, kind of business activity, size of establishments and other industry-specific measures.

Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires and other electronic data collection methods.

II. Method of Collection

The construction industry sector of the economic census will select establishments for its mail canvass from a sample frame extracted from the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the construction industry sector; (ii) it must be an active operating establishment of a multi-establishment firm, or it must be a single-establishment firm with payroll for at least one quarter of calendar year 2007; and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

A. Establishments of Multi-Establishment Firms

Selection procedures will assign all active construction establishments of multi-establishment firms to the mail component of the potential respondent universe.

We estimate that the mail canvass for the 2007 construction sector will include approximately 11,000 establishments of multi-establishment firms.

B. Single-Establishment Firms With Payroll

In the fall of 2006 the Census Bureau will conduct a limited classification refile operation (see **Federal Register** Notice dated October 26, 2005, 2007 Economic Census Classification Report for Construction, Manufacturing, and Mining Sectors). Within the construction sector, this refile will be directed to single-establishment firms in the Business Register with a NAICS industry code within the 236 subsector. This specific subsector was problematic in the 2002 Economic Census. The goal of the refile is to obtain accurate 6-digit NAICS industry codes for these single-establishment firms prior to the

sampling operation. We are not aware of other systematic coding issues that need to be addressed via this refile.

The primary goal is to produce reliable State level estimates for each NAICS industry. We will use a stratified probability-proportionate-to-size (PPS) sample strategy for selecting the sample of single-establishment firms. The population of eligible single-establishment firms will be partitioned into State by NAICS strata. Within each stratum, each establishment will be assigned a probability of selection that is a function of its relative size within the stratum (payroll) and a stratum-specific reliability constraint. The larger establishments in a stratum may have probabilities equal to 1.00. Within each stratum, an independent sample will be selected. We will use a fixed sample size selection method for selecting the sample. This technique considerably improves the reliability of the resulting survey estimates by eliminating the variability associated with a variable sample size. The impact of the multi-establishment firms within each stratum will be taken into account in deriving the target sample size from the single-establishment firm population. We estimate that the mail canvass for the 2007 construction sector will include approximately 119,000 establishments of single-establishment firms.

III. Data

OMB Number: Not available.

Form Number: CC–23601, CC–23701, CC–23702, CC–23801, CC–23802, CC–23803, CC–23804.

Type of Review: Regular review.

Affected Public: Businesses or other for profit, non-profit institutions or organizations, and State or local governments.

Estimated Number of Respondents: 130,000.

Estimated Time per Response: 2.3 hours.

Estimated Total Annual Burden Hours: 299,000.

Estimated Total Annual Cost: $7,376,330.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 11, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–7429 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Fastener Quality Act Requirements

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 17, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Wayne Stiefel, International Legal Metrology Group, 301–975–4011, or *stiefel@nist.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

The National Institute of Standards and Technology (NIST), a component of the Technology Administration reporting to the Under Secretary for Technology, under the Fastener Quality Act (the Act) (Pub. L. 101–592 amended by Pub. L. 104–113, Pub. L. 105–234 and Pub. L. 106–34) is required to accept an affirmation from laboratory accreditation bodies and quality system registrar accreditation bodies. They are required to meet International Organization for Standardization/ International Electro-Technical Commission (ISO/IEC) Guide 17011 (replaced ISO/IEC Guides 58 and 61). An organization having made such an affirmation to NIST may accredit either fastener testing laboratories or quality system registrars for fastener manufacturers in accordance with the applicable provisions of the Fastener Quality Act. NIST will solicit information declarations from U.S. and foreign private accreditation bodies. The information collected will enable NIST to compile a list of accreditation bodies able to provide accreditations meeting all the requirements of the Act and of the procedures, 15 CFR part 280.

Section 10 of the Act requires NIST to accept petitions from persons publishing a document setting forth guidance or requirements providing equal or greater rigor and reliability compared to ISO/IEC Guide 17025 (replaced ISO/IEC Guide 25), ISO/IEC 17011 or ISO/IEC Guide 62. The petitions to consider a document as an alternative to one of the ISO/IEC documents may be accepted by the Director of NIST for use provided the document provides equal or greater rigor and reliability as compared to the ISO/IEC document.

II. Method of collection

Applicants submit required information in paper form.

III. Data

OMB Number: 0693–0015.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 1 hour and 30 minutes per accreditation, and 20 hours per petition.

Estimated Total Burden Hours: 22.

Estimated Total Annual Respondent Cost Burden: $442.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 11, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–7427 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Evaluation of the Coastal Management Fellowship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 17, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Thomas Fish, NOAA Coastal Services Center, Ph: (843) 740–1271, or *tom.fish@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NOAA Coastal Services Center (CSC) conducts the Coastal Management Fellowship, which provides on-the-job education and training opportunities in coastal resource management and policy for postgraduate students as well as project assistance to state coastal zone management programs. CSC is seeking a new clearance to conduct data collection activities associated with the evaluation of the fellowship program. The evaluation is designed to assess the effectiveness of the fellowship and its impact on state coastal zone programs to address high priority coastal issues. The results of the evaluation will provide information on the success of the Coastal Management Fellowship Program in meeting its goals to train young professionals entering the coastal management field and to help states address high priority coastal issues.

Four types of respondents are included in the evaluation: Fellows (past and current), finalists to the fellowship (past and current), state coastal zone program mentors, and partner organizations. Current and past fellows will complete an electronic survey that assesses both their fellowship experience and subsequent professional goals/experiences. Also, current and past finalists will complete a telephone interview that evaluates both their experiences applying to the fellowship program and subsequent professional goals/experiences. State coastal zone program mentors will complete an electronic survey that assesses their experiences with the fellowship program and the impact of the program on their state coastal zone program. In addition, partner organizations will complete an electronic survey that assesses their experiences with the fellowship and how the fellowship has impacted CSC.

II. Method of Collection

Electronic surveys and telephone interviews will be the modes of collection.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not for-profit institutions.

Estimated Number of Respondents: 68.

Estimated Time per Response: Telephone interviews, 25 minutes; surveys, 1 hour and15 minutes.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 11, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 06–4583 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050906F]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will be held on June 27–29, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center (AFSC), 7600 Sand Point Way NE, Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee's agenda includes the following issues: Introductions and opening remarks, Minutes of last meeting; Update on call for proposals; Hydroacoutic Surveys of Pollock, Aleutian Islands; Steller Sea Lion (SSL) Recovery Plan, Overview and

Discussion; Impact Evaluation Tool Discussion; Pacific cod Management and recent Council action; Updates on SSL and Other Marine Mammal Research, SSL Genetics and Stock Structure; the Committee will discuss and deliberate on these issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: May 11, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7416 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050906G]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) Impact Evaluation Tool Development Subcommittee will meet in Seattle, WA.

DATES: The meeting will be held on June 26, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center (AFSC), 7600 Sand Point Way NE, Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee's agenda includes the following issues: Introductions and opening remarks; purpose and need for Impact Evaluation Tool; work session to develop a Straw Man Impact Evaluation Tool; action items, closing remarks, adjourn.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: May 11, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7417 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050306D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a work session on May 30,2006, via telephone conference call, which is open to the public.

DATES: The HMSMT work session will be held on Tuesday, May 30, 2006, from 12 noon to 3 p.m., Pacific Time

ADDRESSES: The work session will be held via telephone conference call. Interested members of the public may contact Dr. Kit Dahl for information on how to participate.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of this HMSMT work session is to review any exempted fishing permit (EFP) applications for HMS fisheries received by the Council for the 2007 fishing year (which begins April 1, 2007) that have not been reviewed to date. According to Council operating procedures, applications must be received at least two weeks prior to the June Council meeting and a deadline of 5 p.m. on May 26, 2006, has been set for such receipt. Based on their review and discussion at this meeting, the HMSMT will prepare a written report with advice to the Council. If no applications are received by this date the HMSMT teleconference meeting will be cancelled and no HMSMT report will be prepared.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7418 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050306B]

Western Pacific Regional Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold its 92nd meeting.

DATES: The meeting will convene on Tuesday, May 30, 2006 through Thursday, June 1, 2006. The meeting will be held between 8:30 a.m. and 5 p.m. each day.

ADDRESSES: The SSC meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Tuesday, May 30, 2006, 8:30 a.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Approval of the Minutes of the 91st Meeting
4. Insular Fisheries
A. Bottomfish and Seamount Groundfish Issues
1. Report on Hawaii Monitoring and Research Plan
2. Update on Bottomfish Stock Assessment
3. Plan Team Recommendations
B. Precious Corals
1. Draft Report on Black Coral Workshop
2. Plan Team Report
C. Public Comment
D. Discussion and Recommendations
5. Ecosystem and Habitat
A. Northwestern Hawaiian Islands (NWHI) Fishing Regulations (ACTION ITEM)
B. Public Comment
C. Discussion and Recommendations

Wednesday, May 31, 2006, 8:30 a.m.

6. Protected Species
A. 26th Sea Turtle Symposium
B. Public Comment
C. Discussion and Recommendations
7. Pelagic Fisheries
A. American Samoa and Hawaii Longline 2005 Reports
B. Bigeye-Yellowfin Overfishing Measures (ACTION ITEM)
C. Options for Swordfish Seasonal Closure (ACTION ITEM)
D. International Fisheries
a. International Scientific Committee
b. SPC Heads of Fisheries Meeting
c. Inter-American Tropical Tuna Commission (IATTC) Annual Meeting
d. WCPFC Scientific Committee
e. Council South Pacific Albacore Workshop
E. Shark Bycatch in Longline Fisheries
F. Public Comment
G. Discussion and Recommendations

Thursday, June 1, 2006, 8:30 a.m.

8. Other Business
A. 93rd SSC meeting – Paul Callaghan
9. Summary of SSC Recommendations to the Council

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 11, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7425 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2006–0026]

Request for Comments on Patents Search Templates

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) has developed and published patent search templates. Search templates define the field of search, search tools, and search methodologies that should be considered each time a patent application is examined in a particular classification. The USPTO is inviting public comment on the search templates.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *STIC-SearchTemplate@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Patents Search Template Comments, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The comments will be available for public inspection via the USPTO's Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kristin Vajs, Manager, Scientific and Technical Information Center (STIC), Office of the Deputy Commissioner for Patent Resources and Planning, by telephone at (571) 272–3512.

SUPPLEMENTARY INFORMATION: Currently, patent applications filed in the USPTO, and the resulting United States patent application publications and United States patents, are classified into approximately 600 classes based upon technology and subject matter of the claimed invention. A patent examiner is responsible for reviewing prior patent documents, both domestic and foreign, and other printed literature related to an application's subject matter during the examination process. This review, called the search, is performed by consulting the appropriate classes, and their respective subclasses, in the United States classification system, other patent document databases, and any other printed media (also known as ''non-patent literature'' or ''NPL''), which might disclose the invention disclosed/claimed in a patent application under examination.

In determining the appropriate field of search for an invention, the examiner must consider three sources of information: (1) Domestic patent documents; (2) foreign patent documents; and (3) NPL. The current requirements for conducting that search are set forth in section 904.02 of the *Manual of Patent Examining Procedure* (MPEP). *See* MPEP § 904.02 (8th ed. 2001) (Rev. 3, August 2005). An examiner may not eliminate any of these resources from consideration unless the examiner can justify to a reasonable certainty that no more pertinent references will be found in a further search. *See* MPEP § 904.02. Although the general guidance set forth in the

MPEP is accurate, it provides little information on what resources should be searched, and which of the available search tools or methodologies, for a particular field of subject matter should be consulted. Detailed guidance on the choice and use of specific search tools were left to each Technology Center. *See* MPEP § 904.02(b)).

The USPTO has published ''search templates'' for each of the classes found in the USPTO's *Manual of Classification*. A search template will define the search field and resource areas of general subject matter, classes/subclasses, patent documents (both domestic and foreign) and NPL that an examiner should consider each time a patent application is examined in a particular classification. Additionally, the search template will indicate what search tools or methodologies should be considered when performing the search. These search templates are based upon input from patent examiners and other searchers at the USPTO and represent an attempt to capture their institutional knowledge of what are the most relevant prior art searches for determining the patentability of subject matter in the area of technology.

In an effort to ensure that each classification has an appropriately structured field of search and search strategy, the USPTO has published the search templates on the USPTO's Internet Web site at *http://www.uspto.gov/web/patents/searchtemplates/*. The USPTO is publishing this request for comments to gather public feedback on the adequacy and completeness of the search templates.

Dated: May 10, 2006.

John Doll,

Commissioner for Patents.

[FR Doc. E6–7424 Filed 5–15–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0086]

Notice of Intent To Grant a Partially Exclusive License; PeopleMatter, Inc.

AGENCY: Office the Secretary, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant PeopleMatter, Inc. a revocable, nonassignable, partially exclusive, license to practice the following Government-Owned invention as described in U.S. Patent NO. 6,904,564 entitle: ''Method of Summarizing Text Using Just the Text'', commonly known as KODA, issued 07 June 2005, in the field of Human Resource Management.

The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Domestic Technology Transfer Program, 9800 Savage Rd, Ste 6541, Fort George G. Meade, Maryland 20755–6541.

FOR FURTHER INFORMATION CONTACT: Pamela L. Porter, Director, Domestic Technology Transfer program, 9800 Savage Road, Suite 6541, Fort George G. Meade, Maryland 20755–6541, telephone (443) 479–0310.

Dated: May 10, 2006.

L. M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–4547 Filed 5–15–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0085]

Notice of Intent To Grant an Exclusive License; University of Michigan

AGENCY: Office the Secretary, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant University of Michigan a revocable, nonassignable, exclusive, license to practice the following Government-Owned invention as described in U.S. Provisional Patent Application Serial No. 60/683,559 entitled: ''Ion Trap on a Semiconductor Chip,'' filed 23 May 2005, in the field of cryptography.

The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Domestic Technology Transfer Program, 9800 Savage Rd., Ste. 6541, Fort George G. Meade, Maryland 20755–6541.

FOR FURTHER INFORMATION CONTACT: Pamela L. Porter, Director, Domestic Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, Maryland 20755–6541, telephone (443) 479–0310.

Dated: May 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–4548 Filed 5–15–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0083]

Notice of Intent To Grant a Partially Exclusive License; Visa USA, Inc.

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant Visa USA, Inc. a revocable, nonassignable, partially exclusive, license to practice the following Government-Owned invention as described in U.S. Patent No. 6,947,978 entitled: ''Method for Geolocating Logical Network Addresses'', issued September 20, 2005, and Patent Application Serial Number 11/145,237 entitled: ''Method to Detecting Intermediary Communications Device,'' filed May 24, 2005, both in the field of credit card transactions over the Internet. The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Domestic Technology Transfer Program, 9800 Savage Rd., Ste. 6541, Fort George G. Meade, Maryland 20755–6541.

FOR FURTHER INFORMATION CONTACT: Pamela L. Porter, Director, Domestic Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, Maryland 20755–6541, telephone (443) 479–0310.

Dated: May 9, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–4531 Filed 5–15–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–OS–2006–0087]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Office of the Inspector General (OIG) is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 15, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–13

SYSTEM NAME:

Travel and Transportation System (June 16, 2003, 68 FR 35636).

Reason: The records are covered by GSA/GOVT–4 (Contracted Travel Service Program), a governmentwide system notice.

[FR Doc. 06–4549 Filed 5–15–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel will meet to discuss issues of interest to the National Ocean Research Leadership Council (NORLC) and the Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI) activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Monday, June 5, 2006, from 8:45 a.m. to 5:15 p.m., and Tuesday, June 6, 2006, from 9 a.m. to 3:30 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Oceanographic Research and Education, 1201 New York Ave, NW., Suite 420, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4120.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss issues of interest to the NORLC and ICOSRMI. The meeting will include discussions on bridging the gap between science and decisionmaking, the national water quality monitoring network, and other current issues in the ocean science and resource management communities.

Dated: May 9, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–7396 Filed 5–15–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Submitted for OMB Review and Comment

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The Office of Science reports annually in the President's Budget Request the numbers of researchers, post docs, graduate students and technicians supported through Research Grants and Field Work Proposals (FWPs). However, these data are based on forecasts by the principal investigator (i.e., PIs) at the time the grants and FWPs were initially funded. These estimates are unreliable because they are based on the best guess of the PIs at the time of funding. While the PI's initial estimate could be accurate at the time of the request, the reliability of the initial estimate decreases as the project matures. Further, the forecasts by the PIs are subjective. Therefore, it is not possible to quantify the inaccuracies with any confidence. To better plan for future investments, the Office of Science must better understand the actual impact of its budget on the technical manpower supported. A short (approximately 17 minutes) web-based survey has been developed to collect actual workforce data from a small sample of researchers currently supported by the Office of Science. The result will be compared to proposal data to estimate the average and range of variation and to derive a statistically valid methodology for approximating budgetary impacts on the technical manpower supported.

DATES: Comments regarding this collection must be received on or before June 15, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–3087.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Jeffrey Martus, Records Management Division IM–11/Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, and to

Christine A. Chalk, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christine A. Chalk.

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No. ''New''; (2) Package Title: DOE 2005 Technical Manpower Online Survey (3) Type of Review: New; (4) Purpose: {enter a brief description of the need for the information and its proposed use}; (5) Respondents: 366; (6) Estimated Number of Burden Hours: Approximately 17 minutes per respondent times 366 respondents is 103.7 hours.

Statutory Authority: Department of Energy Organization Act (Pub. L. 95–91, as amended) Sec. 209 defines the duty and the responsibilities of the Director of Office of Science to include: Advising the Secretary with respect to education and training activities required for effective short and long-term basic and applied research activities of the Department; and Advising the Secretary with respect to grants and other forms of financial assistance required for effective short and long-term basic and applied research activities of the Department.

Jeffrey Martus,

Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer (IM–11).

[FR Doc. E6–7413 Filed 5–15–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–313–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 8, 2006.

Take notice that on April 21, 2006, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as a part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 20, 2006.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. 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. E6–7377 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–345–000]

ANR Pipeline Company; Notice of Tariff Filing

May 9, 2006.

Take notice that on May 5, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 118, with an effective date of June 5, 2006.

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 and 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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. 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. E6–7378 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–348–000]

ANR Pipeline Company; Notice of Tariff Filing

May 9, 2006.

Take notice that on May 5, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 108, with an effective date of June 5, 2006.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. 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. E6–7381 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–152]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

May 9, 2006.

Take notice that on May 4, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 820, to be effective April 1, 2006.

CEGT states that the purpose of this filing is to remove a reference to a negotiated rate transaction which has been permanently released.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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. E6–7371 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–151–004]

Columbia Gas Transmission Corporation; Notice of Petition To Amend

May 9, 2006.

Take notice that on May 3, 2006, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP98–151–004, an amendment to its pending petition to amend filed on August 1, 2005, in Docket No. CP98–151–003, pursuant to section 7 of the Natural Gas Act (NGA), to amend the facilities previously approved for abandonment by conveyance to Millennium Pipeline Company, L.L.C. (Millennium) and the lease of capacity to Millennium. Specifically, Columbia states that it will now retain ownership of Lines U, K, 1278, 1842 and will lease to Millennium capacity in the facilities. In addition, Columbia states that it will retain ownership in the Milford Compressor Station and Port Jervis Measuring Station, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

This petition is on file with the Commission and open to 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 this petition should be directed to counsel for Columbia, Fredric J. George, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273; at (304) 357–2359 (phone) or (304) 357–3206 (fax).

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, 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, or in support of or in opposition to 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. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. 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.

Comment Date: May 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7372 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–013]

El Paso Natural Gas Company; Notice of Compliance Filing

May 9, 2006.

Take notice that on April 28, 2006, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, Third Substitute Original sheet No. 28B, with an effective date of June 1, 2006.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7376 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–008]

Millennium Pipeline Company, L.L.C.; Notice of Petition To Amend

May 9, 2006.

Take notice that on May 3, 2006, Millennium Pipeline Company, L.L.C., (Millennium), One Blue Hill Plaza, 7th Floor, P.O. Box 1565, Pearl River, New York 10965, filed in Docket No. CP98–150–008, a second amendment to its pending application filed on August 1, 2005, in Docket No. CP98–150–006, pursuant to section 7 of the Natural Gas Act (NGA), to reflect: (1) The conversion of Millennium Pipeline Company, L.P. to Millennium Pipeline Company, L.L.C; (2) Columbia Gas Transmission Corporation's (Columbia) Line 1278 north of Milford, Line K and the Milford Compressor Station which Millennium initially proposed to acquire and operate, will instead be retained by Columbia, and under which Millennium will lease capacity on the retained facilities; (3) the relocation of the Wagoner M&R station from Milford, Pennsylvania to Deer Park, New York; (4) certain minor route changes and modifications with respect to the location of pipe, contractor and staging yards; and (5) to include the latest amended versions of the precedent agreements, a new precedent agreement with Central Hudson Gas & Electric Corporation, and certain formation documents. In addition, Millennium requests that the Commission vacate the portions of the certificated project that are not located on the proposed route from Greenwood, New York to the point in Clarkstown, New York referred to as Buena Vista, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

This petition to amend is on file with the Commission and open to 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 initial questions regarding this petition should be directed to counsel for Millennium, Daniel F. Collins or

Glenn S. Benson, Fulbright & Jaworski, L.L.P., at 801 Pennsylvania Avenue, NW., Washington, DC 20004; or (202) 662–4586 (Daniel) or (202) 662–4589 (Glenn), or by fax at (202) 662–4643.

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, 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, or in support of or in opposition to 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. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. 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.

Comment Date: May 30, 2006.

Magalie Salas,

Secretary.

[FR Doc. E6–7384 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–350–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreement

May 9, 2006.

Take notice that on May 5, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 372, to become effective June 5, 2006. Northwest also tendered for filing a Rate Schedule TF–1 non-conforming service agreement.

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 and 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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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. E6–7383 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–148–000; ER05–1410–000]

PJM Interconnection, L.L.C.; Notice of Initiation of Proceeding and Refund Effective Date

May 9, 2006.

On April 20, 2006, the Commission issued an order that initiated a proceeding in Docket Nos. EL05–148–000 and ER05–1410–000, pursuant to section 206 of the Federal Power Act (FPS), 16 U.S.C. 824e (2005), concerning the justness and reasonableness of PJM Interconnection, L.L.C.'s reliability pricing model proposal (RPM). *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006).

The refund effective date in Docket Nos. EL05–148–000 and ER05–1410–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7373 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–346–000]

Puget Sound Energy, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 9, 2006.

Take notice that on May 3, 2006, Puget Sound Energy, Inc. (Puget) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 3, 2006:

Fifth Revised Sheet No. 1
Original Sheet Nos. 122 through 126

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. 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. E6–7379 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–349–000]

Southern Natural Gas Company; Notice of Fuel Sharing Refund Report

May 9, 2006.

Take notice that on May 5, 2006, Southern Natural Gas Company (Southern) tendered for filing a refund report showing refunds that were made to Southern's customers regarding fuel over-recovery pursuant to Section 35 (Fuel Sharing Mechanism) of the General Terms and Conditions of Southern's tariff for the period March 1, 2005–February 28, 2006.

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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Comment Date: 5 p.m. Eastern Time May 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7382 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–347–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

May 9, 2006.

Take notice that on May 4, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, First Revised Sheet No. 272 to be effective as of June 4, 2006.

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 and 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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. 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. E6–7380 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–69–000]

ALLETE, Inc.; Complainant v. Midwest Independent Transmission System Operator, Inc.; Respondent; Notice of Complaint

May 9, 2006.

Take notice that on May 8, 2006, pursuant to sections 206 and 306 of the Federal Power Act, ALLETE, Inc. (d/b/a Minnesota Power) filed a complaint against Midwest Independent Transmission System Operator, Inc. (Midwest ISO) alleging that Midwest ISO has erred in assessing excessive congestion charges against Minnesota Power.

The Complainant states that copies of the complaint were served on the contacts for the Midwest ISO as listed on the Commission's list of Corporate Officials.

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 and 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. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. 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 May 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7374 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AC06–96–000, et al.]

Electric Rate and Corporate Filings

May 9, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power Corporation

[Docket No. AC06–96–000]

On May 5, 2006, Florida Power Corporation filed a request for authority to reduce the wholesale annual nuclear decommissioning accrual for its Crystal River Unit #3 beginning January 2006 through December 2009, in the above referenced docket.

Comment Date: 5 p.m. Eastern Time on May 23, 2006.

2. Rumford Falls Hydro LLC

[Docket No. EG06–46–000]

Take notice that on April 17, 2006 Rumford Falls Hydro LLC filed its notice of self-certification of exempt wholesale generator status pursuant to sections 366.1 and 366.7 of the Commission's regulations and section 1266 of the Public Utility Holding Company Act of 2005.

Comment Date: 5 p.m. Eastern Time on May 15, 2006.

3. MMC Escondido LLC

[Docket No. EG06–48–000]

Take notice that on April 19, 2006 MMC Escondido LLC filed its notice of self-certification of exempt wholesale generator status pursuant to sections 366.1 and 366.7 of the Commission's regulations and section 1266 of the Public Utility Holding Company Act of 2005.

Comment Date: 5 p.m. Eastern Time on May 15, 2006.

4. WGL Holdings, Inc.

[Docket No. PH06–47–000]

Take notice that on May 3, 2006 WGL Holdings, Inc. filed a notice for exemption from the requirements of the Public Utility Holding Company Act of 2005 pursuant to 18 CFR 366.3(a) and 366.4(b)(1).

Comment Date: 5 p.m. Eastern Time on May 24, 2006.

5. Legg Mason, Inc.

[Docket No. PH06–48–000]

Take notice that on May 5, 2006 Legg Mason, Inc. filed a notice for exemption from the requirements of the Public Utility Holding Company Act of 2005 pursuant to 18 CFR 366.3(b)(1) and 366.4(b)(1).

Comment Date: 5 p.m. Eastern Time on May 26, 2006.

6. ALLETE, Inc.

[Docket No. PH06–49–000]

Take notice that on May 5, 2006 ALLETE, Inc. filed a notice of petition for waiver of the Commission's regulations, pursuant to 18 CFR 366.3(c) and 366.4(c)(1), stating it is a single-state holding company system.

Comment Date: 5 p.m. Eastern Time on May 26, 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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. 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. E6–7370 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 9, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* A Subsequent License. (Minor Project).

b. *Project No.:* 946–007.

c. *Date Filed:* April 28, 2006.

d. *Applicant:* Hyrum City.

e. *Name of Project:* Hyrum City Hydroelectric Project.

f. *Location:* On the Blacksmith Fork River in Hyrum City, Cache County, Utah. The project affects about 17.03 acres of Federal lands within the Wasatch Cache National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Dean Howard, Mayor, Hyrum City, 83 West Main Street, Hyrum, Utah 84319; (435) 245–6033, or Ken Tuttle or Mike Wilcox, Sunrise Engineering, Inc., 25 East 500 North, Fillmore, UT 84631; (435) 743–6151.

i. *FERC Contact:* Gaylord Hoisington, (202) 502-6032 or *gaylord.hoisington@FERC.gov*.

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 27, 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.

Additional study requests and requests for cooperating agency status 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.

m. This application is not ready for environmental analysis at this time.

n. The existing Hyrum City's Hydropower Project was initially constructed in 1930–1931, after receiving an original license on November 27, 1929. The project has been licensed since that time with one amendment in 1977, and one renewal in 1981. The current license expires on April 30, 2008. The run-of-river, base-load plant operates on 85-cubic-foot-per-second of water diverted by a diversion dam located in Blacksmith Fork Canyon. The 3,419-foot-by-passed reach is not de-watered because the flows in the river exceeds the capacity of the plant, and during low flows, Hyrum City operates the plant at less than maximum flow to maintain a continuous flow throughout the river channel for aesthetic enjoyment in the city park that adjoins the powerhouse.

The project includes the following constructed facilities: (1) A 15-foot-high, 70-foot-long earth-fill concrete core embankment to the north, a 14-foot-high, 65-foot-long concrete spillway section, a 15-foot-high, 125-foot-long earth-fill concrete core embankment to the north which makes the total length of the dam approximately 260-foot-long; (2) a 16-foot-high, 8-foot-wide concrete intake structure with a 20-foot-high, 8-foot-wide trash rack and fish ladder; (3) a 60-inch-diameter concrete penstock inlet with head gate; (4) a 3,470-foot-long, 48-inch-diameter concrete penstock going into a 130-foot-long, 42-inch-diameter steel penstock; (5) a 37-acre-foot de-silting pond; (6) a 26-foot-wide, 39-foot-long, 20-foot-high brick powerhouse; (7) a 400-kilowatt Leffel horizontal shaft scroll case turbine; (8) a 100-foot, 2.4-kV underground transmission line; and (9) appurtenant facilities.

The average annual generation of the project is approximately 3,083,000 kilowatt-hours and there are no proposed changes to the facilities or the current mode of operation at this time.

o. A copy of the application 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.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency letter—June 2006.
Issue Acceptance letter—July 2006.
Issue Scoping Document 1 for comments—September 2006.
Request Additional Information—November 2006.
Issue Scoping Document 2—January 2007.
Notice of application is ready for environmental analysis—February 2007.

Notice of the availability of the environmental analysis—April 2007.

Ready for Commission's decision on the application—June 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7375 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0394; FRL–8170–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Approval of State Coastal Nonpoint Pollution Control Programs; EPA ICR No. 1569.06, OMB Control No. 2040–0153

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 17, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2006–0394 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *OW-Docket@epa.gov.*
- Mail: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Water Docket—Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Office of Water Docket, Environmental Protection Agency, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2006–0394. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Don Waye, Assessment and Watershed Protection Division, Office of Wetlands Oceans and Watersheds, Mail Code 4503–T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1170; fax number: (202) 566–1333; e-mail address: *waye.don@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2006–0394, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are 16 coastal States and 1 Territory with conditionally approved Coastal Nonpoint Pollution Control Programs.

Title: Approval of State Coastal Nonpoint Pollution Control Programs

ICR numbers: EPA ICR No. 1569–06, OMB Control No. 2040–0153.

ICR status: This ICR is currently scheduled to expire on July 31, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the provisions of national Program Development and Approval Guidance implementing section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) which was jointly developed and published by EPA and the National Oceanic and Atmospheric Administration (NOAA), 29 coastal States and 5 coastal Territories with federally approved Coastal Zone Management Programs have developed and submitted to EPA and NOAA Coastal Nonpoint Pollution Programs. EPA and NOAA have approved 12 States and 4 Territories, and conditionally approved 17 States and 1 Territory. The conditional approvals will require States and Territories to submit additional information in order to obtain final program approval. CZARA section 6217 requires States and Territories to obtain final approval of their Coastal Nonpoint Pollution Programs in order to retain their full share of funding available to them under section 319 of the Clean Water Act and section 306 of the Coastal Zone Management Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 148 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 17 States and 1 Territory.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: Four.

Estimated total annual burden hours: 2664 hours.

Estimated total annual costs: $93,240.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 586 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is the result of EPA and NOAA having fully approved 16 of the 34 programs.

What Is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 10, 2006.

Diane C. Regas,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. E6–7407 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0386; FRL–8170–4]

RIN NA2060

Consumer and Commercial Products: Schedule for Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the list of product categories scheduled for regulation under section 183(e) of the Clean Air Act (CAA).

SUMMARY: This notice modifies the section 183(e) list and schedule for regulation by adding one category and removing one category of consumer and commercial products. By this action, EPA is listing portable fuel containers (PFCs) for regulation and removing petroleum dry cleaning solvents from the list of product categories for regulation.

DATES: This action is effective on May 16, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0386 (legacy docket No. A–94–65). All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov* or in hard copy at the HQ Docket Center for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at: U.S. EPA, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460, or by calling (202) 566–1744 or 1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, EPA, Office of Air Quality Planning and Standards, Sector Policies

and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711, telephone number (919) 541–5460, facsimile number (919) 541–3470, electronic mail address: *moore.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION: *World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the action will be posted on the TTN policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this notice is organized as follows:

I. What is the CAA section 183(e) list?
II. Why is EPA revising the list and schedule for regulation?
III. What criteria were considered in EPA's decision to add PFC to the list and schedule for regulation?
IV. What was the result of the ranking exercise for the PFC product category?
V. Which category is EPA removing from the schedule for regulation?
VI. What portion of the 1990 CAA section 183(e) baseline does the schedule for regulation address?
VII. Statutory and Executive Order Reviews

I. What is the CAA section 183(e) list?

Ground-level ozone, which is a major component of smog, is formed in the atmosphere by reactions of volatile organic compounds (VOC) and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. Acute health effects are induced by short-term exposures (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged exposures to ozone (observed at concentrations as low as 0.08 ppm), typically while individuals are engaged in moderate exertion. Moderate exertion levels are more frequently experienced by individuals than heavy exertion levels. The acute health effects include respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and pulmonary inflammation. Groups at increased risk of experiencing such effects include active children, outdoor workers, and others who regularly engage in outdoor activities, as well as those with preexisting respiratory disease. Currently available information also suggests that long-term exposures to ozone may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

Under section 183(e) of the CAA, EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the national ambient air quality standards (NAAQS) for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (*i.e.*, ozone nonattainment areas), and to divide the list of categories to be regulated into four groups.

EPA published the original list of product categories and the original schedule that established the four groups of categories in the **Federal Register** on March 23, 1995 (60 FR 15264). EPA noted in that notice that EPA may amend the list of products for regulation, and the groups of product categories, in order to achieve an effective regulatory program in accordance with the Agency's discretion under CAA section 183(e). EPA published a revised schedule and grouping on March 18, 1999 (64 FR 13422). EPA again revised the list to regroup the product categories for purposes of workload management on November 17, 2005 (70 FR 69759). For more background information, please refer to the previous notices relating to the development of the initial list and schedule and subsequent changes.[1]

Since the beginning of the CAA section 183(e) program, EPA has noted that the inclusion of a product category on the list of products for potential regulation is not the final action by the Agency on this decision, and that the Agency will make the final determination in conjunction with development of regulations that affect the product category.[2]

Similarly, this listing exercise is not the Agency's final determination that PFC should be regulated, or of the appropriate method for their regulation, under CAA section 183(e). EPA has proposed to regulate PFC under CAA section 183(e) as part of a proposed rule regarding emissions from the use of gasoline, passenger vehicles, and PFC. *See*, ''Control of Hazardous Air Pollutants from Mobile Sources,'' 71 FR 15804 (March 29, 2006), known as the mobile sources air toxics (MSAT) rule. Interested parties may comment upon or challenge the inclusion of the product category in the CAA section 183(e) program in comments in that proceeding. *See*, 71 FR 15984 (''EPA will afford interested persons the opportunity to comment on the data underlying the listing before taking final action'' on this proposal). The final determination to regulate PFC under CAA section 183(e) will be made in conjunction with EPA's proposal for the MSAT rule. EPA encourages all interested parties to review that proposal and to comment upon EPA's proposed regulation of PFC under CAA section 183(e) in that rulemaking action.

II. Why is EPA revising the list and schedule for regulation?

By this action, EPA is adding the product category ''portable fuel containers'' to the CAA section 183(e) list and schedule for regulation and removing the category ''petroleum dry cleaning solvents'' from the CAA section 183(e) list.

The PFC category includes portable liquid fuel containers and does not apply to containers holding non-liquid fuels (for example, propane). EPA has determined that PFC fall within the definition of ''consumer and commercial product'' found in CAA section 183(e) and that it is appropriate to consider this category for regulation under CAA section 183(e) in order to achieve VOC emission reductions.

Section 183(e)(1)(B) of the CAA defines the term ''consumer and commercial product'' to mean: ''any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not

[1] EPA notes that it is currently subject to a court-ordered schedule to complete the Agency's obligations under CAA section 183(e). Pursuant to this order, EPA must complete either regulations or control techniques guidelines (CTGs) for the product categories on the current section 183(e) list. EPA may further revise and reorder the list of products in the future.

[2] *See*, ''Final Listing of Product Categories for Regulation,'' 63 FR 48792 (September 11, 1998). In this regulatory action, EPA confirmed that three product categories should be regulated under section 183(e).

include fuels or fuel additives regulated under section 211, or motor vehicles, non-road vehicles, and non-road engines as defined under section 216 of this title.'' Accordingly, the statutory definition of consumer and commercial products includes a much broader array of products than those usually considered to be consumer products (*e.g.*, personal care products, household cleaning products, household pesticides, etc.). The statutory definition of consumer and commercial products encompasses all VOC-emitting products used in or around the home, by businesses, by institutions, and in a wide range of industrial manufacturing operations. We note that PFC are not excluded by the references to ''fuels and fuel additives regulated under CAA section 211'' because the cans themselves are ''containers'' as contemplated in CAA section 183(e) and because regulation of the cans themselves will not affect the fuels or fuel additives within the containers.

Although EPA did not identify PFC as a category of consumer and commercial products at the time of the initial product listing, information now available to EPA indicates that these products, in the aggregate, are a significant source of VOC emissions. People use PFC to refuel a wide variety of equipment. Their most frequent use is for refueling lawn and garden equipment such as lawn mowers, trimmers, and chainsaws. They are also routinely used for recreational equipment such as all-terrain vehicles and snowmobiles, and for passenger vehicles which have run out of fuel. About 95 percent of PFC are made of plastic (high density polyethylene). There are approximately 20 million PFC sold annually, and about 80 million PFC are in use nationwide. The average lifetime of a PFC is about 5 years.

Gasoline fuels are highly volatile and evaporate easily from containers that are not sealed or closed properly. Although an individual PFC is a relatively modest emission source, the aggregate VOC emissions from PFC are quite significant. We estimate that nationwide VOC emissions from PFC were about 287,000 tons per year (tpy) (about 261,000 megagrams per year) in 1990 (the CAA section 183(e) baseline year).[3] Current emissions are estimated to be about 315,000 tpy (about 286,000 megagrams per year), which is about 5 percent of the nationwide mobile source VOC emissions inventory. Left uncontrolled, a single PFC's evaporative emissions, in grams of VOC per day, are up to 60 times the VOC emissions of a new Tier 2 vehicle evaporative control system. PFC emissions are primarily of three types: Evaporative emissions from unsealed or open containers; permeation emissions from fuel passing through the walls of the plastic containers; and evaporative emissions from fuel spillage during use.

As a result of the significant aggregate VOC emissions from PFC, EPA has concluded that it is appropriate to consider PFC for regulation under CAA section 183(e) to achieve needed VOC emission reductions. Accordingly, the Agency is revising the list of consumer and commercial products to include the category.

When EPA issued the original CAA section 183(e) list, EPA selected product categories that would account for approximately 80 percent of the VOC emissions in ozone nonattainment areas in the base year. Removal of the petroleum dry cleaning solvents category from the list, in combination with the addition of the PFC category, will maintain a list that accounts for approximately 80 percent of VOC emissions in ozone nonattainment areas in the base year.

III. What criteria were considered in EPA's decision to add PFC to the list and schedule for regulation?

EPA has followed the same process it used for the original listing exercise to evaluate whether to add PFC to the list at this time. In establishing criteria for regulating products, CAA section 183(e)(2)(B) directs the Administrator to consider the following factors:

(1) Uses, benefits, and commercial demand,

(2) Health and safety functions,

(3) Products which emit highly reactive VOC,

(4) Cost-effectiveness of control, and

(5) Availability of alternatives.

Based on the five statutory factors, EPA developed the following eight criteria for ranking consumer and commercial products:

(1) Utility,

(2) Commercial demand,

(3) Health and safety functions,

(4) Emissions of highly reactive VOC,

(5) Availability of alternatives,

(6) Cost-effectiveness of controls,

(7) Magnitude of annual VOC emissions, and

(8) Regulatory efficiency and program considerations.

The first statutory factor is evaluated using two criteria. Criterion 1 (Utility) considers uses and benefits of the product, and Criterion 2 (Commercial Demand) evaluates commercial demand for the product. The remaining four statutory factors are addressed individually by Criteria 3 through 6. Criteria 7 and 8 (magnitude of emissions and regulatory efficiency) reflect additional considerations not specifically prescribed in the CAA. EPA has exercised its discretion to include these criteria, as EPA believes they are important in prioritizing product categories for regulation. Criteria 1 through 7 were developed such that each product category could be evaluated numerically by assigning a score of 1 to 5 for each of the criteria, with a higher score indicating a higher priority for regulation. A complete discussion of the criteria is contained in Chapter 4 of ''Study of Volatile Organic Compounds from Consumer and Commercial Products—Report to Congress,'' EPA–453/R–94–066–A, March 1995. A copy of the full Report to Congress is in the docket. Furthermore, a copy of Chapter 4 is also included in the Technical Support Document (TSD) for this action.[4]

IV. What was the result of the ranking exercise for the PFC product category?

EPA used 1990 emission estimates and other information on PFC in evaluating the product category to maintain consistency with the process used to form the initial list. Application of the criteria indicated that PFC ranked highly compared to the categories considered in the original listing exercise. A detailed discussion of that process as applied to PFC is included in the TSD. EPA concludes that PFC should receive high priority for regulation and, as a result, should be added to the CAA section 183(e) list and schedule for regulation.

V. Which category is EPA removing from the schedule for regulation?

Concurrent with the addition of PFC, the Agency is removing one product category, ''petroleum dry cleaning solvents,'' from the CAA section 183(e) list of products for regulation. The 1990 nonattainment area emissions estimate for petroleum dry cleaning solvents was 49,091 megagrams.

When evaluated according to the criteria discussed above, the petroleum dry cleaning solvents category ranked

[3] These estimates are based on emissions from PFC when used with gasoline. We have not included emissions from containers used with diesel and kerosene due to lack of data on which to base these estimates. However, we believe that emissions from containers used with diesel and kerosene would only slightly increase the total emissions estimates due to the very low volatility of these fuels.

[4] EPA notes that its general approach to the listing exercise and the criteria used by the Agency has been approved. *See*, *ALARM Caucus* v. *EPA*, 215 F.3d61 (D.C. Cir. 2000); *cert. denied*, 532 U.S. 1018 (2001).

lowest among the categories listed in the original CAA section 183(e) schedule for regulation in 1995. The results of the ranking exercise for petroleum dry cleaning solvents are documented in the TSD.

VI. What portion of the 1990 CAA section 183(e) baseline does the schedule for regulation address?

Section 183(e)(3)(A) of the CAA requires EPA to list and regulate categories that account for at least 80 percent of VOC emissions, on a reactivity-adjusted basis, in areas that violate the NAAQS for ozone. We base this calculation on the 1990 baseline of estimated VOC emissions from all consumer and commercial products in ozone nonattainment areas at that time. Because we had not previously identified PFC as a product category with significant VOC emissions, we did not include emission from this category towards the total emissions in the original 1990 baseline for all consumer and commercial products. We have now examined this product category and have added the estimated 1990 level of emissions from this category to the baseline we used for creation of the original CAA section 183(e) product list.

Pursuant to CAA section 183(e), EPA has adjusted the 1990 nationwide VOC emissions estimate to account for reactivity. This process, which is discussed in detail in the TSD, is based on giving higher weight to highly-reactive compounds. The nationwide emissions estimate was further adjusted to reflect VOC emissions in ozone nonattainment areas. Emissions for consumer products such as many household products, including PFC, generally track population (*i.e.*, highly populated areas generally have higher use of a given product than sparsely populated areas). Therefore, the nonattainment area emissions of many consumer products, including PFC, are estimated to be proportional to the population in those areas. EPA estimated nonattainment area emissions in 1990 (the CAA section 183(e) baseline year) to be approximately 60 percent of nationwide emissions. This estimate is based on a 1990 nonattainment area population of 160 million divided by the total United States population of 260 million. As a result, the 1990 nationwide mass emissions estimate of 261,000 megagrams per year was adjusted for reactivity and scaled by population to yield reactivity-adjusted emissions of 228,722 megagrams in ozone nonattainment areas. Details of these calculations are provided in the TSD.

Having included such emissions in the 1990 baseline, EPA has increased the baseline by 228,722 megagrams per year. This results in a change from 3,481,804 to 3,710,526 megagrams per year. Accordingly, we have recalculated the percentage of VOC emissions accounted for by the categories listed for regulation. This action (i.e., adding PFC and removing petroleum dry cleaning solvents) results in EPA listing for regulation categories that account for 2,968,998 megagrams per year, or 80.02 percent of the 1990 baseline. The revised list of categories scheduled for regulation is shown in Table 1. As noted above, CAA section 183(e) gives EPA the discretion to revise the list of products for regulation, or to change the groupings of products for regulation, so long as the requirements of the section are met. EPA will make appropriate adjustments to ensure that we continue to meet the requirement to regulate categories accounting for at least 80 percent of the 1990 baseline.

TABLE 1.—CONSUMER AND COMMERCIAL PRODUCTS SCHEDULE FOR REGULATION

Product category	Emissions megagrams per year (Mg/yr)
Group I:	
Consumer products	301,347
Shipbuilding and repair coatings	23,302
Aerospace coatings	165,892
Architectural coatings	362,454
Autobody refinishing coatings	85,509
Wood furniture coatings	88,109
Total for Group I	1,026,613
Group II:	
Flexible package printing materials	136,364
Lithographic printing materials	545,454
Letterpress printing materials	25,636
Industrial cleaning solvents	232,890
Flatwood paneling coatings	19,618
Total for Group II	959,962
Group III:	
Portable fuel containers	228,722
Aerosol spray paints	58,521
Paper, film, and foil coatings	92,064
Metal furniture coatings	97,220
Large appliance coatings	22,994
Total for Group III	499,521
Group IV:	
Miscellaneous metal products coatings	198,545
Fiberglass boat manufacturing materials	11,000
Miscellaneous industrial adhesives	185,175
Plastic parts coatings	20,000
Auto and light-duty truck assembly coatings	68,182

TABLE 1.—CONSUMER AND COMMERCIAL PRODUCTS SCHEDULE FOR REGULATION—Continued

Product category	Emissions megagrams per year (Mg/yr)
Total for Group IV	482,902
Emissions addressed by schedule	2,968,998
1990 CAA section 183(e) baseline emissions	3,710,526
Percentage of baseline addressed by schedule	80.02

VII. Statutory and Executive Order Reviews

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 the Office of Management and Budget (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, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

This notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13132 (Federalism), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and the National Technology Transfer and Advancement Act do not apply to this notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: May 11, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–7405 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8170–8]

National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION.** Due to limited space, seating at the NEJAC meeting will be on a first-come basis.

DATES: The NEJAC meeting will take place at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005. On-site registration for the NEJAC meeting will begin on Tuesday, June 20, 2006 at 11 a.m. The NEJAC will convene Tuesday, June 20, 2006, from 1 p.m. to 5 p.m. The NEJAC will reconvene on Wednesday, June 21, 2006, from 8:30 a.m. to 5 p.m., and Thursday, June 22, 2006, from 9 a.m. to 3 p.m. One public comment session relevant to the specific issues being considered by the NEJAC is scheduled for Tuesday, June 20, 2006, from 7 p.m. to 9 p.m. All times noted are Eastern Time. Members of the public who wish to participate in the public comment period are encouraged to pre-register by Wednesday, June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Correspondence concerning the meeting should be sent to Ms. Victoria Robinson, NEJAC Program Manager, U.S. Environmental Protection Agency, at 1200 Pennsylvania Avenue, NW., (MC2201A), Washington, DC 20460; via e-mail at *environmental-justice-epa@epa.gov;* by telephone at (202) 564–6349; or by FAX at (202) 564–1624. Additional information about the meeting is available at the Internet Web site: *http://www.epa.gov/compliance/environmentaljustice/nejac/meetings.html.*

Pre-registration for all attendees is recommended. To register online, visit the Web site above. Requests for registration forms should be sent to Ms. Julianne Pardi of ICF International at: 9300 Lee Highway, Fairfax, Virginia 22031; Telephone: (703) 934–3873; E-mail: *jpardi@icfi.com,* or FAX: (703) 934–3270. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice on EPA's progress, quality and adequacy in planning, developing and implementing environmental justice strategies, projects and programs'' relating to environment justice. In order to provide such independent advice, the Agency requests that the NEJAC convene a focused, issue-oriented public meeting in Washington, DC. To help prepare for this specific focused policy issue meeting the following background information is provided:

The meeting shall be used to receive comments on, discuss, and analyze what mechanisms will most effectively:

(1) Ensure continuation of timely, relevant and cogent public policy advice on environmental justice issues/concerns; (2) enable impacted communities to continue to raise concerns to government agencies; (3) support continued partnership-building and problem-solving capacity among EPA's regulatory partners and other environmental justice stakeholders; and (4) promote opportunities for training and sharing lessons learned for all stakeholders involved in the environmental justice dialogue. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the focused policy issue, and provide advice and recommendations for the Agency's review and consideration.

In order to fulfill this charge, the NEJAC is being asked to discuss and provide recommendations regarding the following broad public policy questions:

- What venues and other mechanisms would be most effective for EPA to continue to obtain public policy advice on specific environmental justice issues/concerns?
- What mechanisms would be most effective for EPA to receive timely advice on specific environmental justice issues/concerns that require action or decision on short notice?
- What are the best mechanisms to continue to build a collaborative problem-solving capacity to address environmental justice issues/concerns among EPA's regulatory partners and other environmental justice stakeholders?

In addition, the NEJAC will deliberate on two draft reports: (1) the Gulf Coast Hurricanes Workgroup's draft advice and recommendations on the environmental justice issues related to natural disasters such as Hurricanes Katrina and Rita, and (2) the Waste and Facility Siting Subcommittee's draft report, ''Unintended Impacts of Redevelopment and Revitalization Efforts in Five Environmental Justice Communities.'' Documents that are the subject of NEJAC reviews normally are available from the originating EPA office and are not available from the NEJAC.

The Gulf Coast Hurricanes Workgroup's draft advice and recommendations responds to the following question:

How can EPA effectively address the vulnerabilities of all communities to public health and environmental risks and harms, including minority and low-income communities, in EPA's response and rebuilding, and preparedness and prevention efforts, in the aftermath of natural disasters similar to Hurricanes Katrina and Rita, pursuant to the National Response Plan and applicable statutory authorities and their implementing regulations, as well as Executive Order 12898?

The Waste and Facility Siting Subcommittee's draft report provides draft advice and recommendations based upon lessons learned regarding unintended impacts of successful brownfields cleanup at redevelopment and revitalization projects in five minority, low-income, and/or tribal communities.

Public Comment: Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative of a community, an organization, or a group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows: Name of Speaker, Name of Organization/Community, Address/Telephone/E-mail, Description of Concern and its Relationship to the policy issue(s), and Recommendations or desired outcome. If you wish to submit written comments of any length, at least 50 copies should be received by Friday, June 14, 2006. Written comments received after that date will be provided to the NEJAC as logistics allow. All information should be sent to the address, e-mail, or fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: May 10, 2006.

Charles Lee,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. E6–7410 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8170–6]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2006 Annual Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held June 6–7, 2006 starting at 1 p.m. on June 6, 2006 and ending June 7, 2006 at 4 p.m.

ADDRESSES: Radisson Hotel Boston, 200 Stuart Street, Boston, MA 02116; (617) 482–1800.

FOR FURTHER INFORMATION CONTACT: Questions regarding the agenda and registration for this meeting and all press inquiries should be directed to: Kromeklia Bryant, Ozone Transport Commission/MANE–VU Office, 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org;* Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR. The purpose of this notice is to announce that the OTC will meet on June 6–7, 2006 at the address noted earlier in this notice. This meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meeting of the OTC is not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: April 28, 2006.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. E6–7408 Filed 5–15–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–06]

Office of Thrift Supervision

[No. 2006–20]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1254]

FEDERAL DEPOSIT INSURANCE CORPORATION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53773; File No. S7–08–06]

Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Securities and Exchange Commission (SEC) (collectively, the Agencies).

ACTION: Notice of revised interagency statement with request for public comment.

SUMMARY: On May 19, 2004, the Agencies issued and requested comment on a proposed Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities (''Initial Statement'') of national banks, state banks, bank holding companies, Federal and state savings associations, savings and loan holding companies, U.S. branches and agencies of foreign banks, and SEC registered broker-dealers and investment advisers (collectively, ''financial institutions'' or ''institutions''). The Initial Statement described some of the internal controls and risk management procedures that may help financial institutions identify, manage, and address the heightened reputational and legal risks that may arise from certain complex structured finance transactions (''CSFTs''). After reviewing the comments received on the Initial Statement, the Agencies are requesting comment on a revised proposed interagency statement (''Revised Statement''). The Revised Statement has been modified in numerous respects to address issues and concerns raised by commenters, clarify the purpose, scope and effect of the statement, and make the statement more principles-based. These changes include reorganizing and streamlining the document to reduce redundancies and to focus the statement on those CSFTs that may pose heightened levels of legal or reputational risk to the relevant institution (referred to as ''elevated risk CSFTs''). In addition, the Agencies have modified the examples of transactions that may present elevated risk to make these examples more risk-focused, and have recognized more explicitly that an institution's review and approval process for elevated risk CSFTs should be commensurate with, and focus on, the potential risks presented by the transaction to the institution. As discussed below, the Revised Statement will not affect or apply to the vast majority of small financial institutions, nor does it create any private rights of action.

DATES: Comments on the Revised Statement should be received on or before June 15, 2006.

ADDRESSES:

OCC: You should include OCC and Docket Number 06–06 in your comment. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web site: http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- *E-mail address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Viewing Comments Electronically:* You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at: *regs.comments@occ.treas.gov.*
- *Docket:* You may also request available background documents and project summaries using the methods described above.

OTS: You may submit comments, identified by No. 2006–20 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@ots.treas.gov.* Please include No. 2006–20 in the subject line of the message, and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–20.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–20.

Instructions: All submissions received must include the agency name and document number. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Board: You may submit comments, identified by Docket No. OP–1254, by any of the following methods:

- *Board's Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http//www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: *comments@fdic.gov.*) Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

SEC: Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/policy.shtml;*) or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–08–06 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–08–06. This file number should be included on the subject line if e-mail is used. To help us 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/policy.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

OCC: Kathryn E. Dick, Deputy Comptroller, Credit and Market Risk, (202) 874–4660; Grace E. Dailey, Deputy Comptroller, Large Bank Supervision, (202) 874–4610; or Ellen Broadman, Director, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: Fred J. Phillips-Patrick, Director, Credit Policy, Examinations and Supervision Policy, (202) 906–7295; Deborah S. Merkle, Project Manager, Credit Policy, Examinations and Supervision Policy, (202) 906–5688; or David A. Permut, Senior Attorney, Business Transactions Division, (202) 906–7505, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Board: Sabeth I. Siddique, Assistant Director, (202) 452–3861, Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Anne B. Zorc, Attorney, (202) 452–3876, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

FDIC: Jason C. Cave, Associate Director, (202) 898–3548; Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SEC: Mary Ann Gadziala, Associate Director, Office of Compliance Inspections and Examinations, (202) 551–6207; Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Senior Special Counsel (Banking and Derivatives), or Randall W. Roy, Branch Chief, Division of Market Regulation, (202) 551–5550, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Financial markets have grown rapidly over the past decade, and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of assets, and other types of structured finance transactions serve important purposes, such as diversifying risks, allocating cash flows, and reducing cost of capital. As a result, structured finance transactions, including the more complex variations of these transactions, now are an essential part of U.S. and international capital markets.

When a financial institution participates in a CSFT, it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, a financial institution involved in a CSFT may face heightened risk if the customer's regulatory, tax or accounting treatment for the CSFT, or disclosures concerning the CSFT in its public filings or financial statements, do not comply with applicable laws, regulations or accounting principles.

In some cases, certain CSFTs appear to have been used in illegal schemes that misrepresented the financial condition of public companies to investors and regulatory authorities. Those cases highlight the substantial legal and reputational risks that financial institutions may face when they participate in a CSFT that is used by the institution's customer to circumvent regulatory or financial reporting requirements or further other illegal behavior.[1] After conducting investigations, the OCC, Federal Reserve System and the SEC took strong and coordinated civil and administrative enforcement actions against certain financial institutions that engaged in CSFTs that appeared to have been designed or used to shield their customers' true financial health from the public. These actions involved significant financial penalties on the institutions and required the institutions to take several measures to strengthen their risk management

[1] For a memorandum on the potential liability of a financial institution for securities laws violations arising from participation in a CSFT, see Letter from Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, to Richard Spillenkothen and Douglas W. Roeder, dated December 4, 2003 (available at *http://www.federalreserve.gov/boarddocs/srletters/2004/* and *http://www.occ.treas.gov*).

procedures for CSFTs.[2] The complex structured finance relationships involving these financial institutions also sparked an investigation by the Permanent Subcommittee on Governmental Affairs of the United States Senate,[3] as well as numerous lawsuits by private litigants.

Following these investigations, the OCC, Board and SEC also conducted special reviews of several large banking and securities firms that are significant participants in the market for CSFTs. These reviews were designed to evaluate the new product approval, transaction approval, and other internal controls and processes used by these institutions to identify and manage the legal, reputational and other risks associated with CSFTs. These assessments indicated that many of the large financial institutions engaged in CSFTs already had taken meaningful steps to improve their control infrastructure relating to CSFTs. The Agencies also focused attention on the complex structured finance activities of financial institutions in the normal course of the supervisory process.

II. Initial Statement

To further assist financial institutions in identifying, managing, and addressing the risks that may be associated with CSFTs, the Agencies developed and requested public comment on the Initial Statement.[4] As a general matter, the Initial Statement provided that financial institutions engaged in CSFTs should have and maintain a comprehensive set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, document, evaluate, and control the full range of credit, market, operational, legal, and reputational risks that may arise from CSFTs. The Initial Statement also described the types of policies and procedures that financial institutions should have for CSFTs in the following specific areas: (1) Transaction approval; (2) approval of new complex structured finance products; (3) identification and management of the potential reputational and legal risk associated with CSFTs; (4) review of the customer's proposed accounting and disclosures for CSFTs; (5) documentation of CSFTs; (6) management reporting for CSFTs; (7) independent monitoring and analysis of the institution's compliance with its internal policies regarding CSFTs; (8) role of internal audit; and (9) training of personnel involved in CSFTs.

Among other things, the Initial Statement provided that financial institutions should establish a clear process for identifying those CSFTs that may create heightened legal or reputational risk for the institution, and included a list of transaction characteristics that may indicate that a CSFT (or series of CSFTs) creates elevated levels of legal or reputational risk for the institution. The Initial Statement also provided that an institution should ensure that transactions identified as being elevated risk CSFTs are thoroughly reviewed by the institution's control functions and management during the institution's transaction or new product approval processes. As part of this review, the Initial Statement indicated that the institution should obtain and document complete and accurate information about the customer's business objectives for entering into the transaction, as well as about the customer's proposed accounting treatment and financial disclosures relating to the transaction.

III. Overview of Comments

The Agencies collectively received comments on the Initial Statement from more than 40 persons, although many commenters submitted multiple comments or submitted identical comments to multiple Agencies. Commenters included banking organizations, trade associations, investment banks, consulting firms, public accounting firms, law firms, an association of state officials, and individuals. In addition to submitting written comments, some commenters also met with Agency representatives to discuss their views of the Initial Statement.

Commenters generally supported the Agencies' efforts to describe the types of risk management procedures and internal controls that may help financial institutions identify and mitigate the legal and reputational risks associated with CSFTs. In this regard, many commenters recognized that financial institutions need a robust risk management and control framework to help institutions avoid becoming involved in CSFTs that are used for illegal or abusive purposes and to manage the risks associated with CSFTs.

Virtually all of the commenters, however, recommended changes to the Initial Statement. For example, many commenters argued that the characteristics of CSFTs in general and of elevated risk CSFTs in particular identified in the Initial Statement were too broad and would encompass many structured finance products that are not novel or complex and that do not present heightened legal or reputational risks for participating financial institutions. These commenters argued, for example, that the Initial Statement could be read as requiring financial institutions to identify any structured finance transaction that involves a special purpose entity (''SPE'') or cross-border elements as an elevated risk CSFT.

Many commenters also asserted that the internal controls and risk management processes described in the Initial Statement for CSFTs and elevated risk CSFTs were overly prescriptive and burdensome. For example, many commenters expressed concern that the Initial Statement could be read as requiring a financial institution to conduct a detailed and extensive pre-transaction review of all CSFTs regardless of the role that the institution played in the transaction, and regardless of whether the transaction's characteristics suggested that it may create significant legal, reputational or other risks for the institution. Similarly, many commenters argued that the Initial Statement imposed new and inappropriate obligations on financial institutions to confirm the validity of a customer's financial disclosures or accounting or tax treatment for a CSFT, and would establish new and extensive documentation requirements for CSFTs.

Commenters asserted that, in light of these and other concerns, the Initial Statement had the potential to increase the legal risks faced by financial institutions participating in CSFTs. In addition, commenters argued that the Initial Statement, if implemented, would disrupt the market for legitimate structured finance products and place U.S. financial institutions at a competitive disadvantage in the market for CSFTs both in the United States and abroad.

As a general matter, commenters recommended that the Agencies modify the Initial Statement to make it more

[2] *See, e.g. In the Matter of Citigroup, Inc.,* Securities Exchange Act Release No. 48230 (July 28, 2003), Written Agreement by and between Citibank, N.A. and the Office of the Comptroller of the Currency, No. 2003–77 (July 28, 2003) (pertaining to transactions entered into by Citibank, N.A. with Enron Corp.), and Written Agreement by and between Citigroup, Inc. and the Federal Reserve Bank of New York, dated July 28, 2003 (pertaining to transactions involving Citigroup Inc. and its subsidiaries and Enron Corp. and Dynegy Inc.); *SEC* v. *J.P. Morgan Chase,* SEC Litigation Release No. 18252 (July 28, 2003) and Written Agreement by and among J.P. Morgan Chase & Co., the Federal Reserve Bank of New York, and the New York State Banking Department, dated July 28, 2003 (pertaining to transactions involving J.P. Morgan Chase & Co. and its subsidiaries and Enron Corp.).

[3] *See Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions,* Report Prepared by the Permanent Subcomm. on Investigations, Comm. on Governmental Affairs, United States Senate, S. Rpt. 107–82 (2003).

[4] *See* 69 FR 28980, May 19, 2004.

principles-based and focused on transactions that may create elevated risks for a participating financial institution. For example, many commenters recommended that the Agencies modify the list of characteristics of elevated risk CSFTs to focus on factors that are likely indicators that a transaction may, in fact, create heightened legal or reputational risks for a participating institution. In addition, commenters recommended that the Agencies provide financial institutions greater flexibility to design internal controls and risk management procedures for CSFTs that are tailored to the size, activities and general internal control framework of the institution. Finally, many commenters recommended that the Agencies republish a revised statement for a new round of public comment.

IV. Overview of Revised Statement

The Agencies have substantially revised the Initial Statement in light of the comments. In particular, the Revised Statement has been shortened and reorganized to be more principles-based and to focus on elevated risk CSFTs. Because these revisions are substantial, and the Revised Statement is an important explanation of the key principles and best practices governing CSFT activities, the Agencies invite public comment on the Revised Statement.

The Agencies continue to believe that it is important for a financial institution engaged in CSFTs to have policies and procedures that are designed to allow the institution to effectively manage and address the risks associated with its CSFT activities. These policies and procedures should, among other things, be designed to allow the institution to identify during its transaction and new product approval processes those CSFTs that may present elevated legal or reputational risks to the institution. In addition, an institution's policies and procedures should provide that CSFTs identified as potentially having elevated legal or reputational risks are reviewed by appropriate levels of control and management personnel at the institution, including personnel from control areas that are independent of the business line(s) involved in the transaction. The level and amount of due diligence conducted by an institution for an elevated risk CSFT should be commensurate with the transaction's potential risk to the institution. In conducting this due diligence, the institution may find it useful or necessary to obtain additional information from the customer or to obtain specialized advice from qualified in-house or outside accounting, tax, legal or other professionals.

If, after evaluating an elevated risk CSFT, a financial institution determines that its participation in the CSFT would create significant legal or reputational risks for the institution, the financial institution should take appropriate steps to manage and address these risks. Such steps may include modifying the transaction or conditioning the institution's participation in the transaction upon the receipt of representations or assurances from the customer that reasonably address the heightened risks presented by the transaction. A financial institution should decline to participate in an elevated risk CSFT if, after conducting appropriate due diligence and taking appropriate steps to address the risks from the transaction, the institution determines that the transaction presents unacceptable risks to the institution or would result in a violation of applicable laws, regulations or accounting principles.

With these broad principles in mind, the Agencies have made a number of changes to the Initial Statement to address the issues and concerns raised by commenters, to clarify the purpose, scope and effect of the Revised Statement, and to make the document more risk-focused. The Agencies believe that, with these changes, the Revised Statement promotes sound risk management principles while providing an individual financial institution greater flexibility to develop implementing policies, procedures and systems that are appropriately tailored to the nature, scope, complexity and risks of its CSFT activities and to the institution's general internal control framework. In particular, the Agencies have, among other things:

- Focused the statement more clearly on those CSFTs that may present heightened legal or reputational risks to a participating institution;
- Clarified that the statement does not apply to structured finance transactions, such as standard public mortgage-backed securities transactions, that are familiar to participants in the financial markets and have well-established track records and, for this reason, will not affect or apply to the vast majority of small financial institutions;
- Modified the examples of CSFTs that may warrant additional scrutiny by an institution to focus on transactions that are more likely to present elevated levels of legal or reputational risk to an institution (*e.g.,* transactions that raise concerns that the client will report or disclose the transaction in its public filings or financial statements in a manner that is materially misleading);
- Clarified that the due diligence conducted by a financial institution for an elevated risk CSFT should focus on those issues identified by the institution as potentially creating heightened levels of legal or reputational risk for the institution;
- Recognized that the role a financial institution plays in a CSFT may affect both the amount of information it has concerning the transaction and the level of legal or reputational risks presented by the transaction to the institution;
- Streamlined and modified the documentation and general control portions of the statement to focus on the proper goals of an institution s policies and procedures in these areas; and
- Provided that a financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those foreign jurisdictions.

Because many of the core elements of an effective control infrastructure are the same regardless of the business line involved, the Revised Statement continues to draw heavily on controls and procedures that the Agencies previously have found to be effective in assisting a financial institution to manage and control risks and identifies ways in which these controls and procedures can be applied effectively to elevated risk CSFTs. Moreover, as noted above, many of the large financial institutions that are actively involved in CSFT-related activities have taken steps in recent years to bolster and improve their risk management and internal control processes for CSFTs. Based on the Agencies' supervisory experience, the Agencies believe that the Revised Statement generally is consistent with the controls and processes used by large financial institutions to manage the risks arising from their CSFT activities.

The Agencies propose to adopt the Revised Statement as supervisory guidance (in the case of the Federal banking agencies) or a policy statement (in the case of the SEC) and to use the Revised Statement in reviewing the internal controls and risk management systems of those financial institutions that are engaged in CSFTs as part of the Agencies' supervisory processes. Accordingly, the Revised Statement does not create any private rights of action, nor does it alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other third parties under applicable law. The

Agencies have added a statement to this effect in the Revised Statement.

The Agencies request comment on all aspects of the Revised Statement.

V. Paperwork Reduction Act

The Agencies have determined that certain provisions of the Revised Statement contain collection of information requirements as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). An Agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

OMB has reviewed and approved the proposed information collections for the FDIC, OTS, and OCC; the SEC is submitting their proposed information collection to OMB for review and approval; and the Board has reviewed the Revised Statement under the authority delegated to the Board by OMB (5 CFR 1320, appendix A.1).

OMB control numbers:

OCC: 1557–0229.
OTS: 1550–0111.
FRB: 7100–0311.
FDIC: 3064–0148.
SEC: 3235–0xxx (to be assigned).

Comment was requested on the proposed information collections contained in the Initial Statement published for comment on May 19, 2004. As discussed above, many commenters asserted that the Initial Statement in general, and its documentation provisions in particular, were unduly burdensome and prescriptive. For this reason, some commenters asserted that the estimates of the burden (100 hours per respondent) were too low.

In light of this and the modifications made to the Initial Statement, the Agencies have reconsidered the burden estimates previously published and are once again requesting comment before finalizing this statement. In response to the comments, the Agencies have made significant modifications to make the Revised Statement more principles-based and risk-focused than the Initial Statement, and to provide an individual institution greater flexibility in developing policies, procedures, and systems that are appropriate and tailored to the nature of the institution's CSFT activities and general internal control framework. The Agencies believe that the information collection requirements contained in the Revised Statement, as discussed earlier in the notice, are generally consistent with the types of policies and procedures that the large financial institutions actively involved in CSFTs have already developed and implemented as a matter of usual and customary business practices. Therefore, the information collections contained in the Revised Statement are significantly less burdensome than those estimated in the Initial Statement and, thus, the Agencies have revised the hourly estimate down from 100 hours per response to an average of 25 hours per response.

New Estimates

OCC

Number of Respondents: 21.
Estimated Time per Response: 25 hours.
Total Estimated Annual Burden: 525 hours.

OTS

Number of Respondents: 5.
Estimated Time per Response: 25 hours.
Total Estimated Annual Burden: 125 hours.

Board

Number of Respondents: 20.
Estimated Time per Response: 25 hours.
Total Estimated Annual Burden: 500 hours.

FDIC

Number of Respondents: 5.
Estimated Time per Response: 25 hours.
Total Estimated Annual Burden: 125 hours.

SEC

Number of Respondents: 5.
Estimated Time per Response: 25 hours.
Total Estimated Annual Burden: 125 hours.

Comments continue to be invited on:

(a) Whether the collections of information contained in the Revised Statement are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on the information collections contained in the Revised Statement should be addressed to:

OCC: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0229, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0229, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or fax number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Board: You may submit comments, identified by Docket No. OP–1254, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at

http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

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

• E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.

• Fax: (202) 452–3819 or (202) 452–3102.

• Mail: Michelle Long, Federal Reserve Board Clearance Officer (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to ''Complex Structured Financial Transactions, 3064–0148.'' Comments may be submitted by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• E-mail: *comments@FDIC.gov.* Include Complex Structured Financial Transactions, 3064–0148 in the subject line of the message.

• Mail: Steven F. Hanft (202) 898–3907, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

SEC: You should direct your comments to: Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy sent to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–08–06.

The proposed Revised Statement follows:

Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities

I. Introduction

Financial markets have grown rapidly over the past decade, and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of assets and other types of structured finance transactions serve important business purposes, such as diversifying risks, allocating cash flows, and reducing cost of capital. As a result, structured finance transactions now are an essential part of U.S. and international capital markets. Financial institutions have played and continue to play an active and important role in the development of structured finance products and markets, including the market for the more complex variations of structured finance products.

When a financial institution participates in a complex structured finance transaction (''CSFT''), it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, in some circumstances, a financial institution may face heightened legal or reputational risk if a customer's regulatory, tax or accounting treatment for a CSFT, or disclosures concerning the CSFT in its public filings or financial statements, do not comply with applicable laws, regulations or accounting principles. Indeed, some financial institutions have incurred significant legal costs and liability and suffered reputational harm due to their role in certain transactions that were used by customers to misrepresent the customers' financial condition to investors, regulatory authorities or others. Reputational risk poses a significant threat to financial institutions because the nature of their business requires them to maintain the confidence of customers, creditors and the general marketplace.

The Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission (the regulatory Agencies) have long expected financial institutions to develop and maintain robust control infrastructures that enable them to identify, evaluate and address the risks associated with their business activities. Financial institutions also must conduct their activities in accordance with applicable statutes and regulations.

II. Scope and Purpose of Statement

The regulatory Agencies are issuing this Statement to describe the types of risk management principles that we believe may help a financial institution to identify CSFTs that may pose heightened legal or reputational risks to the institution (''elevated risk CSFTs'') and to evaluate, manage and address these risks within the institution's internal control framework.[5]

Structured finance transactions encompass a broad array of products with varying levels of complexity. Most structured finance transactions, such as standard public mortgage-backed securities transactions, public securitizations of retail credit cards, asset-backed commercial paper conduit transactions, and hedging-type transactions involving ''plain vanilla'' derivatives and collateralized loan obligations, are familiar to participants in the financial markets, and these vehicles have a well-established track record. These transactions typically would not be considered CSFTs for the purpose of this Statement.

Because this Statement focuses on sound practices related to CSFTs that may create heightened legal or reputational risks—transactions that typically are conducted by a limited number of large financial institutions—it will not affect or apply to the vast majority of financial institutions, including most small institutions. As in all cases, a financial institution should tailor its internal controls so that they are appropriate in light of the nature, scope, complexity and risks of its

[5] As used in this Statement, the term ''financial institution'' or ''institution'' refers to national banks in the case of the Office of the Comptroller of the Currency; federal and state savings associations and savings and loan holding companies in the case of the Office of Thrift Supervision; state member banks and bank holding companies (other than foreign banking organizations) in the case of the Federal Reserve Board; state nonmember banks in the case of the Federal Deposit Insurance Corporation; and registered broker-dealers and investment advisers in the case of the Securities and Exchange Commission. The U.S. branches and agencies of foreign banks supervised by the Office of the Comptroller, the Federal Reserve Board and the Federal Deposit Insurance Corporation also are considered to be financial institutions for purposes of this Statement.

activities. Thus, for example, an institution that is actively involved in structuring and offering CSFTs that may create heightened legal or reputational risk for the institution should have a more formalized and detailed control framework than an institution that participates in these types of transactions less frequently. The internal controls and procedures discussed in this Statement are not all inclusive, and, in appropriate circumstances, an institution may find that other controls, policies, or procedures are appropriate in light of its particular CSFT activities.

Because many of the core elements of an effective control infrastructure are the same regardless of the business line involved, this Statement draws heavily on controls and procedures that the Agencies previously have found to be effective in assisting a financial institution to manage and control risks and identifies ways in which these controls and procedures can be effectively applied to elevated risk CSFTs. Although this Statement highlights some of the most significant risks associated with elevated risk CSFTs, it is not intended to present a full exposition of all risks associated with these transactions. Financial institutions are encouraged to refer to other supervisory guidance prepared by the Agencies for further information concerning market, credit, operational, legal and reputational risks as well as internal audit and other appropriate internal controls.

This Statement does not create any private rights of action, and does not alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other third parties under applicable law. At the same time, adherence to the principles discussed in this Statement would not necessarily insulate a financial institution from regulatory action or any liability the institution may have to third parties under applicable law.

III. Identification and Review of Elevated Risk Complex Structured Finance Transactions

A financial institution that engages in CSFTs should maintain a set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs, or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those jurisdictions.[6]

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. Financial institutions may find it helpful to incorporate the review of new CSFTs into their existing new product policies. In this regard, a financial institution should define what constitutes a ''new'' complex structured finance product and establish a control process for the approval of such new products. In determining whether a CSFT is new, a financial institution may consider a variety of factors, including whether it contains structural or pricing variations from existing products, whether the product is targeted at a new class of customers, whether it is designed to address a new need of customers, whether it raises significant new legal, compliance or regulatory issues, and whether it or the manner in which it would be offered would materially deviate from standard market practices. An institution's policies should require new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

A. Identifying Elevated Risk CSFTs

As part of its transaction and new product approval controls, a financial institution should establish and maintain policies, procedures and systems to identify elevated risk CSFTs. Because of the potential risks they present to the institution, transactions or new products identified as elevated risk CSFTs should be subject to heightened reviews during the institution's transaction or new product approval processes. Examples of transactions that an institution may determine warrant this additional scrutiny are those that (either individually or collectively) appear to the institution during the ordinary course of its transaction approval or new product approval process to:

- Lack economic substance or business purpose;
- Be designed or used primarily for questionable accounting, regulatory, or tax objectives, particularly when the transactions are executed at year end or at the end of a reporting period for the customer;
- Raise concerns that the client will report or disclose the transaction in its public filings or financial statements in a manner that is materially misleading or inconsistent with the substance of the transaction or applicable regulatory or accounting requirements;
- Involve circular transfers of risk (either between the financial institution and the customer or between the customer and other related parties) that lack economic substance or business purpose;
- Involve oral or undocumented agreements that, when taken into account, would have a material impact on the regulatory, tax, or accounting treatment of the related transaction, or the client s disclosure obligations;[7]
- Have material economic terms that are inconsistent with market norms (*e.g.*, deep in the money options or historic rate rollovers); or
- Provide the financial institution with compensation that appears substantially disproportionate to the services provided or investment made by the financial institution or to the credit, market or operational risk assumed by the institution.

The examples listed previously are provided for illustrative purposes only, and the policies and procedures established by financial institutions may differ in how they seek to identify elevated risk CSFTs. The goal of each institution's policies and procedures, however, should remain the same—to identify those CSFTs that warrant additional scrutiny in the transaction or new product approval process due to concerns regarding legal or reputational risks.

Financial institutions that structure or market, act as an advisor to a customer regarding, or otherwise play a substantial role in a transaction may have more information concerning the

[6] In the case of U.S. branches and agencies of foreign banks, the institution should coordinate these policies with the foreign bank's group-wide policies developed in accordance with the rules of the foreign bank's home country supervisor. In addition, the U.S. branches and agencies of foreign banks should implement a control infrastructure for CSFTs, including management, review and approval requirements, that is consistent with the institution's overall corporate and management structure as well as its framework for risk management and internal controls.

[7] This item is not intended to include traditional, non-binding ''comfort'' letters or assurances provided to financial institutions in the loan process where, for example, the parent of a loan customer states that the customer (*i.e.*, the parent's subsidiary) is an integral and important part of the parent's operations.

customer's business purpose for the transaction and any special accounting, tax or financial disclosure issues raised by the transaction than institutions that play a more limited role. Thus, the ability of a financial institution to identify the risks associated with an elevated risk CSFT may differ depending on its role.

B. Due Diligence, Approval and Documentation Process for Elevated Risk CSFTs

Having developed a process to identify elevated risk CSFTs, a financial institution should implement policies and procedures to conduct a heightened level of due diligence for these transactions. The financial institution should design these policies and procedures to allow personnel at an appropriate level to understand and evaluate the potential legal or reputational risks presented by the transaction to the institution and to manage and address any heightened legal or reputational risks ultimately found to exist with the transaction.

Due Diligence. If a CSFT is identified as an elevated risk CSFT, the institution should carefully evaluate and take appropriate steps to address the risks presented by the transaction with a particular focus on those issues identified as potentially creating heightened levels of legal or reputational risk for the institution. In general, a financial institution should conduct the level and amount of due diligence for an elevated risk CSFT that is commensurate with the level of risks identified. A financial institution that structures or markets an elevated risk CSFT to a customer, or that acts as an advisor to a customer or investors concerning an elevated risk CSFT, may have additional responsibilities under the federal securities laws, the Internal Revenue Code, state fiduciary laws or other laws or regulations and, thus, may have greater legal and reputational risk exposure with respect to an elevated risk CSFT than a financial institution that acts only as a counterparty for the transaction. Accordingly, a financial institution may need to exercise a higher degree of care in conducting its due diligence when the institution structures or markets an elevated risk CSFT or acts as an advisor concerning such a transaction than when the institution plays a more limited role in the transaction.

To appropriately understand and evaluate the potential legal and reputational risks associated with an elevated risk CSFT that a financial institution has identified, the institution may find it useful or necessary to obtain additional information from the customer or to obtain specialized advice from qualified in-house or outside accounting, tax, legal, or other professionals. As with any transaction, an institution should obtain satisfactory responses to its material questions and concerns prior to consummation of a transaction.[8]

In conducting its due diligence for an elevated risk CSFT, a financial institution should independently analyze the potential risks to the institution from both the transaction and the institution's overall relationship with the customer. Institutions should not conclude that a transaction identified as being an elevated risk CSFT involves minimal or manageable risks solely because another financial institution will participate in the transaction or because of the size or sophistication of the customer or counterparty. Moreover, a financial institution should carefully consider whether it would be appropriate to rely on opinions or analyses prepared by or for the customer concerning any significant accounting, tax or legal issues associated with an elevated risk CSFT.

Approval Process. A financial institution's policies and procedures should provide that CSFTs identified as having elevated legal or reputational risk are reviewed and approved by appropriate levels of control and management personnel. The designated approval process for such CSFTs should include representatives from the relevant business line(s) and/or client management, as well as from appropriate control areas that are independent of the business line(s) involved in the transaction. The personnel responsible for approving an elevated risk CSFT on behalf of a financial institution should have sufficient experience, training and stature within the organization to evaluate the legal and reputational risks, as well as the credit, market and operational risks to the institution.

The institution's control framework should have procedures to deliver the necessary or appropriate information to the personnel responsible for reviewing or approving an elevated risk CSFT to allow them to properly perform their duties. Such information may include, for example, the material terms of the transaction, a summary of the institution's relationship with the customer, and a discussion of the significant legal, reputational, credit, market and operational risks presented by the transaction.

Some institutions have established a senior management committee that is designed to involve experienced business executives and senior representatives from all of the relevant control functions within the financial institution, including such groups as independent risk management, accounting, policy, legal, compliance, and financial control, in the oversight and approval of CSFTs identified as having elevated risks. While this type of management committee may not be appropriate for all financial institutions, a financial institution should establish processes that assist the institution in consistently managing its elevated risk CSFTs on a firm-wide basis.[9]

If, after evaluating an elevated risk CSFT, the financial institution determines that its participation in the CSFT would create significant legal or reputational risks for the institution, the institution should take appropriate steps to address those risks. Such actions may include declining to participate in the transaction, or conditioning its participation upon the receipt of representations or assurances from the customer that reasonably address the heightened legal or reputational risks presented by the transaction. Any representations or assurances provided by a customer should be obtained before a transaction is executed and be received from, or approved by, an appropriate level of the customer's management. A financial institution should decline to participate in an elevated risk CSFT if, after conducting appropriate due diligence and taking appropriate steps to address the risks from the transaction, the institution determines that the transaction presents unacceptable risk to the institution or would result in a violation of applicable laws, regulations or accounting principles.

Documentation. The documentation that financial institutions use to support CSFTs is often highly customized for individual transactions and negotiated with the customer. Careful generation, collection and retention of documents associated with elevated risk CSFTs are important control mechanisms that may help an institution monitor and manage the legal, reputational, operational, market, and credit risks associated with the transaction. In addition, sound

[8] Of course, financial institutions also should ensure that their own accounting for transactions complies with applicable accounting standards, consistently applied.

[9] The control processes that a financial institution establishes for CSFTs should take account of, and be consistent with, any informational barriers established by the institution to manager potential conflicts of interests, insider trading or other concerns.

documentation practices may help reduce unwarranted exposure to the financial institution's reputation.

A financial institution should create and collect sufficient documentation to allow the institution to:

- Document the material terms of the transaction;
- Enforce the material obligations of the counterparties;
- Confirm that customers have received any required disclosures concerning the transaction; and
- Verify that the institution s policies and procedures are being followed and allow the internal audit function to monitor compliance with those policies and procedures.

When an institution's policies and procedures require an elevated risk CSFT to be submitted for approval to senior management, the institution should maintain the transaction-related documentation provided to senior management as well as other documentation that reflect management's approval (or disapproval) of the transaction, any conditions imposed by senior management, and the reasons for such action. The institution should retain documents created for elevated risk CSFTs in accordance with its record retention policies and procedures as well as applicable statutes and regulations.

C. Other Risk Management Principles for Elevated Risk CSFTs

General Business Ethics. The board and senior management of a financial institution also should establish a ''tone at the top'' through both actions and formalized policies that sends a strong message throughout the financial institution about the importance of compliance with the law and overall good business ethics. The board and senior management should strive to create a firm-wide corporate culture that is sensitive to ethical or legal issues as well as the potential risks to the financial institution that may arise from unethical or illegal behavior. This kind of culture coupled with appropriate procedures should reinforce business-line ownership of risk identification, and encourage personnel to move ethical or legal concerns regarding elevated risk CSFTs to appropriate levels of management. In appropriate circumstances, financial institutions may also need to consider implementing mechanisms to protect personnel by permitting the confidential disclosure of concerns.[10] As in other areas of financial institution management, compensation and incentive plans should be structured, in the context of elevated risk CSFTs, so that they provide personnel with appropriate incentives to have due regard for the legal, ethical and reputational risk interests of the institution.

Monitoring Compliance with Internal Policies and Procedures. The events of recent years evidence the need for an effective oversight and review program for elevated risk CSFTs. Financial institutions should conduct periodic independent reviews of their CSFT activities to verify that their policies and controls relating to elevated risk CSFTs are being implemented effectively and that elevated risk CSFTs are accurately identified and receive proper approvals. Such monitoring may include more frequent assessments of the risk arising from elevated risk CSFTs, both individually and within the context of the overall customer relationship, and the results of this monitoring should be provided to an appropriate level of management in the financial institution.

Training. An institution should identify relevant personnel who may need specialized training regarding CSFTs to be able to effectively perform their oversight and review responsibilities. Appropriate training on the financial institution's policies and procedures for handling elevated risk CSFTs is critical. Financial institution personnel involved in CSFTs should be familiar with the institution's policies and procedures concerning elevated risk CSFTs, including the processes established by the institution for identification and approval of elevated risk CSFTs and new complex structured finance products and for the elevation of concerns regarding transactions or products to appropriate levels of management. Financial institution personnel should be trained to identify and properly handle elevated risk CSFTs that may result in a violation of law.

Audit. The internal audit department of any financial institution is integral to its defense against fraud, unauthorized risk taking and damage to the financial institution's reputation. The internal audit department of a financial institution should regularly audit the financial institution's adherence to its own control procedures relating to elevated risk CSFTs, and further assess the adequacy of its policies and procedures related to elevated risk CSFTs. Internal audit should periodically validate that business lines and individual employees are complying with the financial institution's standards for elevated risk CSFTs and appropriately identifying any exceptions. This validation should include transaction testing for elevated risk CSFTs.

Reporting. A financial institution's policies and procedures should provide for the appropriate levels of management and the board of directors to receive sufficient information and reports concerning the institution's elevated risk CSFTs to perform their oversight functions.

IV. Conclusion

Structured finance products have become an essential and important part of the U.S. and international capital markets, and financial institutions have played an important role in the development of structured finance markets. In some instances, however, CSFTs have been used to misrepresent a customer's financial condition to investors and others, and financial institutions involved in these transactions have sustained significant legal and reputational harm. In light of the potential legal and reputational risks associated with CSFTs, a financial institution should have effective risk management and internal control systems that are designed to allow the institution to identify elevated risk CSFTs, to evaluate, manage and address the risks arising from such transactions, and to conduct those activities in compliance with applicable law.

Dated: May 4, 2006.

John C. Dugan,

Comptroller of the Currency.

Dated: May 8, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By order of the Board of Governors of the Federal Reserve System, May 9, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 9th day of May, 2006.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: May 9, 2006.

By the Securities and Exchange Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–4510 Filed 5–15–06; 8:45 am]

BILLING CODE 4810–33–P, 6720–01–P, 6210–01–P, 6714–10–P, 8010–01–P

[10] The agencies note that the Sarbanes-Oxley Act of 2002 requires companies listed on a national securities exchange or inter-dealer quotation system of a national securities association to establish procedures that enable employees to submit concerns regarding questionable accounting or auditing matters on a confidential, anonymous basis. *See* 15 U.S.C. 78j–1(m).

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 May 30, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. John A. Barker, Springfield, Illinois; to retain voting shares of Barker Brothers Inc., Springfield, Illinois, and thereby indirectly retain voting shares of Middletown State Bank, Middletown, Illinois.

Board of Governors of the Federal Reserve System, May 10, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–7366 Filed 5–15–06; 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 June 9, 2006.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Juniata Valley Financial Corp., Mifflintown, Pennsylvania; to acquire 39.2 percent of the voting shares of First National Bank of Liverpool, Liverpool, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. San Joaquin Bancorp, Bakersfield, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Joaquin Bank, Bakersfield, California.

Board of Governors of the Federal Reserve System, May 10, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–7367 Filed 5–15–06; 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 Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Catskill Hudson Bancorp, Inc., Rock Hill, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Sullivan County, Thompson, New York.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. RAC, Inc., Wisconsin, Kohler, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Ridgestone Financial Services, Inc., Brookfield, Wisconsin, and thereby indirectly acquire Ridgestone Bank, Brookfield, Wisconsin.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. FMS Bancorp, Inc., Poplar Bluff, Missouri; to acquire 100 percent of the voting shares of First Missouri State Bank of Cape County, Cape Girardeau, Missouri (in organization).

D. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Frontier Financial Corporation, Everett, Washington; to acquire 12.2 percent of the voting shares of Skagit State Bancorp, Inc., and thereby indirectly acquire voting shares of Skagit State Bank, both of Burlington, Washington.

Board of Governors of the Federal Reserve System, May 11, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–7399 Filed 5–15–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Societe Generale, Paris, France; to engage *de novo* through its subsidiary Societe Generale, FSB, New York, New York in owing and operating a savings and loan association, pursuant to section 225.24(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, May 10, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–7368 Filed 5–15–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, May 22, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 12, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–4612 Filed 5–12–06; 1:32 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 052 3117]

Nations Title Agency, Inc.; 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 June 9, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Nations Title Agency, File No. 052 3117,'' 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 e-mail 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 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: Alain Sheer or Loretta Garrison, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

[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).

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 May 10, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/05/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, a consent agreement from Nations Title Agency, Inc (''Nations Title''), Nations Holding Company (''Nations Holding''), and Christopher M. Likens (''Likens'').

The consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

According to the Commission's proposed complaint, Nations Holding, Nations Title, and Likens provide services in connection with financing home purchases and refinancing existing home mortgages, including, but not limited to, real estate settlement services, residential closings, title abstracts, title commitments, appraisals, foreclosure management, asset disposition, and real estate management. Likens wholly owns Nations Holding, a subchapter ''S'' corporation, and has the authority to control the conduct of Nations Holding and its subsidiaries, including Nations Title. In providing these services, Nations Title, Nations Holding, and Likens (''respondents'') routinely obtain sensitive consumer information from banks and other lenders, real estate brokers, consumers, public records, and others, including but not limited to consumer names, Social Security numbers, bank and credit card account numbers, mortgage information, loan applications, purchase contracts, refinancing agreements, income histories, and credit histories (collectively, ''personal information'').

The Commission's proposed complaint alleges that respondents failed to employ reasonable and appropriate security measures to protect personal information. In particular, the proposed complaint alleges that respondents have engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for consumers' personal information. Among other things, respondents failed to: (1) Assess risks to the information they collected and stored both online and offline; (2) implement reasonable policies and procedures in key areas, such as employee screening and training and the collection, handling, and disposal of personal information; (3) implement simple, low-cost, and readily available defenses to common website attacks, or implement reasonable access controls, such as strong passwords, to prevent a hacker from gaining access to personal information stored on respondents' computer network; (4) employ reasonable measures to detect and respond to unauthorized access to personal information or to conduct security investigations; and (5) provide reasonable oversight for the handling of personal information by service providers, such as third parties employed to process the information and assist in real estate closings.

The proposed complaint alleges that in April 2004, a hacker exploited these failures by using a common Web site attack to obtain unauthorized access to Nations Holding's computer network. In addition, in February 2005, a Kansas City television station found documents containing sensitive personal information discarded in a dumpster used by respondents located in an unsecured area adjacent to their building.

According to the complaint, respondents' practices violated the Gramm-Leach-Bliley (''GLB'') Safeguards Rule because respondents failed to: (1) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information; (2) design and implement information safeguards to control the risks to customer information and regularly test and monitor them; (3) investigate, evaluate, and adjust the information security program in light of known or identified risks; (4) develop, implement, and maintain a comprehensive written information security program; and (5) oversee service providers and require them by contract to implement safeguards to protect respondent's customer information.

In addition, the proposed complaint alleges that respondents misrepresented that they implemented reasonable and appropriate measures to protect consumers' personal information from unauthorized access, in violation of Section 5 of the Federal Trade Commission Act (''FTC Act''). Further, the proposed complaint alleges that respondents disseminated a privacy policy that does not accurately reflect their privacy policies and practices, in violation of the GLB Privacy Rule.

The proposed order applies to personal information from or about consumers that respondents collect in connection with their real estate-related services. The proposed order contains provisions designed to prevent them from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order requires that respondents not misrepresent the extent to which they maintain and protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers.

Part II of the proposed order requires respondents to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information they collect from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to their size and complexity, the nature and scope of their activities, and the sensitivity of the personal information collected. Specifically, the order requires respondents to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of consumer information that could result in unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified

through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

• Evaluate and adjust their information security program in light of the results of testing and monitoring, any material changes to their operations or business arrangements, or any other circumstances that they know or have reason to know may have a material impact on the effectiveness of their information security program.

Part III of the proposed order requires that respondents not violate any provision of the GLB Safeguards Rule and Privacy Rule, as well as the Fair and Accurate Credit Transactions Act's Disposal Rule.

Part IV of the proposed order requires that respondents obtain within 180 days, and on a biennial basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) They have in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order, and (2) their security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts V through X of the proposed order are reporting and compliance provisions. Part V requires respondents to retain documents relating to their compliance with the order. Part VI requires dissemination of the order now and in the future to persons with supervisory responsibilities relating to the subject matter of the order. Part VII requires Likens to notify the Commission of changes in his business or employment in connection with providing financial products or services. Part VIII requires respondents to notify the Commission of changes in their corporate status. Part IX mandates that they submit compliance reports to the FTC. Part X is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

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 or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–7397 Filed 5–15–06; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Youth Empowerment Demonstration Grant Program

AGENCY: Office of Minority Health, Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

Announcement Type: Competitive Initial Announcement of Availability of Funds.

Catalog of Federal Domestic Assistance Number: (1) Youth Empowerment Demonstration Grant Program—93.910.

DATES: *Application Availability Date:* May 16, 2006. *Application Deadline:* June 15, 2006.

SUMMARY: This announcement is made by the United States Department of Health and Human Services (HHS or Department), Office of Minority Health (OMH) located within the Office of Public Health and Science (OPHS), and working in a ''One-Department'' approach collaboratively with participating HHS agencies and programs (entities). The mission of the OMH is to improve the health of racial and ethnic minority populations through the development of policies and programs that address disparities and gaps. OMH serves as the focal point in the HHS for leadership, policy development and coordination, service demonstrations, information exchange, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities.

As part of a continuing HHS effort to improve the health and well being of racial and ethnic minorities, the Department announces availability of FY 2006 funding for the Youth Empowerment Demonstration Grant Program (''Youth Empowerment Program''). Violence among children and adolescents continues to be a public health concern. In 2002, more than 877,700 young people ages 10 to 24 were injured from violent acts.[1] For this same age group, homicide is the second leading cause of death over-all: the leading cause of death for African-Americans, the second leading cause of death for Hispanics, and the third leading cause of death for American Indians, Alaskan Natives, and Asian Pacific Islanders.[2] Suicide is the third leading cause of death among young people ages 15–24, with American Indian and Alaskan Natives having the highest rate of suicide in this age group.[3] During the hours immediately after school, teens are more likely to commit violent crimes and to be the victims of violence than at any other time. For teens ages 12 to 17, this risk peaks at 3 p.m.[4] Other behaviors that contribute to placing youth at risk for unhealthy lifestyles, including violence, include tobacco use; alcohol and other drug use; sexual behaviors that contribute to unintended pregnancy and sexually transmitted diseases, including HIV infection; unhealthy dietary habits; and physical inactivity.[5] Data suggest that helping young people to achieve their full potential is the best way to prevent them from engaging in risky behaviors. The Youth Empowerment Program provides targeted youth safe places with organized activities, opportunities to use their time positively, academic enrichment, mentoring relationships with young adult role models, career exposure, opportunities to engage in community service, information and guidance on embracing healthy choices and lifestyles, and ongoing interaction with the community.

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[1] Youth Violence: Fact Sheet, retrieved October 7, 2005 from the Centers for Disease Control and Prevention, National Center for Injury Prevention and Control Web Site: *http://www.cdc.gov/ncipc/factsheets/yvfacts.*

[2] *Ibid.*

[3] Suicide: Fact Sheet, retrieved October 15, 2005 from the Centers for Disease Control and Prevention, National Center for Injury Prevention and Control Web Site: *http://www.cdc.gov/ncipc/factsheets/yvfacts.*

[4] After School Programs, retrieved October 7, 2005 from the National Youth Violence Prevention Resource Center Web site: *http://www.safeyouth.org/scripts/teens/after.*

[5] Morbidity and Mortality Weekly Report, May 21, 2004, Vol. 53, retrieved January 31, 2006 from the Centers for Disease Control and Prevention Web Site: *http://www.cdc.gov/mmwr.*

2. Administrative and National Policy Requirements
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Section I. Funding Opportunity Description

Authority: This program is authorized under 42 U.S.C. § 300 u–6, section 1707 of the Public Health Service Act, as amended.

1. *Purpose:* The Youth Empowerment Program is designed to address unhealthy behaviors in at-risk minority (see definition of ''minority populations'') youth, and provide them opportunities to learn more positive life styles and enhance their capacity to make healthier life choices. It is intended to test community-based interventions on reducing risky behaviors among targeted minority youth. These demonstration grants require a multi-partner approach involving institutions of higher education, primary and secondary schools, community organizations and institutions, and the community at-large.

2. *OMH Expectations:* Among the cohort group of at-risk minority youth, it is intended that the Youth Empowerment Program will result in:

Reduction in high risk behaviors.
Strengthening of protective/resiliency factors.
Development of skills and behaviors that lead to healthier lifestyle choices.

3. *Applicant Project Results:* Applicants must identify anticipated project results that are consistent with the overall Youth Empowerment Program purpose and OMH expectations. Project results should fall within the following general categories:

Mobilizing Communities and Partnerships
Increasing Knowledge and Awareness
Changing Behavior

The outcomes of these projects will be used to develop other national efforts to address unhealthy behaviors of minority youth.

4. *Project Requirements:* Each applicant under the Youth Empowerment Program must:

Involve at least three formal partnerships, one of which must be with a primary or secondary school. Other partners could come from the following: Youth organizations (*e.g.,* Boys and Girls Clubs), social service agencies, health/mental health agencies, faith and community-based organizations, community groups, the business community, and federally supported youth programs, including those funded through the Administration for Children and Families, Indian Health Service, and Department of Justice.

Identify the minority youth population who are at-risk of being involved in, committing or being the target of violent, abusive or other unhealthy behaviors.

Recruit and select a minimum of 25 youth, grades 3 through 10, from the target population to participate in each of the 3 years of the project as a cohort group.

Establish a Youth Center to provide services to the cohort. The Center must be established on physical site within a 10-mile radius to the target community to facilitate access to the program's services/activities on a consistent basis. (The Center can be located at the grantee institution or at a facility of one of the partner organizations.) Youth Centers established on American Indian reservations are exempted from the mileage limitation. The Center must be open year round, with activities/services offered at various times (*e.g.,* weekdays, evening, weekends) to accommodate the cohort.

Conduct a comprehensive program of support and education for the cohort in the areas of academic enrichment, personal development and wellness, cultural enrichment, and career development. Activities must be provided for a minimum of 4 hours per week throughout the year. Additionally, summer activities must include a program of at least 3 weeks duration.

Offer opportunities for students to participate in activities or events on campus.

Involve undergraduate students from the applicant organization as mentors, tutors, role models, etc.

Involve parents in activities to promote their understanding of risk and protective factors and foster enhanced interaction with their children.

Establish an Advisory Board comprised of five to nine individuals representative of the target community and partner organizations to provide advice and guidance on program implementation, design and direction. The membership must include a primary/secondary school educator or administrator, a parent, and an undergraduate student involved in programming. Other members could come from such areas as law enforcement, juvenile justice system, behavioral health, social services, and faith and community-based organizations.

A signed Memorandum of Agreement (MOA) between the applicant organization and each partner organization must be submitted with the application. Each MOA must clearly detail the roles and resources (including in-kind) that each entity will bring to the project; state the duration and terms of the agreement; cover the entire project period; and be signed by an individual with the authority to represent the organization.

Section II. Award Information

Estimated Funds Available for Competition: $5,800,000 in FY 2006.

Anticipated Number of Awards: 23–29.

Range of Awards: $200,000 to $250,000 per year.

Anticipated Start Date: September 1, 2006.

Period of Performance: 3 Years (September 1, 2006 to August 31, 2009).

Budget Period Length: 12 months.

Type of Award: Grant.

Type of Application Accepted: New.

Section III. Eligibility Information

1. Eligible Applicants

To qualify for funding, an applicant must be:

(1) A four-year undergraduate with a documented history of working in minority communities; or
(2) A Tribal College.

This is a limited competition. To qualify for funding, an applicant must be an institute of higher education, as described above.

The organization submitting the application will:

Serve as the lead agency for the project, responsible for its implementation and management; and
Serve as the fiscal agent for the Federal grant awarded.

2. Cost Sharing or Matching

Matching funds are not required for the Youth Empowerment Program.

3. Other

This limited competition is based on the need for involvement of post-secondary schools in educating, coordinating interventions, and motivating minority students from underserved areas to develop those skills and characteristics that will lead to positive life styles, reduce risk for involvement in violence and other unhealthy behaviors, and, potentially, pursue careers that will lead to the expansion of the minority healthcare work force. Institutions of higher education with a history of serving minority communities are best situated to access the target population; succeed in coordinating efforts involving the

collaboration of a wide variety of organizations, including primary and secondary schools, community organizations and institutions, and the community at-large; design, carry out and evaluate evidence-based activities of an educational nature with the target population; and insure the involvement of enrolled undergraduates, who are pursuing careers in health and social services, as mentors and role models for students from targeted minority neighborhoods, a key factor in ensuring success of these students. At the college level, these schools have greater access to a wealth of resources to design and guide the execution of such programs than would be expected from individual schools and community groups. In addition, they are in the best position to educate advisory board members, collaborating organizations, and other key stakeholders as to the root causes of violence and other unhealthy behaviors, and to understand their critical roles in addressing these issues.

If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Applications that are not complete or that do not conform to or address the criteria of this announcement will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

A college/university may submit no more that one application to the Youth Empowerment Program. Those institutions submitting more than one proposal for this grant program will be deemed ineligible, and the proposals will be returned without comment. Colleges/universities are not eligible to receive funding from more than one OMH grant program to carry out the same project and/or activities.

Section IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be obtained at *http://www.omhrc.gov* or by writing to the Office of Grants Management, OPHS, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or contact the Office of Grants Management at (240) 453–8822. Application kits may also be requested by fax at (240) 453–8823. Please specify the program name, Youth Empowerment Program, when requesting an application kit.

2. Content and Form of Application Submission

A. Application and Submission

Applicants must use Grant Application Form OPHS–1 and complete the Face Page/Cover Page (SF 424), Checklist, and Budget Information Forms for Non-Construction Programs (SF 424A). In addition, the application must contain a project narrative. The project narrative (including summary and appendices) is limited to 75 pages double-spaced. For those institutions that previously received funding under the OMH-supported Family and Community Violence Prevention Program (''FCVP''), in addition to the project narrative, you must attach a report on the FCVP Program and its results. This report is limited to 15 pages double-spaced, which do not count against the page limitation.

The narrative must be printed on one side of 8½ by 11 inch white paper, with one inch margins, double-spaced and 12-point font. All pages must be numbered sequentially including any appendices. (Do not use decimals or letters, such as: 1.3 or 2A.) Do not staple or bind the application package.

The narrative description of the project must contain the following, in the order presented:

Table of Contents.

Project Summary: Describe key aspects of the Background, Objectives, Program Plan, and Tracking and Evaluation Plan. The summary is limited to 5 pages. Background:

Statement of Need: Describe the youth at-risk to be targeted by the Youth Empowerment Program project, and the magnitude of the problem of violence, abuse, or other unhealthy behaviors on this population. In describing the problem or the need for the Youth Empowerment Program project, each applicant should clearly describe the risk factors faced by targeted youth and how the proposed protective factors will guard against and/or impact these risk factors. Provide a rationale for the approach, supported with data from the local area (national, regional and state data may be used to put the local problem in context). Identify partner organizations and provide the rationale for including them in the project.

Experience: Describe any similar projects implemented to work with issues of abuse, violence and other unhealthy behaviors, and the results of these efforts. (For those institutions that previously received funding under the OMH-supported Family and Community Violence Prevention Program, you must attach a report on that specific project and its results.) Discuss the applicant organization's experience in managing projects/activities, especially those targeting the population to be served. Indicate where the project will be located within the college/university structure and the reporting channel. Provide a chart of the proposed project's organizational structure, showing who will report to whom. Describe how the partner organizations will interface with the applicant organization.

Objectives: Provide an objective for each of the required program areas (*i.e.*, academic enrichment, personal development and wellness, cultural enrichment, and career development). State objectives in terms of proposed measurable improvement, including time frames for achievement for the three-year project period.

Program Plan: Describe the target population of at-risk youth to be served. Describe specific activities and strategies planned to address the identified risk factors and achieve each objective. Include the role of partner organizations and undergraduate students. Describe recruitment and selection criteria for the cohort group, and plans for replacing any members who drop out over the course of the three-year project.

For each activity, describe how, when, where, by whom, and for whom the activity will be conducted. Activities must be conducted in the areas of academic enrichment, personal development and wellness, cultural enrichment, and career development of youth.

Academic Enrichment are those activities designed to improve academic skills (*e.g.*, math, reading, science, note taking, time management, and test taking) which will facilitate students' progression through school.

Personal Development and *Wellness* are activities designed to promote and enhance positive self concepts and healthy lifestyles, including physical activity, offer students safe and positive alternatives for use of free time, develop interpersonal skills, and improve family relations and stability.

Cultural Enrichment are those activities designed to expose students to a variety of cultural experiences to promote understanding and appreciation of diverse cultures, and promote awareness of their heritage.

Career Development are those activities designed to expose individuals to a variety of career options, including health and biomedical careers, and impart

information on the preparatory activities necessary for such careers.

Provide a description of the proposed program staff, including resumes and job descriptions for key staff, qualifications and responsibilities of each staff member, and percent of time each will commit to the project. Provide a description of duties for any proposed consultants. Describe any products to be developed by the project. Provide a time line for each of the three years of the project.

Tracking and Evaluation Plan: Describe the plan for tracking the participants through each educational milestone (*e.g.*, middle school, high school, college). Clearly delineate how program activities will be evaluated. The evaluation plan must be able to produce documented results that demonstrate whether and how the strategies and activities funded under the Program: (1) Made a difference in positively impacting the incidences of violent, abusive and/or unhealthy behavior in the target population and (2) affected lifestyles choices. The plan must identify the expected results for each objective. The description must include data collection and analysis methods, demographic data to be collected on project participants, process measures which describe indicators to be used to monitor and measure progress toward achieving projected results, outcome measures to show the project has accomplished planned activities, and impact measures that demonstrate achievement of the objectives.

Discuss plans and describe the vehicle (*e.g.*, manual, CD), that will be used to document the steps which others may follow to replicate the proposed project in similar communities. Describe plans for disseminating project results to other communities and schools.

Appendices: Include MOAs and other relevant information in this section.

If applicable, attach a report on the project and outcomes supported under the Family and Community Violence Prevention Program (does not count against page limitation).

In addition to the project narrative, the application must contain a detailed budget justification which includes a narrative explanation and indicates the computation of expenditures for each year for which grant support is requested. The budget request must include funds for key project staff to attend two annual OMH grantee meetings. (The budget justification does not count toward the page limitation.)

B. Data Universal Numbering System Number (DUNS)

Applications must have a Dun & Bradstreet (D&B) Data Universal Numbering System number as the universal identifier when applying for Federal grants. The D&B number can be obtained by calling (866) 705–5711 or through the web site at *http://www.dnb.com/us/.*

3. Submission Dates and Times

Application Deadline Date: June 15, 2006.

Submission Mechanisms

The Office of Public Health and Science provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the Office of Grants Management, OPHS, confirming the receipt of applications submitted using any of these mechanisms. Applications submitted after the deadline described below will not be accepted for review. Applications that do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

You may submit your application in either electronic or paper format.

To submit an application electronically, use either the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov* or the Grants.gov Web site, *http://www.Grants.gov/.* OMH will not accept grant applications via any other means of electronic communication, including e-mail or facsimile transmission.

Electronic Submission

If you choose to submit your application electronically, please note the following:

Electronic submission is voluntary, but strongly encouraged. You will not receive additional point value because you submit a grant application in electronic format, nor will you be penalized if you submit an application in paper format.

The electronic application for this program may be accessed on *https://egrants.osophs.dhhs.gov* (eGrants) or on *http://www.grants.gov/* (Grants.gov). If using Grants.gov, you must search for the downloadable application package by the CFDA number (93.910).

When you enter the eGrants or the Grants.gov sites, you will find information about submitting an application electronically, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process. Visit eGrants or Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. Grants.gov requires organizations to successfully complete a registration process prior to submission of an application. The body of the application and required forms can be submitted electronically using either system. Electronic submissions must contain all forms required by the application kit, as well as the Program Narrative, Budget Narrative, and any appendices or exhibits. Applicants using eGrants are also required to submit, by mail, a hard copy of the face page (SF–424) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. (Applicants using Grants.gov are not required to submit a hard copy of the SF–424, as Grants.gov uses digital signature technology.) If required, applicants using eGrants may also need to submit a hard copy of SF LLL, and/or certain program related forms (*e.g.*, Program certifications) with original signatures.

Any other hard copy materials, or documents requiring signature, must also be submitted via mail. Mail-in items may only include publications, resumes, or organizational documentation. (If applying via eGrants, the applicant must identify the mail-in items on the Application Checklist at the time of electronic submission.) The application will not be considered complete until both the electronic application components and any hard copy materials or original signatures are received. All mailed items must be received by the Office of Grants Management, OPHS by the deadline specified below.

Your application must comply with any page limitation requirements described in this program announcement.

We strongly encourage you to submit your electronic application well before the closing date and time so that if difficulties are encountered you can still send in a hard copy overnight. If you encounter difficulties, please contact the eGrants Help Desk at 1–301–231–9898 x142 (*egrants-help@osophs,dhhs.gov*), or the Grants.gov Help Desk at 1–800–518–4276 (*support@grants.gov*) to report the problem and obtain assistance with the system.

Upon successful submission via eGrants, you will receive a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. The confirmation will also provide a listing

of all items that constitute the final application submission including all electronic application components, required hard copy original signatures, and mail-in items, as well as the mailing address of the Office of Grants Management, OPHS, where all required hard copy materials must be submitted and received by the deadline specified below. As items are received by that office, the application status will be updated to reflect their receipt. Applicants are advised to monitor the status of their applications in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Upon successful submission via Grants.gov, you will receive a confirmation page indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that you print and retain this confirmation for their records, as well as a copy of the entire application package. Applications submitted via Grants.gov also undergo a validation process. Once the application is successfully validated by Grants.gov, you will again be notified and should immediately mail all required hard copy materials to the Office of Grants Management, OPHS, to be received by the deadline specified below. It is critical that you clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials. Validated applications will be electronically transferred to the OPHS eGrants system for processing. Any applications deemed ''Invalid'' by Grants.gov will not be transferred to the eGrants system. OPHS has no responsibility for any application that is not validated and transferred to OPHS from Grants.gov.Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on June 15, 2006. All required hard copy original signatures and mail-in items must be received by the Office of Grants Management, OPHS, no later than 5 p.m. Eastern Time on the next business day after the deadline.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the complete application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The original and each of the two copies must include all required forms, certifications, assurances, and appendices.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the Office of Grants Management, OPHS, on or before 5 p.m. Eastern Time on June 15, 2006. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

For applications submitted in hard copy, send an original, signed in blue ink, and two copies of the complete application to: Ms. Karen Campbell, Director, OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Required hard copy mail-in items should be sent to this same address.

4. Intergovernmental Review

The Youth Empowerment Program is subject to requirements of Executive Order 12372 which allows States the options of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. The SPOC list is also available on the Internet at the following address: *http://www.whitehouse.gov/omh/grants/spoc/html.* Applicants should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instruction on the State process. The due date for State process recommendations is 60 days after the application deadlines established by the OPHS Grants Management Officer. TheOMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. Funding Restrictions

Budget Request: If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Grants funds may be used to cover costs of:

Personnel.
Consultants.
Equipment.
Supplies.
Grant-related travel (domestic only), including attendance at two OMH grantee meetings per year.
Other grant-related costs.

Grants funds may not be used for:

Building alterations or renovations.
Construction.
Fund raising activities.
Job training.
Medical care, treatment or therapy.
Political education and lobbying.
Research studies involving human subjects.
Vocational rehabilitation.

Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kit.

Section V. Application Review Information

1. Criteria

The technical review of the Youth Empowerment Program applications will consider the following four generic factors listed, in descending order of weight.

A. Factor 1: Program Plan (40%)

Appropriateness of proposed approach and specific activities for each objective. Logic and sequencing of the planned approaches as they relate to the statement of need and to the objectives.

Soundness of proposed partnerships (*e.g.*, primary and secondary schools, community organizations) and their roles in the program.

Involvement of appropriate undergraduate students in carrying out program activities. Appropriateness of the activities for each of the three years for the targeted age group, and identified risk factors.

Applicant's capability to manage and evaluate the project as determined by:

Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff and consultants.

Proposed staff level of effort.

Management experience of the applicant.

The applicant's organizational structure and proposed project organizational structure.

Appropriateness of defined roles including staff reporting channels and that of any proposed consultants.

Clear lines of authority among the proposed staff within and between participating organizations.

B. Factor 2: Tracking and Evaluation Plan (25%)

The degree to which expected results are appropriate for objectives and activities.

Appropriateness of the proposed data collection plan (including demographic data to be collected on project participants), analysis and reporting procedures.

Soundness of the plan to track program participants.

Suitability of process, outcome, and impact measures.

Clarity of the intent and plans to assess and document progress towards achieving objectives, planned activities, and intended outcomes.

Potential for the proposed project to impact violent, abusive and/or unhealthy behaviors of the target population.

Soundness of the plan to document the project for replicability in similar communities.

Soundness of the plan to disseminate project results.

C. Factor 3: Background (20%)

Demonstrated knowledge of the problem, including factors that place youth at risk, at the local level.

Significance and prevalence of violence, abuse and other unhealthy behaviors in the proposed community and target population.

Extent to which the applicant demonstrates access to the target community(ies), and whether it is well positioned and accepted within the community(ies) to be served.

Extent and documented outcome of past efforts and activities with the target population.

Extent and documented outcome(s) of activities conducted under the OMH-supported Family and Community Violence Program, if applicable.

D. Factor 4: Objectives (15%)

Merit of the objectives for each of the four required program areas (*i.e.*, academic enrichment, personal development and wellness, cultural enrichment, and career development).

Relevance to the OMH Program, purpose and expectations, and to the applicant's stated problem.

Attainability of the objectives in the stated time frames.

2. Review and Selection Process

Accepted Youth Empowerment Program applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Committee (ORC). Committee members are chosen for their expertise in minority health and health disparities, and their understanding of the unique health problems and related issues confronted by the racial and ethnic minority populations in the United States. Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health who will take under consideration:

The recommendations and ratings of the ORC.

Geographic distribution of applicants.

Racial/ethnic distribution of targeted audience.

3. Anticipated Award Date

September 1, 2006.

Section VI. Award Administration Information

1. Award Notices

Successful applicants will receive a notification letter from the Deputy Assistant Secretary for Minority Health and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the Office of Minority Health. Unsuccessful applicants will receive notification from OPHS.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The DHHS Appropriations Act requires that, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting Requirements

A successful applicant under this notice will submit: (1) Semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR 74.51–74.52, with the excepting of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Uniform Data Set: The Uniform Data Set (UDS) is a web-based system used by OMH grantees to electronically report progress data to OMH. It allows OMH to more clearly and systematically link grant activities to OMH-wide goals and objectives, and document programming impacts and results. All OMH grantees are required to report program information via the UDS (*http://www.dsgonline.com/omh/uds*). Training will be provided to all new grantees on the use of the UDS system during the annual grantee meeting.

Grantees will be informed of the progress report due dates and means of submission. Instructions and report format will be provided prior to the required due date. The Annual Financial Status Report is due no later than 90 days after the close of each budget period. The final progress report and Financial Status Report are due 90 days after the end of the project period. Instructions and due dates will be provided prior to required submission.

Section VII. Agency Contacts

For questions on budget and business aspects for the application, contact the Mr. DeWayne Wynn, Grants Management Specialist, OPHS Office of Grants Management, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Mr. Wynn can be reached by telephone at (240) 453–8822; or by e-mail at *dwynn@osophs.dhh.gov.*

For questions related to the Youth Empowerment Program or assistance in preparing a grant proposal, contact Ms. Cynthia Amis, Director, Division of Program Operations, Office of Minority Health, Tower Building, Suite 600, 1101 Wootton Parkway, Rockville, MD 20852. Ms. Amis can be reached by telephone at (240) 453–8444; or by e-mail at *camis@osophs.dhhs.gov.*

For additional technical assistance, contact the OMH Regional Minority Health Consultant for your region listed in your grant application kit.

For health information, call the OMH Resource Center (OMHRC) at 1–800–444–6472.

Section VIII. Other Information

1. Healthy People 2010

The Public Health Service (PHS) is committed to achieving the health promoting and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 Web site: *http://www.healthypeople.gov* and copies of the documents may be

downloaded. Copies of the Healthy People 2010: Volumes I and II can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $20.00 for CD–ROM). Another reference is the Healthy People 2010 Final Review-2001.

For one free copy of the Healthy People 2010, contact: The National Center for Health Statistics, Division of Data Services, 3311 Toledo Road, Hyattsville, MD 20782, or by telephone at (301) 458–4636. Ask for HHS Publication No. (PHS) 99–1256. This document may also be downloaded from: *http://www.healthypeople.gov.*

2. Definitions

For purposes of this announcement, the following definitions apply:

Minority Populations—American Indian and Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander (42 U.S.C. 300u–6, section 1707 of the Public Service Act, as amended).

Protective Factors—Those factors that potentially decrease the likelihood of engaging in a risk behavior. (Risk and Protective Factors for Youth Violence Fact Sheet, retrieved November 15, 2005 from the National Youth Violence Prevention Resource Center Web Site: *http://www.safeyouth.org*)

Risk Factors—scientifically established factors or determinants for which there is strong objective evidence of a causal relationship to a problem. (Risk and Protective Factors for Youth Violence Fact Sheet, retrieved November 15, 2005 from the National Youth Violence Prevention Resource Center Web Site: *http://www.safeyouth.org*)

Tribal College or University (TCU)—One of the institutions cited in section 532 of the Equity in Education Land-Grants Status Acts of 1994 (U.S.C. 301 note) or that qualify for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 et seq.), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Dated: May 9, 2006.

Mirtha R. Beadle,

Deputy Director, Office of Minority Health.

[FR Doc. E6–7447 Filed 5–15–06; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

DATES: June 19, 2006, 8 a.m. to 5 p.m., and June 20, 2006, 8 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 in Room 800.

FOR FURTHER INFORMATION CONTACT: Dana Ceasar, Program Assistant, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 351F, Washington, DC 20201; (202) 690–2470 or visit the Council's Web site at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 21 members. Council membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this Council meeting includes the following topics: Disparities in HIV/AIDS health care, HIV/AIDS prevention, and HIV/AIDS international issues. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker.

Public attendance is limited to space available and pre-registration is required. Any individual who wishes to participate should register at *http://www.pacha.gov*. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate in the comment section when registering.

Dated: May 8, 2006.

Joseph Grogan,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. E6–7449 Filed 5–15–06; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *acmh@osophs.dhhs.gov*.

DATES: The meeting will be held on June 13, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza, 8777 Georgia Avenue, Silver Spring, Maryland 20910. The meeting is accessible from the Silver Spring Metro Station.

FOR FURTHER INFORMATION AND REGISTRATION CONTACT: Garth Graham, M.D., M.P.H., Executive Secretary, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882; Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve Native American Health (including ''indigenous'' peoples of the U.S. and the Pacific Islands), Information Technology's Role in Health Care, and Educational Outreach and Health Promotion in improving the health of racial and ethnic minority populations, as well as other related issues.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to five minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least five business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Secretary, ACMH, prior to close of business June 2, 2006.

Dated: May 8, 2006.

Mirtha R. Beadle,

Deputy Director, Office of Minority Health, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

[FR Doc. E6–7438 Filed 5–15–06; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Quality indicators Workgroup on Risk Adjustment Approaches to Administrative Data

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking nominations for members of an AHRQ-convened Workgroup on risk adjustment specifically aimed at the AHRQ Quality Indicators (QIS). This Workgroup is being formed as part of a structured approach for evaluating risk-adjustment and the appropriateness of hierarchical modeling methodology for the AHRQ Quality Indicators at the area and/or provider levels. The Workgroup will evaluate appropriate technical and methodological approaches currently available, and will also discuss and suggest strategies as to what risk adjustment approach(s), if any, would best fit AHRQ QI user needs. As part of this effort and using the AHRQ QIs, the Workgroup member will be addressing several key issues for the development of a risk adjustment methodology, including but not limited to:

- Statistical and methodological issues related to the development and validation of risk adjusted models that predict patient outcomes using administrative data, and are suitable for assessing quality at different levels (individual hospital, State, region).
- Methods for comparing the performance of hierarchical methods with previously employed methods based on administrative data to improve predictive and discriminant ability, and overall fit.
- Appropriate use of sub-sampling techniques for model validation.
- Computation of confidence intervals for assessing provider-specific and State-level performance in comparison to national summary statistics (means or percentiles).

For additional information about the AHRQ QIs, please visit the AHRQ Web site at *http://www.qualityindicators.ahrq.gov.*

Specifically, the AHRQ QIs Risk Adjustment Workgroup will consist of up to 9 individuals who are familiar with different risk adjustment methodologies including hierarchical modeling approaches. The Workgroup will have a series of conference calls to discuss the technical and policy issues surrounding risk adjustment for the AHRQ QIs and will then assist AHRQ in developing a report that will aim to summarize the discussions and suggestions of the workgroup, which will be made available for public comment.

DATES: Please submit nominations on or before June 15, 2006. Self-nominations are welcome. Third-party nominations must indicate that the individual has been contacted and is willing to serve on the workgroup. Notification of selected candidates will be contacted by AHRQ no later than June 29, 2006.

ADDRESSES: Nominations can be sent in the form of a letter or e-mail, preferably as an electronic file with an e-mail attachment and should specifically address the submission criteria as noted below. electronic submissions are strongly encouraged. Responses should be submitted to:

ATTN: Project Officer, AHRQ Quality Indicators Project, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Room 5121, Rockville, MD 20850, E-mail: *projectofficer@qualityindicators.ahrq.gov.*

Submission Criteria

To be considered for membership on the AHRQ QI Workgroup, please send the following information for each nominee:

1. A brief nomination letter highlighting experience/knowledge relevant in the development and use of risk adjustment methodology including hierarchical modeling approaches and familiarity with the AHRQ QIs and health care administrative data. (See selection criteria below.) Please include full contact information of nominee: name, title, organization, mailing address, telephone and fax numbers, and e-mail address.
2. Curriculum vita (with citations to any pertinent publications).

Nominee Selection Criteria

Nominees should have technical expertise in health care quality measurement development, and a familiarity with statistical methods in the area of risk adjustment as well as hierarchical modeling,.

More specifically, each candidate will be evaluated using the following criteria:

- Knowledge of recent risk-adjustment and hierarchical modeling approaches published in the literature;
- Peer-reviewed publications relevant to the development and use of risk-adjustment, hierarchical modeling; performance measures and reporting;
- Expertise in statistical methods relevant to the evaluation of alternative approaches to risk-adjustment and hierarchical modeling;
- Experience with development of measures based on administrative data and its uses;
- Expertise in hospital quality improvement and patient safety;
- Familiarity with the AHRQ Quality Indicators and their application; and,
- Availability to participate in conference calls and provide written comments starting from late June through September 2006.

Time Commitment

In an effort to provide for expert input and for recommendations on how to improve on the existing risk adjustment approach to administrative data, we are initiating a review process that will require participation in approximately

four to five conference calls with some pre and post evaluation time (approximately 13 hours). Results from this process will influence the development of risk-adjustment and hierarchical modeling approaches for the AHRQ Quality Indicators. Beginning in late June through September, selected nominees will be asked to participate in the following activities:

Workgroup Activities

1. Provide evaluative comments on current methodology for risk-adjustment and hierarchical modeling (2.0 hours) and participate in subsequent Workgroup call (1.0 hour);
2. Participate in second Workgroup conference call to discuss suggested changes to the current modeling methodology, including the adoption of hierarchical methods (1.5 hour);
3. Provide evaluative comments on AHRQ's new draft or revised methodology (1.5 hour);
4. Participate in third Workgroup call to respond to each others' comments and questions or provide additional clarifications regarding draft methodology (1.5 hours);
5. Review draft summary document (1.5 hour);
6. Participate in fourth Workgroup call. Provide suggestions for summary document for public comment (2.0 hours); and,
7. Participate in final Workgroup call. Discuss and respond to public comments (2.0 hours).

Please note that should additional conference calls be necessary, Workgroup members are expected to make every effort to participate. The Workgroup will conduct business by telephone, e-mail, or other electronic means as needed.

FOR FURTHER INFORMATION CONTACT:

Mamatha Pancholi, Center for Delivery, Organization, and Markets, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1470; Fax: (301) 427–1430; E-mail: *mamatha.pancholi@ahrq.hhs.gov*

Marybeth Farquhar, Center for Delivery, Organization, and Markets, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1317; Fax: (301) 427–1430; E-mail: *marybeth.farquhar@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The AHRQ Quality Indicators (AHRQ QIs) are a unique set of measures of health care quality that make use of readily available hospital inpatient administrative data. The QIs have been used for various purposes. Some of these include tracking, hospital self-assessment, reporting of hospital-specific quality or pay for performance. The AHRQ QIs are provider- and area-level quality indicators and currently consist of four modules: the Prevention Quality Indicators (PQI), the Inpatient Quality Indicators, the Patient Safety Indicators (PSI), and the Pediatric Quality Indicators (PedQIs). In response to feedback from the AHRQ QI user community, AHRQ is committed to developing risk adjustment approaches in an effort to provide an overall view of quality that is complete, useful and easily understandable to consumers and others with the health care field.

Dated: May 8, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–4574 Filed 5–15–06; 8:45am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Criteria for Removing Chemicals From Future Editions of CDC's National Report on Human Exposure to Environmental Chemicals

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On Monday, October 7, 2002, CDC published final criteria for consideration of chemicals or categories of chemicals for possible inclusion in future releases of CDC's ''National Report on Human Exposure to Environmental Chemicals (the ''Report'') and also solicited chemicals for possible inclusion in future editions of the ''Report'' (See **Federal Register,** 67 FR 62477). The final selection criteria have remained the same since the issuance of the 2002 notice. They are as follows: (1) Independent scientific data which suggest that the potential for exposure of the U.S. population to a particular chemical is changing (*i.e.*, increasing or decreasing) or persisting; (2) seriousness of health effects known or suspected to result from exposure to the chemical (for example, cancer, birth defects, or other serious health effects); (3) proportion of the U.S. population likely to be exposed to levels of chemicals of known or potential health significance; (4) need to assess the efficacy of public health actions to reduce exposure to a chemical in the U.S. population or a large component of the U.S. population (for example, among children, women of childbearing age, the elderly); (5) existence of an analytical method that can measure the chemical or its metabolite in blood or urine with adequate accuracy, precision, sensitivity, and speed; and (6) incremental analytical cost (in dollars and personnel) to perform the analyses (preference is given to chemicals that can be added readily to existing analytical methods).

On Tuesday, September 30, 2003, CDC published a record of the nominated chemicals of interest that were scored by a panel of experts in accordance with the published selection criteria. (See **Federal Register**, 68 FR 56296.) All of this information is available on CDC's Web site at *http://www.cdc.gov/exposurereport/chemical_nominations.htm.* Past and future nominations do not result in obligatory laboratory analysis or inclusion of nominated chemicals in the ''Report,'' but rather serve to better inform CDC about which chemicals are of concern to the public.

CDC now requests public comment on proposed criteria for removing chemicals from future editions of the ''Report.'' These removal criteria (given below) will become part of a combined process of nominating chemicals for inclusion in or removal from the ''Report.'' This process will include (a) nominations from the public of chemicals to include or remove from the ''Report,''(b) an external scoring of nominations in accord with the published nomination and removal criteria, and (c) assistance from the Board of Scientific Counselors of CDC's National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in reviewing plans for including or removing chemicals and identifying alternatives for monitoring specific at-risk population subgroups. This combined process for nomination and removal would occur periodically (*e.g.*, every six years). The criteria for selecting and removing chemicals apply only to those chemicals published in the ''Report,'' not those merely nominated.

The proposed removal criteria are as follows: A chemical may be removed from the ''Report'': (1) If a new replacement chemical (*i.e.*, a metabolite) is more representative of exposure than the chemical currently being measured or; (2) if after three survey periods (or not less than six years), detection rates for all chemicals within a methodological and chemically-related group* are less than 5 percent for all

population subgroups (two sexes, three race/ethnicity, and three age groups) or; (3) if after three survey periods (or not less than six years), levels of chemicals within a methodological and chemically-related group are unchanged or declining in all the specific subgroups as documented in the ''Report.''

A chemical would continue to be measured and not be removed from the ''Report'' if it met either of two proposed exceptions to these criteria: (a) It is a chemical for which there is an established biomonitoring health threshold (*e.g.*, CDC's level of concern for blood lead levels in children) or any chemical for which there is widespread public health concern (*e.g.*, mercury) or (b) three survey periods (or not less than six years) have passed, which constitute the minimum time before a chemical could be removed; a longer period may be necessary to account for the half-life of a particular chemical or to account for a recent change (*e.g.*, the removal of a chemical from commerce) that would necessitate monitoring of the population.

Note that the criteria for removing a chemical from the ''Report'' are not the corollaries of the criteria for adding chemicals to the ''Report.'' After reviewing and incorporating public comments from this announcement, CDC will publish the criteria in their final form in the **Federal Register.**

*Chemicals within a methodological and chemically related group are those which are detected and identified by a single test or analytic procedure, such that individual chemicals in the group cannot easily be dropped from analysis while others in the group continue to be monitored.

DATES: Submit comments on or before May 31, 2006, to the below address.

ADDRESSES: Address all comments concerning this notice to Dorothy Sussman, Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Laboratory Sciences, Mail Stop F–20, 4770 Buford Highway, Atlanta, Georgia 30341.

FOR FURTHER INFORMATION CONTACT: Dorothy Sussman, Telephone 770–488–7950.

SUPPLEMENTARY INFORMATION: CDC publishes the ''Report'' under the authorities 42 U.S.C. 241 and 42 U.S.C. 242k. The ''Report'' provides ongoing assessment using biomonitoring of the exposure of the noninstitutionalized, civilian population to environmental chemicals. Biomonitoring assesses human exposure to chemicals by measuring the chemicals or their metabolites in human specimens such as blood or urine. For the ''Report,'' an environmental chemical means a chemical compound or chemical element present in air, water, soil, dust, food, or other environmental medium. The ''Report'' provides exposure information about participants in an ongoing national survey known as the National Health and Nutrition Examination Survey (NHANES). This survey is conducted by CDC's National Center for Health Statistics; measurements are conducted by CDC's National Center for Environmental Health. The first ''Report,'' published in March 2001, gave information about levels of 27 chemicals found in the U.S. population; the second ''Report,'' published in January 2003, contained exposure information on 116 chemicals, including the 27 chemicals in the first ''Report.'' The third ''Report,'' published in July 2005, contained exposure information on 148 chemicals, including data on the chemicals published in the second ''Report.'' This ''Report'' can be obtained in the following ways: access *http://www.cdc.gov/exposurereport;* e-mail *ncehdls @cdc.gov;* or telephone 1–866–670–6052. Over time, CDC will be able to track trends in exposure levels. The ''Report'' is published every 2 years; the fourth ''Report'' is slated for publication in 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–7395 Filed 5–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Medicaid Program and State Children's Health Insurance Program (SCHIP) Payment Error Rate Measurement (PERM), System No. 09–70–0578.'' The Improper Payments Information Act (IPIA) of 2002 (Pub. L. 107–300) requires heads of Federal agencies to annually estimate and report to the Congress national error rates for the programs they oversee. The Medicaid and SCHIP programs were identified by the Office of Management and Budget (OMB) as programs at risk for significant erroneous payments. OMB has directed HHS to report the estimated error rate for the Medicaid and SCHIP programs to OMB. Since Medicaid and SCHIP are administered by state agencies according to each state's unique program characteristics, state assistance in estimating improper payments is critical and continues to be necessary and important for the Secretary to comply with the requirements of the IPIA. CMS will use a national contracting strategy to calculate a state-by-state, comprehensive error rate for both the Medicaid and SCHIP programs. Implementing regulations set forth state requirements to: (1) Provide claims information to CMS for the purposes of estimating improper payment in Medicaid and SCHIP; and (2) measure improper payments in the Medicaid and SCHIP based on eligibility errors.

The primary purpose of this system is to collect and maintain individually identifiable claims information to calculate payment error rates for Medicaid and SCHIP programs. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency in the proper administration of the Medicare program, enable such agency to administer a Federal health benefits program, and/or assist Federal/state Medicaid programs within the state; (3) support constituent requests made to a Congressional representative; (4) to support litigation involving the Agency related to this system; and (5) combat fraud and abuse in certain health benefits programs. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, OMB on May 9, 2006. To ensure that all parties have adequate time in which to comment, the new system will become effective 30

days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development, CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Catherine Pesto, Division of Analysis and Evaluation, Program Integrity Group, Office of Financial Management, CMS, Mail Stop C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Her telephone number is 410–786–3492, or e-mail at *Catherine.Pesto@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Improper Payments Information Act of 2002 (IPIA), Public Law 107–300, enacted on November 26, 2002, requires the heads of Federal agencies to review annually programs they oversee that are susceptible to significant erroneous payments, to estimate the amount of improper payments, to report those estimates to the Congress, and to submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed OMB to provide subsequent guidance. OMB defines significant erroneous payments as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million (OMB M–03–13, 05/21/03). For those programs with significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

In the report to the Congress, Federal agencies must include: (1) The estimate of the annual amount of erroneous payments; (2) a discussion of the causes of the errors and actions taken to correct those causes; (3) a discussion of the amount of actual erroneous payments the agency expects to recover; and (4) limitations that prevent the agency from reducing the erroneous payment levels, that is, resources or legal barriers.

There currently is no systematic means of measuring payment errors at the state and national levels for Medicaid and SCHIP. Through the Payment Accuracy Measurement (PAM) and Payment Error Rate Measurement (PERM) pilot projects that operated in Fiscal Years (FYs) 2002 through 2005, we determined that it is feasible to estimate improper payments for Medicaid and SCHIP and refined a review methodology. This methodology was designed to estimate state-specific payment error rates within ±3 percent of the true population error rate with 95 percent confidence. Moreover, through weighted aggregation, the state-specific estimates can be used to make national level error rate estimates for Medicaid and SCHIP that meet OMB's confidence and precision requirements.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for the System

Authority for this system is given under provisions of the Improper Payments Information Act of 2002 (Pub. L. 107–300), sections 1102, 1902(a)(6), 1902(a)(27), and 2107(b)(1) of the Social Security Act.

B. Collection and Maintenance of Data in the System

Information in this system is collected on eligibility and claims information included in the annual random sample to measure Medicaid and SCHIP payment error rates. Information collected for this system will include, but is not limited to, name, Medicaid and SCHIP identification number, Medicaid and SCHIP claims data, provider's medical records, claim numbers, managed care capitation payment data, and eligibility-related information on the Medicaid and SCHIP beneficiaries included in the eligibility sample.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release PERM information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of PERM. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to collect and maintain individually identifiable claims information to calculate payment error rates for Medicaid and SCHIP programs.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system to:

1. Agency contractors, consultants or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need

to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system. CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give contractors, consultants or grantees whatever information is necessary for the contractors, consultants or grantees to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractors, consultants or grantees from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. Another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper administration of the Medicare program,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid and/or SCHIP programs within the state.

Other Federal or state agencies in their administration of a Federal or state health program may require PERM information in order to collect information on Medicaid and SCHIP beneficiaries to ensure that claims are processed in an orderly and consistent manner.

3. Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

4. The Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

5. A CMS contractor (including, but not necessarily limited to Federal contractors engaged by CMS to develop and calculate Medicaid and SCHIP payment and eligibility error rates) that assists in the administration of a CMS-administered program to measure payment error rates in the Medicaid and SCHIP programs, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information at the direction of CMS.

6. Another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require PERM information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information

Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: May 8, 2006.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No.: 09–70–0578.

SYSTEM NAME:

''Medicaid Program and State Children's Health Insurance Program Payment Error Rate Measurement (PERM)''.

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244–1850; and at various contractor location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information in this system is collected on eligibility and claims information included in the annual random sample to measure Medicaid and SCHIP payment error rates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected for this system will include, but is not limited to, name, Medicaid and SCHIP identification number, Medicaid and SCHIP claims data, provider's medical records, claim numbers, managed care capitation payment data, and eligibility-related information on the Medicaid and SCHIP beneficiaries included in the eligibility sample.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is given under provisions of the Improper Payments Information Act of 2002 (Pub. L. 107–300), sections 1102, 1902(a)(6), 1902(a)(27), and 2107(b)(1) of the Social Security Act.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to collect and maintain individually identifiable claims information to calculate payment error rates for Medicaid and SCHIP programs. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency in the proper administration of the Medicare program, enable such agency to administer a Federal health benefits program, and/or assist Federal/state Medicaid programs within the state; (3) support constituent requests made to a Congressional representative; (4) to support litigation involving the Agency related to this system; and (5) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system to:

1. Agency contractors, consultants or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. Another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper administration of the Medicare program,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid and/or SCHIP programs within the state.

3. Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

4. The Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. A CMS contractor (including, but not necessarily limited to Federal contractors engaged by CMS to develop and calculate Medicaid and SCHIP payment and eligibility error rates) that assists in the administration of a CMS-administered program to measure payment error rates in the Medicaid and SCHIP programs, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

6. Another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that

administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures. To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic and/or hard copy media.

RETRIEVABILITY:

Information can be retrieved by provider name, beneficiary name, claim number, Medicaid or SCHIP identification number, or other identifying variables.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period of 6 years and 3 months. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Analysis and Evaluation, Program Integrity Group, Office of Financial Management, CMS, Mail Stop C3–02–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, Medicaid Identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and Social Security Number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from claims submitted by providers participating in the Medicaid and SCHIP programs, provider's medical records, and information collected on individuals to establish their eligibility for these programs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–7393 Filed 5–15–06; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Court Improvement Program.
OMB No.: 0970–0245.
Description: The Court Improvement Program provides grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes and to develop and implement a plan for system improvement. ACF proposes to collect information from the States about this program (applications, program reports) by way of a Program Instruction, which (1) describes the requirements for States under the reauthorization of the Court Improvement Program; (2) outlines the programmatic and fiscal provisions and reporting requirements of the program; (3) specifies the application submittal and approval procedures for the program for Fiscal Years 2003 through 2006; and (4) identifies technical resources for use by State courts during the course of the program. This Program Instruction contains information collection requirements that are found in Pub. L. 103–66, as amended by Pub. L. 105–89 and Pub. L. 107–133; and pursuant to receiving a grant award. The agency will use the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.
Respondents: State Courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual program report	52	1	36	1,872

Estimated Total Annual Burden Hours: 3,952.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 11, 2006

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–4576 Filed 5–15–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires the Office of Refugee Resettlement to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the United States. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report, which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze the refugee secondary services formula allocation.

Respondents: State, local and tribal government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–11 State-of-Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 10, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–4577 Filed 5–15–06; 8:45am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: building Strong Families (BSF) Demonstration and Evaluation—Implementation and Impact Study.

OMB No.: New Collection.

Description: This proposed information collection activity is for two types of data collections: (1) Interview and focus group protocols for use with program staff and couples enrolled in BSF programs and (2) a telephone survey to be administered (about 15 months after enrollment) to both partners of couples enrolled in the BSF research sample.

These data collections are part of the BSF evaluation, which is an important opportunity to learn if well-designed interventions can help low-income couples develop the knowledge and relationship skills that research has shown are associated with healthy marriages. BSF programs will provide instruction and support to improve marriage and relationship skills and enhance couples' understanding of marriage. In addition, BSF programs will provide links to a variety of other services that could help couples sustain a healthy relationship (e.g., employment assistance). The BSF evaluation uses an experimental design that randomly assigns couples who volunteer to participate in BSF programs to a program or to a control group.

The BSF evaluation has two parts, an implementation study and an impact study. For the implementation study, the BSF evaluation will use the interview and focus-group protocols to document how the programs worked and the experiences of staff and couples enrolled. For the impact study, the BSF evaluation will use telephone surveys to determine whether the BSF programs helped couples form healthier marriages.

Respondents: for the implementation study, respondents will be BSF program managers and staff, couples who participated in the BSF group sessions, and couples who dropped out of the program or never participated in the BSF groups. Information from staff will be obtained in face-to-face interviews. Information from participating couples will be collected in focus groups. Non-participating couples and couples who dropped out of the program will be interviewed by phone. For the impact study, the respondents for the 15-month survey will be all couples in the BSF evaluation. They will be interviewed by telephone. Both types of information collection will take place over about a 24-month period.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Implementation Study				
Staff interview protocol	126	1	1.5	189
Focus group protocol	70	1	1.5	105
Telephone interview protocol (non-participants/dropouts)	84	1	.17	14
Impact Study				
15-month Survey (females)	1,434	1	.91	1,305
15-month Survey (males)	1,434	1	.83	1,190
Estimated Total Annual Burden Hours				2,803

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 11, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–4584 Filed 5–15–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0181]

Product Stability Data; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is seeking volunteers to participate in a pilot project involving the testing of a Health Level 7 (HL7) data interchange standard for the submission of product stability data to FDA to facilitate the review of this data. Using the data interchange standards and the analytical tools will allow consistent data presentation to the agency and allow a reviewer to more efficiently and consistently display and evaluate product stability data submitted in electronic format.

DATES: Submit written or electronic requests to participate in the pilot project by July 17, 2006. Comments on this pilot project can be submitted at any time.

ADDRESSES: Submit written requests to participate to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Norman Schmuff, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 22, rm. 2472,Silver Spring, MD 20993–0002, *norman.schmuff@fda.hhs.gov* or Norman Gregory, Food and Drug Administration, Center for Veterinary Medicine (HFV–143), Rockville, MD 20857, *norman.gregory@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I . Background

Applicants provide product stability information in marketing applications and other submissions to the various centers of FDA. This information is currently provided in paper documents or as a series of portable document format (PDF) files. In January 2001, a format for presenting product stability data in extensible markup language (XML) and a prototype of a review tool

for evaluating stability information were demonstrated at an FDA public meeting.

Subsequently, work has been underway in the Regulated Clinical Research Information Management technical committee in HL7 to refine the data design presented at the meeting with the goal of developing an XML standard for the exchange of product stability data based on the HL7 version 3 reference information model. HL7 is an international, open, American National Standards Institute (ANSI) accredited standards development organization that focuses on standards for the exchange of information related to health care. The Stability Data Standard was adopted by HL7 by a vote of the full membership in May 2005 and was adopted as an ANSI standard in October 2005. FDA is currently considering the adoption of the standard as a voluntary standard for transmission of stability data in new drug applications, abbreviated new drug applications, investigational new drugs, new animal drug applications, abbreviated new animal drug applications, and investigational new animal drugs.

The purpose of this pilot project is to assist in the evaluation of the data interchange standard, provide data for testing the analytical tools designed to facilitate the review of product stability data and to obtain feedback from reviewers and pharmaceutical companies on the creation and use of standardized product stability data.

II. Pilot Project Description

This pilot project is part of an effort to improve the process for submitting and reviewing product stability data by increasing the consistency of the process (by establishing a uniform procedure). A consistent look and feel is expected to facilitate the review of this data. Eventually, there is the expectation that a detailed data interchange standard for the submission of product stability data will be defined based on the HL7 model. As the HL7 model was developed via a collaboration between industry and FDA, certain portions of the model may be useful for industry, but not needed in submissions to FDA. Consequently, the HL7 stability model may be adopted in whole or in part. Participants in this pilot project will have the opportunity not only to assist FDA in testing the stability data interchange standard, but will also be able to familiarize themselves with the process at an early stage of development. Only a few participants are needed for this pilot.

1. Initial Approach

Because a limited number of voluntary participants are needed, the agency will use its discretion in choosing volunteers, basing this selection on a firm's experience with the preparation of product stability documents and data submissions to the different centers at FDA. During the pilot project specific technical instructions for providing the product stability data for testing will be made available to participants. Participants in the pilot project will be asked to provide the product stability data as described in the technical instructions and to provide technical feedback.

2. Scope

Existing expectations for the submission of product stability data will not be waived, suspended, or modified for purposes of this pilot project. However, aside from metadata associated with the XML instance, there will be no additional data expectations beyond those data usually submitted in applications. The pilot project will test the preparation and use of the submitted product stability data.

3. How to Participate and Submit Comments

Written and electronic requests to volunteer should be submitted to the docket number found in the heading of this document. In addition to requests to participate, interested persons can submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this pilot project. Two paper copies of any comments are to be submitted, except that individuals can submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. We will consider all received comments in making a determination on adopting the data interchange standard as a voluntary standard for the electronic submission of product stability data.

Dated: May 8, 2006.

Jefrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7391 Filed 5–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences, Proposed Collection; Comment Request; The Head Off Environmental Asthma in Louisiana (HEAL) Study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Head Off Environmental Asthma in Louisiana (HEAL) Study.

Type of Information Collection Request: New collection.

Need and Use of Information Collection: The purpose of the HEAL Study is to design, implement and evaluate a case management program to intervene in asthma morbidity and examine the genetic and environmental risk factors in children in post-Katrina New Orleans. Asthma is the most common chronic disease among children in the United States; it is the number one reason children miss school and the second leading cause of emergency department visits after accidents and injuries. Asthma prevalence has been increasing dramatically, especially among minority inner-city children, where rates as high as 24% have been observed in some urban census areas. Overall rates of asthma have also increased in post-Katrina Louisiana children from 14% (2003) to 18% (2006) according to results from the Louisiana Child & Family Health Study, and may be even higher for minority and underprivileged children or children residing in certain geographical areas that were affected by post-Katrina flooding. For the HEAL Study, a school-based screening survey will be given to children (5 to 12 years of age) in the public and/or private elementary schools in New Orleans. This survey will take about 15 minutes to complete and contains questions concerning physician diagnosed asthma, asthma morbidity, healthcare, and current housing situation, as well as recent and planned changes in housing. The major purpose of the school-based survey will be to identify up to 1,000

children with moderate to severe asthma for a tailored Asthma Counselor case management intervention program and for an in depth examination of the genetic and environmental risk factors associated with asthma. We expect that about 6,000 parents or guardians will have to be interviewed in order to identify 1,000 eligible cases.

Case management will be designed to address the unique challenges presented to these children with asthma in post-Katrina New Orleans and will draw upon the prior Inner City Asthma intervention programs of the National Institutes of Health. It will also include the best components of the locally based Step Together New Orleans (Steps) and the Open Airways (American Lung Association) programs, among others. Each child will undergo a baseline assessment in the form of a questionnaire administered to their parents or guardians. This will contain questions concerning their demographics, stress, access to care, medication use, current and past symptoms, quality of life, knowledge and attitudes about asthma, and environmental exposures. The questionnaire will be administered by professional interviewers and will take about 1 hour to complete. Each child will also undergo a baseline clinical assessment for pulmonary function, allergen skin prick testing for indoor and outdoor allergens including molds, and blood draws for allergen specific IgE and genetic studies. Following the baseline assessments, the Asthma Counselors will refer the children to selected clinics for treatment and will monitor their progress by conducting periodic follow-up assessments which include a phone call with standardized questions about morbidity, treatment and exposures every two months (about 15 min each) and 2 periodic evaluations of pulmonary function. A final assessment will occur at the end of the year similar to the baseline assessment and take about 1 hour to complete.

In light of the impact of environmental exposures on asthma, a complete evaluation will also be conducted of each child's housing. This will entail the collection of environmental samples such as settled dust samples for potential allergens and triggers for asthma exacerbation (dust mite, cockroach, cat, dog, mouse, and endotoxin) and air for airborne fungal spores. The houses will be evaluated by trained technicians for the presence of mold, mildew, evidence of smoking, water leaks, disrepair, pests and other potential asthma triggers. The ultimate goal of this study is to develop case management and environmental intervention strategies for this population of post-Katrina children to reduce their asthma morbidity and improve their quality of life. These strategies could potentially be used to intervene in other future disasters similar to hurricane Katrina.

Estimated Number of Respondents: The estimated number of respondents is 40,000 which includes the parents or guardians of 1,000 children enrolled in the case management intervention and environmental assessment programs.

Affected Public: Individuals or households.

Type of Respondents: Children with asthma 5 to 12 years of age or their parents or guardians.

The annual reporting burden is as follows:

Estimated Number of Responses per Respondent: The table below shows the estimated number of responses per respondent per activity over the next two years.

Average Burden Hours per Response: 0.36; and

Estimated Total Annual Burden Hours Requested: 20,500 over 2 years.

The average annual burden hours requested is 10,250. The annualized cost to respondents is estimated at $7.20 (assuming $20 hourly wage). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Activity	Estimated number of respondents	Estimated responses per respondent	Average burden hours per response	Estimated total burden hours requested
School-based eligibility screening	40,000	1	0.25	10,000
Enrollment interview	6,000	1	0.5	3,000
Baseline QX assessment	1,000	1	1.25	1,250
Baseline Medical assessment	1,000	1	2	2,000
Phone follow-up	1,000	6	0.25	1,500
Pulmonary function assessment	1,000	2	1	2,000
Yearly follow-up	1,000	1	2	1,000
Total				20,750

Request for comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Patricia Chulada, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–7736 or e-mail your request, including your address to *chulada@niehs.nih.gov.*

Comments due date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 4, 2006.

Richard A. Freed,

Associate Director for Management, NIEHS.

[FR Doc. 06–4571 Filed 5–15–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

T-Cell Receptor Recognizing Renal Cell Carcinoma

Description of Invention: Renal cell carcinoma (RCC) is the most common renal tumor with approximately 30,000 cases per year in the USA. The survival rate for this cancer is very low, where only 10% of patients survive because this carcinoma is resistant to most chemotherapies.

This technology describes a T-cell receptor that was cloned from a human immune cell. This T-cell receptor recognizes a number of human kidney tumors and is not limited to use in patients with specific MHC types. This cell was able to kill other kidney cancer cells in other patients, and when this T-cell was introduced into other human immune cells, these cells also acquired the ability to kill kidney cancer cells. This invention also describes novel methods using dendritic cells to generate both CD4+ and CD8+ RCC-reactive T-cells for use in antigen identification and therapeutic protocols. This is the first and only cloned T-cell receptor that recognizes a majority of human kidney tumors.

Applications: A therapeutic for patients suffering from renal cell carcinoma; a novel method using dendritic cells to prime T-cell responses; a novel method of constructing and inserting light chain genes of the T-cell receptor into other patient's T-cells.

Market: There are approximately 30,000 new estimated cases of renal cell carcinoma per year in the USA. The total market size in the USA in the range of $2 billion dollars.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Qiong J. Wang, Ken-ichi Hanada and James C. Yang (NCI).

Publication: QJ Wang et al., ''Generating renal cancer-reactive T-cells using dendritic cells (DCs) to present autologous tumor,'' *J Immunother.* 2005 Nov-Dec 28(6):551–559.

Patent Status: U.S. Provisional Application No. 60/776,194 filed 24 Feb 2006 (HHS Reference No. E–106–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michelle A. Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize T-cell receptors and their clinical use as cancer treatments. Please contact Dr. Steven Rosenberg at (301) 496–4164 or *sar@mail.nih.gov* for more information.

Preparation of a Peptide Targeted Human RNase, RGD-Eosinophil Derived Neurotoxin (RGD-EDN) To Specifically Target Tumor Vasculature

Description of Technology: Cancer is the second leading cause of death in the United States and it is estimated that there will be approximately 600,000 deaths caused by cancer in 2006. A major drawback of the existing chemotherapies is the cytotoxic side-effects that are associated with them. Thus, there is a need to develop new therapeutic approaches with reduced side-effects.

Anti-angiogenic therapy is a recent approach in cancer therapeutics targeting the formation of blood vessels that are necessary for tumor growth. Anti-angiogenic therapeutic agents are generally devoid of toxic side-effects, recently gaining attention as cancer therapeutics with tremendous promise. Recently, the anti-angiogenic molecule bevacizumab (Avastin), a monoclonal antibody against the vascular endothelial growth factor (VEGF), has gained approval from the FDA for the first-line treatment of metastatic colon cancer in combination with standard chemotherapy.

This technology describes a novel anti-angiogenic method for treating cancer. The $\alpha v\beta 3$-integrin is upregulated on tumor endothelial cells and can bind RGD (Arg-Gly-Asp) peptides. By tagging the RGD peptide with the normally non-cytotoxic eosinophil-derived neurotoxin (EDN), this RNase molecule can be targeted to human vascular endothelial cells where it becomes cytotoxic. These RGD-EDN molecules inhibit the adhesion of HUVEC cells in response to endothelial growth factors. These molecules have also been shown to inhibit tumor growth in mice with Kaposi's sarcoma. This technology has therapeutic potential for a broad spectrum of cancer related diseases alone, or in combination with existing therapies.

Applications: A novel therapeutic molecule, RGD tagged EDN (RGD-EDN); an anti-angiogenic cancer therapy for targeting RGD-EDN to endothelial cells via binding to the RGD receptor $\alpha v\beta 3$ integrin.

Market: 600,000 deaths from cancer related diseases estimated in 2006; the technology platform involving novel anti-angiogenic cancer therapy technology has a potential market of more than 2 billion U.S. dollars.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Dianne L. Newton, Zhongyu Zhu, and Susanna M. Rybak (NCI).

Publications:

1. A Dricu et al., ''A synthetic peptide derived from the human eosinophil-derived neurotoxin induces apoptosis in Kaposi's sarcoma cells,'' *Anticancer Res.* 2004 May–Jun; 24(3a):1427–1432.
2. M Fani et al, ''Comparative evaluation of linear and cyclic 99mTc-RGD peptides for targeting of integrins in tumor angiogenesis,'' *Anticancer Res.* 2006 Jan–Feb; 26(1A):431–434.
3. DL Newton et al., ''Construction and characterization of RNase-based targeted therapeutics,'' *Methods Mol Biol.* 2003; 207:283–304.
4. A Capello et al., ''Anticancer activity of targeted proapoptotic peptides,'' *J Nucl Med.* 2006 Jan; 47(1):122–129.

Patent Status: U.S. Provisional Application No. 60/782,968 filed 15 Mar 2006 (HHS Reference No. E–094–2006/0–US–01).

Licensing Status: Available for non-exclusive and exclusive licensing.

Licensing Contact: David Lambertson, Ph.D.; 301/435–4632; *lambertsond@od.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Biological Testing Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Peptide Targeted Human RNases. Please contact Bjarne Gabrielsen at (301) 846–5465 or *bjg@nih.gov* for more information.

Adoptive Immunotherapy With Autologous Natural Killer Cells

Description of Technology: Dr. Rosenberg and colleagues have clearly demonstrated that T-lymphocytes can mediate the regression of metastatic melanoma. However, not all patients with cancer are eligible for or respond to this type of immunotherapy. In some patients, the tumor infiltrating lymphocytes (TIL) do not expand sufficiently, or do not exhibit sufficient tumor specific reactivity.

Studies in mice have shown that adoptive transfer of NK cells activated *in vitro* can significantly reduce the load of Acute Myelogenous Leukemia (AML), and intravenously-injected autologous NK cells have been shown to significantly decrease melanoma tumor outgrowths. To this end, Dr. Rosenberg and colleagues have developed an alternative type of immunotherapy, which involves the adoptive transfer of autologous natural killer (NK) cells. This method consists of three parts: (a) Isolation and expansion of NK cells *ex-vivo;* (b) Administration of nonmyeloablative lymphodepleting chemotherapy regimen to the patient; and (c) Reconstitution of the patient's immune system by infusion of NK cells and interleukin 2. This approach also offers the possibility of treating AIDS, immunodeficiency, and autoimmune diseases for which immune cells can impact the clinical outcome.

Development Status: This work has not yet been published; however, Dr. Rosenberg and colleagues have developed a clinical protocol and are awaiting IRB approval to begin enrolling patients in a Phase I clinical trial.

Inventors: Steven A. Rosenberg and Maria R. Parkhurst (NCI).

Publications:

1. IRB approved protocol in press.
2. SA Rosenberg and ME Dudley, ''Cancer regression n patients with metastatic melanoma after the transfer of autologous antitumor lymphocytes,'' *Proc. Natl. Acad. Sci USA* 2004 Oct 5;101 Suppl 2:14639–14645.
3. ME Dudley et al., ''Adoptive cell transfer therapy following non-myeloablative but lymphodepleting chemotherapy for the treatment of patients with refractory metastatic melanoma,'' *J. Clin. Oncol.* 2005 Apr 1;23(10):2346–2357.
4. U Siegler et al., ''Activated natural killer cells from patients with acute myeloid leukemia are cytotoxic against autologous leukemic blasts in NOD/SCID mice,'' *Leukemia* 2005 Dec;19(12): 2215–2222.
5. F Lozupone et al., ''Effect of human natural killer and gammadelta T cells on the growth of human autologous melanoma xenografts in SCID mice,'' Cancer Res. 2004 Jan 1;64:378–385.

Patent Status: U.S. Provisional Application No. 60/779,863 filed 06 Mar 2006 (HHS Reference No. E–090–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michelle A. Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov*

Collaborative Research Opportunity: The NCI Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Natural Killer (NK) cells for their clinical use as cancer treatments. Please contact Dr. Steven Rosenberg at (301) 496–4164 or *sar@mail.nih.gov* for more information.

Sensitive Antibody-Based Assay for the Measurement of c-Met Concentration Shed in Bodily Fluids Useful in the Diagnosis and Prognosis of Cancer

Description of Technology: This invention described and claimed in these patent applications provide for methods and assays which may be used to diagnose and follow the progression of cancers associated with c-Met expression. The data supporting this application suggests that c-Met expression may be an appropriate biomarker in certain types of cancer. In particular, the applications describe a sensitive assay useful for monitoring levels of c-Met shed in the urine or blood. The assay was developed using commercially available reagents. The applications contain data, derived from patient samples, supporting the clinical utility of the assay. In particular, the data shows the use of the assay to detect levels of shed c-Met in patients with bladder cancer, renal cancers and prostate cancer. Data showing the applicability of the assay for glioblastoma was derived using murine models of cancer for glioblastoma. Data showing the applicability of the assay for breast cancer, melanoma and prostate cancer was derived using various human cell line model systems.

HGF/met signaling has been most widely studied in settings related to cancer. It has been demonstrated to have a role in metastasis and angiogenesis. In addition to cancer, HGF activity has also been linked, through its role in apoptosis, to Alzheimer's disease and cardiovascular disease.

These applications have not been published. The investigators presented their work in a poster session at the AACR Meeting April 16–20, 2005 (Abstract 2788) (*http://www.abstractonline.com/ viewer/viewAbstract.asp?CKey=%7bAD0F2047-14FA-4BEE-AE98-0DAF2F26EF1A%7d&MKey=%7b218FF7E7-9F17-4030-9BB4-8C029B0C9B4E%7d&AKey=%7b728BCE9C-121B-46B9-A8EE-DC51FDFC6C15%7d&SKey=%7bA5AFD1D5-1D83-4F0E-9FD5-AC7119D62D8E*). At this time there are no other publications related to this work. Dr. Bottaro's Web site is *http://ccr.cancer.gov/Staff/Staff.asp?profileid=8410.*

Inventors: Donald Bottaro and Pathirage G. Dharmawardana (both of NCI).

Patent Status: U.S. Provisional Application No. 60/734,993 filed 08 Nov 2005 (HHS Reference No. E–261–2005/0–US–01) and U.S. Provisional Application No. 60/780,626 filed 09 Mar 2006 (HHS Reference No. E–261–2005/1–US–01), entitled ''Methods for Diagnosing and Monitoring the Progression of Cancer.'' At this time only U.S. Patent protection has been sought for this technology. There are no foreign counterpart patent applications.

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan S. Rucker, Esq.; 301/435–4478; *ruckersu@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Urologic Oncology Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HGF/c-Met signaling as it relates to tissue repair and regeneration, cancer, and other diseases. Please contact Brian W. Bailey, Ph.D. at (301) 451–2158 or *bbailey@mail.nih.gov* for more information.

Use of Cripto-1 as a Biomarker for Neurodegenerative Disease and Method of Inhibiting Progression Thereof

Description of Technology: Cripto-1 is a gene that is currently thought to play an important role in several cancers, and is being developed in clinical trials as a cancer therapeutic. Presented in this invention is another use of Cripto-1 as a biomarker and possible therapeutic target for a variety of neurodegenerative diseases, including NeuroAIDS, Alzheimer's disease (AD), multiple sclerosis (MS), amyotrophic lateral sclerosis (ALS), Parkinson's disease (PD) and encephalitis. Cripto-1 and concomitant protein expression appears to be overexpressed by 20-fold or more in the brains of macaque monkeys and humans afflicted with NeuroAIDS. This expression is confined to neurons related to neurodegeneration.

Inhibition of Cripto-1 may be associated with inhibiting the progression of these diseases via a disclosed method for inhibiting the expression or downstream signaling pathways mediated by Cripto-1. This inhibition can be achieved through the expression of various inhibitory oligonucleotides. Additionally, the development of antibodies against Cripto-1 has already been achieved for the detection of Cripto-1 in human pathological specimens.

It is estimated that by 2050, 14 million Americans will suffer from AD, representing national annual costs for caring and due to productivity lost of approximately $160 billion. Despite active research in this area, there remains urgent need to identify differentially expressed genes in and to develop methods for detecting neurodegenerative disease through assaying expression levels of specific genes. Currently, there are no drugs directed at inhibiting Cripto-1 as a therapeutic agent for AD or other neurodegenerative diseases. This invention holds the promise of market opportunities through pursuing development of Cripto-1 as a biomarker for diagnosis of and possible target for therapeutic intervention of these diseases.

Inventors: David S. Salomon (NCI) et al.

Publications:

1. CL Parish et al., ''Cripto as a target for improving embryonic stem cell-based therapy in Parkinson's disease,'' *Stem Cells* 2005 Apr; 23(4):471–476.
2. HB Adkins et al., ''Antibody blockade of the Cripto CFC domain suppresses tumor cell growth *in vivo,*'' *J Clin Invest.* 2003 Aug 15; 112(4): 575–587.

Patent Status: U.S. Provisional Application No. 60/508,750 filed 03 Oct 2003 (HHS Reference No. E–075–2003/0–US–01); PCT Application No. PCT/US04/32649 filed 01 Oct 2004 (HHS Reference No. E–075–2003/0-PCT–02), which published as WO 2005/033341 on 02 Jun 2005.

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michelle A. Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Mammary Biology and Tumorigenesis Laboratory, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Jeffrey Hildesheim, Ph.D. at (301) 435–1569 or *hildesheimj@mail.nih.gov* for more information.

Dated: May 5, 2006.

David R. Sadowski,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–7428 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: June 14, 2006, 8 a.m. to 4:30 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: June 14, 2006, 4:30 p.m. to Adjournment.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4561 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; CA–07–001, CA–07–007 (STTR), CA–07–006 (SBIR) Innovation Technologies for the Molecular Analysis of Cancer.

Date: June 15–16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8057, Bethesda, MD 20892–8329. 301–496–7421. *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.3905, Cancer Treatment Research; 93.396 Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 10, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4567 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: June 8, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: 1. Preparation for advocates summit: Listening and Learning Together: Building a Bridge of Trust—Monday and Tuesday June 19–20, 2006 role of the DCLG members as hosts of this meeting; 2. Consideration of and vote on DCLG Working Group recommendations made on March 30, 2006; 3. Update on NCI Listens and Learns topic; 4. Public comment; 5. Action Items and Conclusion.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Barbara Guest, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Blvd., Room 2202, Rockville, MD 20892–8324. 301–496–0307. *guestb@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: May 10, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4568 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: May 16, 2006.

Time: 11:45 a.m. to 1:45 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Valerie L. Prenger, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892–7924, 301–435–0270, *prengerv@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: May 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4556 Filed 5–15–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes on Alcohol Abuse and Alcoholism Special Emphasis Panel, Integrative Neuroscience Initiative on Alcoholism (INIA) Consortias (EPIGENETICS).

Date: July 24–25, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: May 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4555 Filed 5–15–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Inegrative Neuroscience Initiative on Alcoholism (INIA) Consortias (Koobs).

Date: May 22–24, 2006.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304. (301) 443–2926. *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HSS)

Dated: May 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4557 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: June 2, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: Personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health, and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892. (301) 496–2133. *rennerto@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4558 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Advisory Child Health and Human Development Council.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. The intramural programs and projects and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the intramural programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council; NACHHD Subcommittee on Planning and Policy.

Date: May 19, 2006.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate Division of Intramural Research site visit reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A48, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret Ames, PhD, Deputy Director for Science, Policy, Analysis, and Communication, NICHD/NIH/DHHS, 31 Center Drive, Suite 2A–18, Bethesda, MD 20892. 301–496–0588.

This notice is being published less than 15 days prior to meeting due to the urgent need to meet timing limitations imposed by the intramural research review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4559 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Integrative Neuroscience Initiative on Alcoholism (INIA) Consortias (Grant).

Date: July 10–12, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304. (301) 443–2926. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clnicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: May 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4560 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associate with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical and Treatment Subcommittee.

Date: July 11–12, 2006.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Judith A. Arroyo, PhD, Scientific Review Administrator, Division of Epidemiology and Prevention Research, National Institute of Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2084, Bethesda, MD 20892–9804. 301–402–0717. *jarroyo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4562 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel—Hyperaccelerated Award/ Mechanisms in Immunomodulation Trials (June 2006).

Date: June 6, 2006.

Time: 1 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3256, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mercy R. PrabhuDas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, Bethesda, MD 20892–7616. 301–451–2615. *mp457n@nih,giv,*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research,National Institutes of Health, HHS)

Dated: May 10, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4564 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

of the National Institute on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism.

Date: June 7–8, 2006.

Closed: June 7, 2006, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Fishers Building Conference Room, Building 5635, Fishers Lane, Rockville, MD 20852.

Open: June 8, 2006, 9 a.m. to 3 p.m.

Agenda: Program Reports and Presentations.

Place: Fishers Building Conference Room, Building 5635, Fishers Lane, Rockville, MD 20852.

Contact Person: Karen P. Peterson, PhD, Executive Secretary NIAAA Council, National Institute on Alcohol Abuse and Alcoholism, National institutes of Health, Bethesda, MD 20892–7003. (301) 451–3883, *kp177z@nih.gov*.

Any member of the public interest in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institutes'/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 10, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4569 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, National Institute on Alcohol Abuse and Alcoholism.

Date: May 12, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Judith A. Arroyo, Ph.D., Scientific Review Administrator, National Institute of Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3041, Bethesda, MD 20892–9804. 301–443–0800. *jarroyo@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 10, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4570 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 22–23, 2006.

Open: June 22, 2006, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 22, 2006, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 23, 2006, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division,

Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894. 301–496–6217. *Sheldon_Kotzin@nlm.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 06–4563 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Antibodies.
Date: May 17, 2006.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892. (301) 435–1719. *litwackm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.
Date: June 1–2, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717. *padaratm@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Intercellular Interactions.
Date: June 1–2, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Raya Mandler, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *rayam@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.
Date: June 4–6, 2006.
Time: 9 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Mehrdad M. Tondravi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–435–1173. *tondravm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Oncogenesis.
Date: June 5–6, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1515 Rhode Island Ave, NW., Washington, DC 20005.
Contact Person: Joanna M. Watson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892. 301–435–1048. *watsonjo@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.
Date: June 8–9, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Peter B. Guthrie, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.
Date: June 8–9, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Betty Hayden, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. 301–435–1223. *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Boron Neutron Capture Therapy.
Date: June 8, 2006.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Zhiqiang Zou, MD, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892. 301–451–0132. *zouzhiq@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Cell Biology Study Section.
Date: June 11–13, 2006.
Time: 6:30 p.m. to 8:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Angela Y. Ng, PhD., MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892. 301–435–1715. *nga@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Therapeutics and Biology Study Section.
Date: June 12–13, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bo Hong, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892. 301–435–5879. *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel,

Bioengineering Research Applications—Respiratory.

Date: June 14, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892. 301–435–1016). *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Biology.

Date: June 15, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 20004.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–4522. *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Mechanisms, Genetics and Animal Models of Neuropsychiatric Disorders.

Date: June 15–16, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Boris P. Sokolov, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892. 301–435–1197. *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neural Oxidative Stress, Mitochondria and Cell Death.

Date: June 19–20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Carole L. Jelsema, PhD., Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–12486. *jelsemac@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.

Date: June 22–23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Embassy Row, 2100 Massachusetts Ave, NW., Washington, DC 20008.

Contact Person: Suzanne L. Forry-Schaudies, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892. 301–451–0131. *forryscs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: June 23, 2006.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chhanda L. Ganguly, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. (301) 435–1739. *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Imaging and Bioinformatics.

Date: June 23, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Guo Feng Xu, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892. 301–435–1032. *xuguofen@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: June 25–27, 2006.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 435–1213. *meyerjl@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.

Date: June 26–27, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Dennis Leszczynski, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044. *leszczyd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment, SBIR/STTR.

Date: June 26–27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hungyi Shau, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. 301–435–1720. *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Imaging and Bioinformatics.

Date: June 26, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Guo Feng Xu, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892. 301–435–1032. *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–06–093:Shared Instrumentation: Flow and Laser Scanning Cytometers.

Date: June 26–27, 2006.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jerrold Fried, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040Q/R, MSC 7840, Bethesda, MD 20892. 301–435–2633. *friedje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities, Communication and Science Education.

Date: June 26–27, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Baltimore, 101 West Fayette Street, Baltimore, MD 21201.

Contact Person: Thomas A. Tatham, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Atherosclerosis and Inflammation.

Date: June 26, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–4522. *gibsonj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333,

93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4565 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Insulin.
Date: May 30, 2006.
Time: 9 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abubakar A. Shaikh, PhD., DVM, Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892. (301) 435–1042. *shaikha@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.
Date: June 5–6, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gamil C. Debbas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301) 435–1018. *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Genetics.
Date: June 7, 2006.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Manzoor Zarger, MS, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. (301) 435–2477. *zargerma@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Celluar Aspects of Diabetes and Obesity Study Section.
Date: June 7–9, 2006.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Ann A. Jerkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892. 301–435–4514. *jerkinsa@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing.
Date: June 8–9, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Marcia Steinberg, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. 301–435–1023. *steinbem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biomarker and Therapeutics Member Conflict.
Date: June 9, 2006.
Time: 9:30 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Hungyi Shau, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. 301–435–1720. *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbiology and Material Science Related Oral and Dental Applications: A Small Business Panel.
Date: June 9, 2006.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Tamizchelvi Thyagarajan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892. 301–451–1327. *tthyagar@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.
Date: June 9–11, 2006.
Time: 6 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: The Benson, 309 Southwest Boulevard, Portland, OR 97205.
Contact Person: Priscilla B. Chen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892. (301) 435–1787. *chenp@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Cellular and Molecular Biology of the Kidney Study Section.
Date: June 12–13, 2006.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Shirley Hilden, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892. (301) 435–1198. *hildens@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.
Date: June 12–13, 2006.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Harold M. Davidson, PhD., Scientific Review Administration Center for Scientific Review, Nationnal Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892. 301/435–1776 *davidsoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Development and Differentiation.
Date: June 13, 2006.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Alcohol and Toxicology.
Date: June 13, 2006.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Christine L. Melchior, PhD, Scientific Review Adminrstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1713. *melchioc@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.
Date: June 15–16, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, MSC 7759, Bethesda, MD 20892 301–435–0912. *levin@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Psychopathology and Developmental Disabilities Study Section.
Date: June 15–16, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.
Contact Person: Jane A. Doussard-Roosevelt, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–4445. *doussarj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroimmunology and Brain Tumors Study Section.
Date: June 15–16, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892. (301) 435–1184 *joshij@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Children and Families Study Section.
Date: June 15, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Fungai F. Chanetsa, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028B, MSC 7770, Bethesda, MD 20892. (301) 435–1262. *chanetsaf@csr.nih.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biology of RNA Interference.
Date: June 15–16, 2006.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Bethesda, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Steven J. Zullo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892. (301) 435–2810. *zullost@csr.nih.gov.*)

Name of Committee: Center for Scientific Review Special Emphasis Pane, Small Business: Respiratory Sciences.
Date: June 19, 2006.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mushtaq A. Khan, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.
Date: June 19–20, 2006.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Daniel R. Kenshalo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, 301–435–1255. *kenshalod@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation Grant Program: Surface Plasmon Resonance (SPR) Instruments.
Date: June 19, 2006.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, Washington, DC 20037.
Contact Person: Stephen M. Nigida, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892. 301–435–1222. *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Applications in Mechanisms of Emotion, Stress and Health.
Date: June 19, 2006.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., Washington, DC 20037.
Contact Person: Jane A. Doussard-Roosevelt, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–4445. *doussarj@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.
Date: June 20–21, 2006.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, PhD., Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301–435–1781. *hoffeldt@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A Study Section.
Date: June 20–21, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Samuel C. Edwards, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892. (301) 435–1152. *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–04–023 Bioengineering Research Partnerships.
Date: June 21, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.
Contact Person: Ross D. Shonat, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892. 301–435–2786. *shonatr@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Erythrocyte and Leukocyte Biology Study Section.
Date: June 22, 2006.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20037.
Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892. 301–435–2506. *tangd@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: June 22–23, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Willaim C. Benzing, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892. (301) 435–1254. *benzingw@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.
Date: June 26–27, 2006.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–594–6376. *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Digestive Sciences.
Date: June 26, 2006.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mushtaq A. Khan, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBMI—Small Business Medical Imaging.
Date: June 26–27, 2006.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Xiang-Ning Li, PhD., MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1744. *lixang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Archiving for Surveys of the Elderly—SBIR/STTR.
Date: June 26, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Alfonso R. Latoni, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022C, MSC 7770, Bethesda, MD 20892. 301–435–1735. *latonia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Meg and Pulsed Devices.
Date: June 26, 2006.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee Rosen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171. *rosenl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396. 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: May 10, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4566 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of C-6 and C-8 Modified cAMP-Derivatives for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 07/198,489 filed May 23, 1988, entitled ''Use of 8-Cl-cAMP as Anticancer Drug'' [HHS Reference No. E–132–1988/0–US–01], PCT Application filed May 19, 1989 [HHS Reference No. E–132–1988/0–PCT–02], U.S. Patent Application No. 07/896,452 filed June 4, 1992, entitled ''Use of 8-Cl-cAMP as Anticancer Drug'' [HHS Reference No. E–132–1988/0–US–04], U.S. Patent 5,792,752 filed October 27, 1994 and issued August 11, 1998, entitled ''Use of 8-Cl-cAMP as Anticancer Drug'' [HHS Reference No. E–132–1988/0–US–05], U.S. Patent 5,902,794 filed September 22, 1997 and issued May 11, 1999, entitled ''Use of 8-Cl-cAMP as Anticancer Drug'' [HHS Reference No. E–132–1988/0–US–06] and Canadian Patent Application No. 133572 filed May 19, 1989, entitled ''Use of 8-Cl-cAMP as Anticancer Drug'' [HHS Reference No. E–132–1988/0–CA–03], to Kuhnil Pharm. Co. Ltd., which has offices in Seoul, Republic of Korea. The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the treatment of cancer with 8–Cl–cAMP.

This notice replaces the Prospective Grant notice published in the **Federal Register** on Tuesday, May 9, 2006 (71 FR 26979).

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 17, 2006 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, PhD., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *lambertsond@od.nih.gov.*

SUPPLEMENTARY INFORMATION: Cyclic AMP (cAMP) is a natural biological product with a number of regulatory functions at physiological levels. At higher than physiological concentrations, cAMP has the ability to inhibit the aberrant growth of malignant cells. Because cAMP is a natural product involved in normal biological function, this inhibition occurs without causing significant toxicity. However, this is not a feasible method for treating cancer *in vivo* because of potential interference with the physiological role of cAMP.

C-6 and C-8 modified cAMP derivatives also inhibit the growth of malignant cells. One such derivative, 8-Cl-cAMP, has effectively decreased tumor growth *in vitro* and *in vivo*. Specifically, 8-Cl-cAMP showed the ability to decrease tumor growth in leukemia mouse models and xenografts of human tumors. Because of the low toxicity associated with 8-Cl-cAMP, this compound has promise as an anti-cancer agent, particularly with regard to hematological malignancies.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless

within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 10, 2006.

David R. Sadowski,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–7435 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Availability of the Genistein and Soy Formula Expert Panel Reports; Request for Public Comment

AGENCY: National Institute for Environmental Health Sciences (NIEHS); National Institutes of Health (NIH), HHS.

ACTION: Request for comments.

SUMMARY: CERHR announces the availability of the genistein and soy formula expert panel reports on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in print from CERHR (see **ADDRESSES** below). These expert panel reports are evaluations of the reproductive and developmental toxicity of genistein and soy formula conducted by a 14-member expert panel composed of scientists from the federal government, universities, and private organizations. CERHR invites the submission of public comments on these expert panel reports.

DATES: The final genistein and soy formula expert panel reports are presently available and written public comments on these reports should be received by July 5, 2006.

ADDRESSES: Public comments and any other correspondence should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

Genistein is a phytoestrogen found in some legumes, especially soybeans. Phytoestrogens are non-steriodal, estrogenic compounds that occur naturally in some plants. In plants, nearly all genistein is linked to a sugar molecule and this genistein-sugar complex is called genistin. Genistein and genistin are found in many food products, especially soy-based foods such as tofu, soy milk, and soy infant formula, and in some over-the-counter dietary supplements. Soy formula is fed to infants as a supplement or replacement for human milk or cow milk. CERHR selected genistein and soy formula for expert panel evaluation because of (1) the availability of reproductive and developmental toxicity studies in laboratory animals and humans, (2) the availability of information on exposures in infants and women of reproductive age, and (3) public concern for effects on infant or child development.

The CERHR convened an expert panel on March 15–17, 2006, to review and revise the draft expert panel reports and reach conclusions regarding whether exposure to genistein or soy formula is a hazard to human development or reproduction. The expert panel also identified data gaps and research needs. Prior to the meeting, CERHR solicited public comment on the draft expert panel reports (**Federal Register** Vol. 70, No. 241 pp. 74834–74835).

Following receipt of public comments on the genistein and soy formula expert panel reports, CERHR staff will prepare NTP–CERHR monographs on each of these substances. NTP–CERHR monographs are divided into four major sections: (1) The NTP Brief which provides the NTP's interpretation of the potential for the chemical to cause adverse reproductive and/or developmental effects in exposed humans, (2) a roster of expert panel members, (3) the final expert panel report, and (4) any public comments received on that report. The NTP Brief is based on the expert panel report, public comments on that report, and any new information that became available after the expert panel meeting.

Request for Comments

CERHR invites written public comments on the genistein expert panel report and on the soy formula expert panel report. Written comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any). All comments received will be posted on the CERHR Web site and will be included in the NTP–CERHR monograph on the chemical. The NTP will consider all public comments during preparation of the NTP Brief.

Background Information on CERHR

The NTP established CERHR in June 1998 [**Federal Register,** December 14, 1998 (Vol. 63, No. 239, pp. 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by CERHR in public forums.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Vol. 66, No. 136, pp. 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from CERHR.

Dated: May 8, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and the National Toxicology Program.

[FR Doc. E6–7434 Filed 5–15–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

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: Request for Premium Processing Service; Form I–907. OMB Control No. 1615–0048.

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 March 9, 2006, at 71 FR 12212, allowing for a 60-day public comment period. USCIS did not receive any comments for 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 June 15, 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 1615–0048 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 proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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:* Application for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–907. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Business or other for profit.* The data collected on this form will be used by USCIS to process the petitioner's/applicant's request for premium processing. The form serves the purpose of standardizing requests for premium processing, and will ensure that basic information required to assess eligibility is provided by petitioners/applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Filed by mail:* 77,000 responses at 30 minutes (.50) per response; *Filed electronically:* 3,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 39,500 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: May 10, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–7369 Filed 5–15–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft National Bald Eagle Management Guidelines; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), are extending the comment for the draft National Bald Eagle Management Guidelines. We are also extending the comment period on the proposed rule re-opening the public comment period on the proposal to remove the bald eagle from the List of Threatened and Endangered Wildlife under the Endangered Species Act, and on the proposed rule to establish a regulatory definition of ''disturb'' under the Bald and Golden Eagle Protection Act, via two additional notices published separately in the Proposed Rules section of today's issue of the **Federal Register**. Comments previously submitted need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final guidelines.

DATES: The public comment period is extended to June 19, 2006. Any comments received after the closing date may not be considered in the final guidelines.

ADDRESSES: Copies of the Draft National Bald Eagle Management Guidelines can be obtained by writing to U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, VA 22203. The draft guidelines may also be obtained via the Internet at: *http://www.fws.gov/migratorybirds/baldeagle.html.* Written comments can be sent to the mailing address above, or e-mailed to *BaldEagle_Management Guidelines@fws.gov.* All comments must include the name and full mailing address of the person submitting the comments. All comments received, including names and addresses, will become part of the public record. You may inspect comments by appointment during normal business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, (see **ADDRESSES** section); or via e-mail at: *Eliza_Savage@fws.gov;* telephone: (703) 358–2329; or facsimile: (703) 358–2217.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2006, in anticipation of possible removal (delisting) of the bald eagle in the 48 contiguous States from the List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service (the Service) published a Notice of Availability of draft National Bald Eagle Management Guidelines (71 FR 8309). The Service concurrently proposed two other related actions: (1) a proposed regulatory definition of ''disturb'' under the Bald and Golden Eagle Protection Act (BGEPA) (71 FR 8265, February 16, 2006); and (2) a re-opening of the comment period on our proposal to remove the bald eagle from the list of threatened and endangered species under the ESA (71 FR 8238, February 16, 2006). Due to the complexity of these related actions, we are extending the comment period for each action for an additional 30 days.

Dated: May 10, 2006.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 06–4605 Filed 5–12–06; 1:17 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PP–EPAI]

Amendment to the List of Affected States Under the Energy Policy Act of 1992

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of removal of Kentucky from the List of Affected States.

SUMMARY: The Energy Policy Act of 1992 (the Act) (Pub. L. 102–486) requires that the Secretary of the Interior administer a Federal program to regulate coalbed methane development in states where coalbed methane development has been impeded by disputes or uncertainty over ownership of coalbed methane gas. As required by the Act, the Department of the Interior, with the participation of the Department of Energy, developed a List of Affected States to which this program would apply (58 FR 21589, April 22, 1993).

Section 1339 of the Act provides three mechanisms by which a state may be removed from the List of Affected States. The List of Affected States is currently comprised of the States of Kentucky and Tennessee.

Section 387 of the Energy Policy Act of 2005 (Pub. L. 109–58) provided a three-year period for state action to seek removal from the List of Affected States, including action taken prior to enactment of that Act (August 8, 2005). In 2004, the Kentucky General Assembly passed and the Governor signed a coalbed methane law, codified as Chapter 349 of Kentucky Revised Statutes. The law created a state authority and procedures to facilitate coalbed methane development. It further explicitly sought, in subsection 349.005(4)(e), deletion of Kentucky from the List of Affected States.

We find that this Kentucky statute fulfills two of the Act's Section 1339 removal standards: (a) A law requesting removal and (b) a law permitting and encouraging the development of coalbed methane. Therefore, the State of Kentucky is officially removed from the List of Affected States.

FOR FURTHER INFORMATION CONTACT: Timothy R. Spisak, Group Manager, Fluid Minerals Group, Bureau of Land Management, 1849 C Street, NW., Mail Stop 501 L St., Washington, DC 20240 or telephone (202) 452–5061; or Charles W. Byrer, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, West Virginia 26507, or telephone (304) 285–4547.

Dated: April 7, 2006.

Thomas Lonnie,

Assistant Director, Minerals, Realty, and Resource Protection.

[FR Doc. 06–4550 Filed 5–15–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 014955 and UTU Management 015233]

Public Land Order No. 7663; Partial Revocation of Public Land Order No. 1579; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Public Land Order insofar as it affects approximately 3,613 acres of public lands within national forests, which were withdrawn for Forest Service recreation areas and administrative sites.

DATES: *Effective Date:* May 16, 2006.

FOR FURTHER INFORMATION CONTACT: Marsha Fryer, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5802.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that a withdrawal is no longer needed on the lands described in this order, and has requested the partial revocation. The lands will not be opened to surface entry or mining until completion of an analysis to determine if any of the lands need special designation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 1579 (23 FR 798, February 6, 1958), which withdrew public lands within national forests for Forest Service, Department of Agriculture administrative sites and recreational areas, is hereby revoked only insofar as it affects the following described lands:

(a) Uinta National Forest

Salt Lake Meridian

Aspen Grove Recreation Area

T. 5 S., R. 3 E.
Sec. 4, all of the S½ of lot 7 north of the centerline of State Highway 92, SE¼SE¼SW¼, and S½SW¼SE¼;
Sec. 9, W½NW¼NE¼, SE¼NW¼NE¼, and NE¼NW¼.

Big Tree Forest Camp No. 1 Recreation Area

T. 4 S., R. 3 E.
Sec. 33, S½SW¼NE¼, N½SE¼SE¼, and N½SE¼;
Sec. 34, W½NW¼SW¼.

Granite Flat Recreation Area

T. 4 S., R. 2 E.
Sec. 1, SE¼SE¼;
Sec. 12, E½E½NE¼.
T. 4 S., R. 3 E.
Sec. 7, N½NW¼NE¼NW¼, NE¼NE¼NW¼, S½NE¼NE¼SW¼, S½NE¼SW¼, NW¼NE¼SW¼, N½SE½SW¼, N½NE¼SE¼, E½NE¼NW¼SE¼, SW¼NW¼SE¼, and W½SE¼NW¼SE¼.

Holman Flat Forest Camp Recreation Area

T. 4 S., R. 3 E.
Sec. 5, lots 5, 6, 7, and 9 and W½SE¼NW¼.

Little Valley Recreation Area

T. 10 S., R. 5 W.
Sec. 14, NW¼NW¼;
Sec. 15, NE¼NE¼.

Mutual Dell Recreation Area

T. 4 S., R. 3 E.
Sec. 29, SW¼NW¼ and S½NW¼NW¼;
Sec. 30, all of NE¼NE¼ North of the centerline of State Route 92, NW¼NE¼, and N½SE¼NE¼.

Silver Lake Flat Recreation Area

T. 3 S., R. 2 E.
Sec. 36, SE¼NE¼ and E½SE¼.
T. 4 S., R. 2 E.
Sec. 1, lots 1 and 8.
T. 3 S., R. 3 E.

Sec. 31, lots 2, 3, and 4.
T. 4 S., R. 3 E.
Sec. 6, all of lot 6 North of Silver Creek, lots 4 and 5, SE¼NW¼, SE¼SW¼, NE¼SW¼, and SW¼SE¼.

South Fork to Tibble Fork Recreation Areas

T. 4 S., R. 2 E.
Sec. 24, W½SE¼NE¼, W½E1/2SE¼NE¼, and SE¼NE¼NE¼.
T. 4 S., R. 3 E.
Sec. 7, E½NW¼, E½SE¼SW¼, W½SW¼SE¼, NE¼SE¼SE¼, and NE¼SE¼SE¼SE¼;
Sec. 8, NE¼SW¼NW¼SW¼, S½SW¼NW¼SW¼, SE¼NW¼SW¼, N½SW¼SW¼, N½SW¼SW¼, N½S½SW¼SW¼, and SE¼SE¼SW¼SW¼;
Sec. 17, NE¼NW¼, E½NE¼NW¼NW¼, S½SW¼NW¼NW¼, SE¼NW¼NW¼, and N½SW¼NW¼;
Sec. 18, W½NW¼NE¼NE¼, SW¼NE¼NE¼, S½SE¼NE¼NE¼, SE¼NW¼NE¼, SW¼NE¼, W½SW¼NE¼, E½NE¼NW¼, NW¼SE¼NW¼, W½NW¼SW¼SW¼, NE¼NW¼SW¼, E½W½SW¼, W½SE¼SW¼, W½W½SW¼SW¼, E½NW¼SW¼SW¼, SE¼SW¼SW¼, and lot 4;
Sec. 19, E½NW¼NW¼.

Timpanogos Cave Recreation Area

T. 4 S., R. 2 E.
Sec. 24, all of the S½S½SW¼ lying within the Lone Peak Wilderness boundary;
Sec. 25, all of the N½NW¼NW¼ lying within the Lone Peak Wilderness boundary, S½SW¼NW¼NW¼, NE¼NE¼NE¼NW¼, S½NE¼NE¼NW¼, SE¼NW¼NW¼, and S½NE¼NW¼;
Sec. 26, all of the N½N½NE¼ lying within the Lone Peak Wilderness boundary, all of the S½NW¼NE¼ lying within the Lone Peak Wilderness boundary, S½S½NE¼NE¼, S½N½NW¼ lying within the Lone Peak Wilderness boundary, S½N½SE¼NW¼, and S½NE¼SW¼NW¼;
Sec. 27, all of the S½NE¼ lying within the Lone Peak Wilderness boundary, S½S½SE¼NE¼, and S½SE¼SW¼NE¼.

Timpooneke Recreation Area

T. 4. S., R. 3 E.
Sec. 29, N½SE¼SW¼ and all of SE¼SE¼SW¼ East of the centerline of State Route 92;
Sec. 31, S½NE¼SW¼NE¼, S½N½SE¼NE¼, and S½S½NE¼;
Sec. 32, all of NE¼NE¼NW¼ East and South of the centerline of State Route 92, SW¼NE¼, S½NW¼, and S½NE¼NW¼.

Little Valley Administrative Site

T. 10 S., R. 5 W.
Sec. 14, NE¼NW¼.

South Fork Administrative Site

T. 4 S., R. 2 E.
Sec. 24, E½NW¼SE¼, NE¼SE¼, SW¼SE¼, S½SE¼SE¼, E½NE¼SE¼SE¼, NE¼NW¼NE¼SE¼SE¼, SW¼NW¼SE¼SE¼, W½NW¼NW¼SE¼SE¼, and SW¼SE¼NW¼SE¼SE¼.
T. 4 S., R. 3 E.,
Sec. 19, lot 4.

Timpooneke Administrative Site

T. 4 S., R. 3 E.
Sec. 32, SW¼NW¼NW¼, S½SW¼SE¼NW¼NW¼, E½E½SE¼NW¼NW¼, and SW¼SE¼SE¼NW¼NW¼.

(b) Wasatch-Cache National Forest

Salt Lake Meridian

Alexander Lake Recreation Area

T. 2 S., R. 8 E.
Sec. 25, S½SE¼SE¼;
Sec. 36, NE¼NE¼ and E½NW¼NE¼.
T. 2 S., R. 9 E.
Sec. 30, SW¼SW¼;
Sec. 31, NW¼NW¼.

Blacks Fork Camp No. 1 Recreation Area

T. 2 N., R. 11 E.
Sec. 24, SW¼NW¼.

Blacks Fork Camp No. 3 Recreation Area

T. 2 N., R. 11 E.
Sec. 35, NW¼NW¼NE¼ and NE¼NE¼NW¼.

Brush Creek Recreation Area

T. 2 N., R. 12 E.
Sec. 8, NE¼NE¼.

Buckeye Lake Recreation Area

T. 2 S., R. 8 E.
Sec. 13, SE¼SE¼SE¼;
Sec. 24, E½NE¼NE¼.
T. 2 S., R. 9 E.
Sec. 19, NW¼NW¼.

Haydens Camp No. 2 Recreation Area

T. 1 N., R. 10 E.
Sec. 8, W½NW¼.

Haydens Camp No. 3 Recreation Area

T. 1 N., R. 9 E.
Sec. 36, S½NW¼NW¼ and SW¼NW¼.

Hourglass Lake Recreation Area

T. 2 S., R. 8 E.
Sec. 24, S½NW¼SW¼ and N½SW¼SW¼.

Lodge Pole Camp Recreation Area

T. 2 N., R. 10 E.
Sec. 26, W½NE¼SW¼ and E½NW¼SW¼.

Packers Camp Recreation Area

T. 1 S., R. 10 E.
Sec. 19, NE¼NW¼.

Pine Creek Camp Recreation Area

T. 3 S., R. 7 W.
Sec. 2, lots 1, 2, and 3, and SE¼NW¼.

Rock Creek Camp Recreation Area

T. 3 S., R. 8 E.
Sec. 4, SW¼SW¼.

Stillwater Camp No. 2 Recreation Area

T. 1 N., R. 10 E.
Sec. 9, NE¼NW¼.

Sulphur Camp Recreation Area

T. 1 N., R. 9 E.
Sec. 24, S½SW¼NE¼, W½SW¼SE¼, and NW¼SE¼.

(c) Wasatch-Cache National Forest

Uinta Special Meridian

Hoover and Marshall Recreation Area

T. 3 N., R. 9 W.
Sec. 2, SE¼SW¼ and SW¼SE¼;
Sec. 11, NW¼NE¼ and NE¼NW¼.

The areas described in (a), (b), and (c) above aggregate approximately 3,613 acres in Duchesne, Juab, Salt Lake, Summit, Tooele, Utah, and Wasatch Counties.

Dated: April 24, 2006.

Mark Limbaugh,

Assistant Secretary of the Interior.

[FR Doc. E6–7403 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–06–1910–BJ]

Notice of Filing of Plats of Survey; OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication, per BLM Manual 2097, Opening Orders.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma

The plat, in two sheets, representing the dependent resurvey of portions of the north boundary and the subdivisional lines, the subdivision of sections 5 and 8, and the adjusted 1875 record meanders of the former left bank of the Red River in section 5 and 8, and the completion survey of portions of the north boundary and the subdivisional lines within the bed of the Red River, the survey of partition lines of the bed of the Red River, the informative traverse of the meanders of the left bank of the Red River in sections 4, 5 and 6, the survey of the meanders of the right bank of the Red River in sections 2, 3, 4, 8, 9, 17 and 18, the medial line of the Red River in sections 4, 5 and 8, and a metes-and-bounds survey (Integrated Tract), Township 5 South, Range 14 West, Indian Meridian, accepted

February 20, 2006, for Groups 81 and 126, Oklahoma.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 33, and the adjusted 1875 record meanders of the former left bank of the Red River in section 34, the subdivision of section 34, the completion survey of a portion of the subdivisional lines within the bed of the Red river, the survey of partition lines of the bed of the Red River, the informative traverse of the meanders of the left bank of the Red River in sections 33, 34 and 35, the survey of the meanders of the right bank of the Red River in unsurveyed portions of Township 4 and 5 South, Range 14 West, and the medial line of the Red River in sections 33, 34 and 35, and a metes-and-bounds survey (Integrated Tract), Township 4 South, range 14 West, Indian Meridian, accepted February 20, 2006, for Groups 84 and 126, Oklahoma.

If a protest against a survey, in accordance with 43 CFR 4.450–2, of any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been addressed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management at the address below, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet. contact Marcella Montoya at 505–438–7537, or *Marcella_Montoya@nm.blm.gov,* for assistance.

Dated: May 9, 2006.

Robert Casias,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 06–4540 Filed 5–15–06; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0136)

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 202—Royalties and part 206—Product Valuation. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

The title of this information collection request (ICR) is ''30 CFR Part 202—Royalties, Subparts C and D, and Part 206—Product Valuation, Subparts C and D (Federal Oil and Gas).'' We changed the title of this ICR to clarify the regulatory language we cover under 30 CFR parts 202 and 206, address non-standard reporting requirements previously overlooked, and address relevant portions of three related ICRs titled:

- 1010–0095: 30 CFR Part 206—Product Valuation (Request to Exceed Transportation and Processing Allowance Limitation), Subpart B—Indian Oil, § 206.54(b)(2); Subpart C—Federal Oil, § 206.109(c)(2); Subpart D—Federal Gas, §§ 206.156(c)(3), 206.158(c)(3), and 206.158(d)(2)(i); and Subpart E—Indian Gas, §§ 206.177(c)(2) and 206.177(c)(3) [Citations concerning Indian oil and gas are currently covered in ICR 1010–0103];
- 1010–0136: 30 CFR 206—Subpart C, Federal Oil Valuation; and
- 1010–0157: 30 CFR 206—Subpart C, Federal Oil.

DATES: Submit written comments on or before June 15, 2006.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0136).

Please also send a copy of your comments to MMS via e-mail at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

You may also mail a copy of your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225.

If you use an overnight courier service or wish to hand-deliver your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain, at no cost, copies of (1) the ICR, (2) any associated forms, and (3) regulations that require the subject collection of information be sent to OMB.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 202—Royalties, Subparts C and D, and Part 206—Product Valuation, Subparts C and D (Federal Oil and Gas).

OMB Control Number: 1010–0136.

Bureau Form Number: Form MMS–4393.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS), including managing the production of minerals, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The MMS performs the royalty management functions for the Secretary.

Applicable Citations

Applicable citations of the laws pertaining to mineral leases include:

(1) Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]);

(2) Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104–200—Sept. 22, 1996;

(3) The Mineral Leasing Act of 1920, Section 36, as amended (30 U.S.C. 192);

(4) Outer Continental Shelf Lands Act of 1953, Section 27, as amended (43 U.S.C. 1353);

(5) 30 U.S.C. 189 pertaining to Public Lands; and

(6) 30 U.S.C. 359 pertaining to Acquired Lands.

Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm*.

The applicable regulations include 30 CFR part 202—Royalties, subpart C—Federal and Indian Oil and subpart D—Federal Gas; and part 206—Product Valuation, subpart C—Federal Oil and subpart D—Federal Gas. In addition, we include applicable citations from the 2004 Federal Oil Valuation Rule (69 FR 24959, published May 5, 2004) and the 2005 Federal Gas Valuation Rule (70 FR 11869, published March 10, 2005).

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are properly valued and appropriately paid.

Section 101(a) of FOGRMA, as amended, requires that the Secretary ''establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' In order to accomplish these tasks, MMS developed valuation regulations for Federal leases at 30 CFR part 206, Product Valuation. Market value is a basic principle underlying royalty valuation. Consequently, these regulations include methods to capture the true market value of crude oil and gas produced from Federal leases, both onshore and offshore. The MMS uses the information collected to ensure that royalty is accurately valued and appropriately paid on oil and gas produced from Federal onshore and offshore leases. Please refer to the chart for all reporting requirements and associated burden hours. All data submitted is subject to subsequent audit and adjustment.

Valuation Regulations

The valuation regulations at 30 CFR part 206, subparts C and D, require companies to collect and/or submit information used to value their Federal oil and gas, including transportation and processing allowance limit information. This is accomplished on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140, expires October 31, 2006). Regulations developed ensure the information requested is the minimum necessary to carry out our mission and places the least possible burden on respondents. The requested information provides a critical link to establishing the proper value of oil and gas from Federal lands. If the information is not collected, a loss of royalties may result for both Federal and state governments.

Transportation and Processing Regulatory Allowance Limits

Transportation and processing allowances are part of the product valuation process that MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

Regulatory Allowance Limit for Transportation

Under certain circumstances, lessees are authorized to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced oil and gas from the lease to a processing or sales point not in the immediate lease area. For oil and gas, regulations establish the allowable limit on transportation allowance deductions at 50 percent of the value of the oil or gas at the point of sale.

Regulatory Allowance Limit for Processing

When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. For oil and gas, regulations establish the allowable limit on processing allowance deductions at 66⅔ percent of the value of each gas plant product.

Request To Exceed Regulatory Allowance Limitation, Form MMS–4393

Lessees may request to exceed regulatory limitations. Upon proper application from the lessee, MMS may approve an oil or gas transportation allowance in excess of 50 percent (Federal or Indian) or a gas processing allowance in excess of 66⅔ percent (Federal only). To request permission to exceed a regulatory allowance limit, lessees must submit a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation, including a completed Form MMS–4393. This form provides MMS with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports.

OMB Approval

The MMS is requesting OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are included in this information collection. A response is mandatory for valuation requirements and voluntary to obtain the benefit of allowances.

Frequency of Response: Annually.

Estimated Number and Description of Respondents: 102 lessees (100 Federal lessees and 2 possible Indian lessees).

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 20,504 hours.

We are revising this ICR to include non-standard reporting requirements that were overlooked in the previous renewal, and we have adjusted the burden hours accordingly. The hours also reflect our recent analysis related to the implementation of the 2004 Federal Oil Valuation rule and the 2005 Federal Gas Valuation rule. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Part 202—Royalties				
Subpart C—Federal and Indian Oil				
§ 202.101 Standards for reporting and paying royalties.				
202.101	202.101 Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
Subpart D—Federal Gas				
§ 202.152 Standards for reporting and paying royalties on gas.				
202.152 (a) and (b)	202.152(a)(1) If you are responsible for reporting production or royalties you must: (i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation;. (ii) Report gas volumes in units of 1,000 cubic feet (MCF); and. (iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (PSIA) and a standard temperature base of 60 °F * * *. (b) Residue gas and gas plant product volumes shall be reported as specified in this paragraph * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
Part 206—Product Valuation				
Subpart C—Federal Oil				
§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?				
206.102(e)(1)	206.102(e) If you value oil under paragraph (a) of this section: (1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil	PRODUCE RECORDS—The Office of Regulatory Affairs (ORA) determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
§ 206.103 How do I value oil that is not sold under an arm's-length contract?				
206.103	This section explains how to value oil that you may not value under § 206.102 or that elect under § 206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with MMS approval	33.25	5	166.25
206.103(a)	(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the trading month most concurrent with the production month * * *. (1) To calculate the daily mean spot price * * * (2) Use only the days * * * (3) You must adjust the value * * *			
206.103(a)(4)	206.103(a)(4) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, * * *.	8	2	16
206.103(b)(1)	206.103(b) *Production from leases in the Rocky Mountain Region* * * * (1) If you have an MMS-approved tendering program, you must value oil * * *.	400	2	800
206.103(b)(1)(ii)	206.103(b)(1)(ii) If you do not have an MMS-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section * * *.	400	2	800

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.103(b)(4)	206.103(b)(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.	400	2	800
206.103(c)(1)	206.103(c) *Production from leases not located in California, Alaska or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 206.112.	50	10	500
206.103(e)(1)	206.103(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* (1) * * * you may apply to the MMS Director to establish a value representing the market at the refinery if: * * *.	330	2	660
206.103(e)(2)	(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery * * *.			
§ 206.105 What records must I keep to support my calculations of value under this subpart?				
206.105	206.105 If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
§ 206.107 How do I request a value determination?				
206.107(a)	206.107(a) You may request a value determination from MMS * * *.	330	8	2,640
§ 206.109 When may I take a transportation allowance in determining value?				
206.109(c)(2)	206.109(c) *Limits on transportation allowances.* (2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. * * * Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination * * *.	4.25	2	8.5[1]
§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?				
206.110(a)	206.110(a) * * * You must be able to demonstrate that you or your affiliate's contract is at arm's length * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.110(d)(3)	216.110(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined * * *. (3) You may propose to MMS a cost allocation method * * *.	330	2	660
206.110(e)	206.110(e) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.	330	1	330
206.110(e)(1) and (2)	206.110(e)(1) * * * If MMS rejects your cost allocation, you must amend your Form MMS–2014 * * *. (2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.110(g)(2)	206.110(g) If your arm's-length sales include a provision reducing the contract price by a transportation factor, * * *. (2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product..	330	1	330
§ 206.111 How do I determine if a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff?				
206.111(g)	206.111(g) To compute depreciation, you may elect to use either * * * After you make an election, you may not change methods without MMS approval * * *.	330	1	330
206.111(k)(2)	206.111(k)(2) You may propose to MMS a cost allocation method on the basis of the values * * *.	330	1	330
206.111(l)(1)	206.111(l)(1) Where you transport both gaseous land liquid products through the same transportation system, you must propose a cost allocation procedure to MMS.	330	1	330
206.111(l)(2)	206.111(l)(2) * * * If MMS rejects your cost allocation, you must amend your Form MMS–2104 for the month months that you used the rejected method and pay any additional royalty and interest due.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/06.		
206.111(l)(3)	206.111(l)(3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	Burden covered under § 206.111(l)(1).		
§ 206.112 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?				
206.112(a)(1)(ii)	206.112(a)(1)(ii) * * * under an exchange agreement that is not at arm's length, you must obtain approval from MMS for a location and quality differential * * *.	330	1	330
206.112(a)(1)(ii)	206.112(a)(1)(ii) * * * If MMS prescribes a different differential, you must apply. * * * You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit * * *.	330	2	660
206.112(a)(3)	206.112(a)(3) If you transport exchange at arm's length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows * * *.	330	4	1,320
206.112(a)(4)	(a)(4) If you transport or exchange (or both transport and exchange) less than 20 percent of your crude oil produced from the lease between the lease and a market center, you must propose to MMS an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center * * * If MMS prescribes a different adjustment * * * You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit * * *.			
206.112(b)(3)	206.112(b)(3) * * * you may propose an alternative differential to MMS * * * if MMS prescribes a different differential * * * You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit * * *.	330	4	1,320

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.112(c)(2)	206.112(c)(2) * * * If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, 5.0 cents per one-tenth percent difference in sulfur content, unless MMS approves a higher adjustment.	330	2	660
§ 206.114 What are my reporting requirements under an arm's-length transportation contract?				
206.114	206.114 You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur..	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.114	206.114 MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMA staff asks non-standard questions to resolve exceptions.		
§ 206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?				
206.115(a)	206.115(a) You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.115(c)	206.115(c) MMS may require you or your affiliates to submit all data used to calculate the allowance deduction * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
Subpart D—Federal Gas				
§ 206.152 Valuation standards—unprocessed gas				
206.152(b)(1)(i) and (iii)	206.152(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contracts is arm's-length * * *. (iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.152(b)(2)	206.152(b)(2) * * * The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; * * *.	330	1	330
206.152(b)(3)	206.152(b)(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.152(e)(1)	206.152(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.152(e)(2)	206.152(e)(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.152(e)(3)	206.152(e)(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section * * *.	330	21	660
206.152(g)	206.152(g) The lessee may request a value determination from MMS. * * * The lessee shall submit all available data relevant to its proposal * * *.	330	6	1,980
§ 206.153 Valuation standards—processed gas.				
206.153(b)(1)(i) and (iii)	206.153(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length * * *. (iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.153(b)(2)	206.153(b)(2) * * * The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; * * *.	330	1	330
206.153(b)(3)	206.153(b)(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.153(e)(1)	206.153(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.153(e)(2)	206.153(e)(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.153(e)(3)	206.153(e)(2) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section * * *.	330	2	660
206.153(g)	206.153(g) The lessee may request a value determination from MMS. * * * The lessee shall submit all available data relevant to its proposal * * *.	330	4	1,320
§ 206.154 Determination of quantities and qualities for computing royalties.				
206.154(c)(4)	206.154(c)(4) * * * A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease * * *.	330	11	330
§ 206.156 Transportation allowances—general.				
206.156(c)(3)	206.156(c)(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraphs (c)(1) and (c)(2) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination * * *.	4.25	5	[2] 21.25

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
§ 206.157 Determination of transportation allowances.				
206.157(a)(1)(i)	206.157(a) *Arm's-length transportation contracts.* (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.157(a)(1)(i)	206.157(a)(1)(i) * * * The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.157(a)(1)(iii)	206.157(a)(1)(iii) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.157(a)(2)(ii)	206.157(a)(2)(ii) * * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported * * *.	330	1	330
206.157(a)(3)	206.157(a)(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal * * *.	330	1	330
206.157(a)(5)	206.157(a)(5) * * * The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.	100	1	100
206.157(b)(1)	206.157(b) *Non-arm's-length or no contract.* (1) The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014 * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.157(b)(2)(iv)	206.157(b)(2)(iv) After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.	100	1	100
206.157(b)(2)(vi)(A)	(A) After an election is made, the lessee may not change methods without MMS approval * * *.			
206.157(b)(3)(ii)	206.157(b)(3)(ii) * * * the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported * * *.	100	1	100
206.157(b)(4)	206.157(b)(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal * * *.	100	1	100
206.157(b)(5)	206.157(b)(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.	100	1	100
206.175(c)(1)(i)	206.157(c) *Reporting Requirements.* (1) *Arm's-length contracts.* (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (From MMS–2014), expires 10/31/2006.		
206.157(c)(1)(ii)	206.157(c)(1)(ii) The MMS may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related document * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exception.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.157(c)(2)(i)	206.157(c)(2) *Non-arm's-length or no contract.* (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006		
206.157(c)(2)(iii)	206.157(c)(2)(iii) The MMS may require you to submit all data used to calculate the allowance deduction * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions		
206.157(e)(2) and (3)	206.157(e) *Adjustments.* (2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS. (3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payments, in accordance with instructions provided by MMS * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
206.157(f)(1)	(f) *Allowable costs in determining transportation allowances.* * * * (1) *Firm demand charges paid to pipelines.* * * * if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify Form MMS–2014 by the amount received or credited for the affected reporting period and pay anyresulting royalty and late payment interest due;			
	§ 206.158 Processing allowances—general.			
206.158(c)(3)	206.158(c)(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for MMS to make a determination * * *.	4.25	17	72.25
206.158 (d)(2)(i)	206.158(d)(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs * * *.	9.5	2	19
206.158(d)(2)(ii)	206.158(d)(2)(ii) * * * to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–1040 (Form MMS–2014), expires 10/31/2006.		
	§ 206.158 Processing allowances—general.			
206.159(a)(1)(i)	2106.159(a) *Arm's-length processing contracts.* ..... (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.159 (a)(1)(ii)	206.159(a)(1)(i) * * * The lessee must claim a processing allowance by reporting it on a separate line entry on the Form MMS–2014.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–1040 (Form MMS–2014), expires 10/31/2006.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 202 and 206	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.159(a)(1)(iii)	206.159(a)(1)(iii) * * * When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.159(a)(3)	206.159(a)(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal * * *.	330	1	330
206.159(b)(1)	206.159(b) *Non-arm's-length or no contract.* (1) * * * The lessee must claim a processing allowance by reflecting it as a separate line entry on the Form MMS–2014. * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–1040 (Form MMS–2014), expires 10/31/2006.		
206.159(b)(2)(iv)	206.159(b)(2)(iv). * * * When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the alternative without approval of the MMS * * *.	100	1	100
206.159 (b)(2)(iv)(A)	(A) * * * After an election is made, the lessee maynot change methods without MMS approval * * *.	.....	.....	.....
206.159 (b)(4)	206.159(b)(4) A lessee may apply to MMS for an exception from the requirements that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section * * *.	100	1	100
206.159(c)(1)(i)	206.159(c) *Reporting requirements—(1) Arm's-length contracts.* (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–1040 (Form MMS–2014), expires 10/31/2006.		
206.159(c)(1)(ii)	206.159(c)(1)(ii) The MMS may require that a lessee submit arm's-length processing contracts and related documents * * *.	PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.159(c)(2)(i)	206.159(c)(2) *Non-arm's length or no contract.*	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–1040 (Form MMS–2014), expires 10/31/2006.		
206.159(c)(2)(iii)	206.159(c)(2)(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction * * *.	PRODUCE RECORDS—The ORA determiend that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.159(e)(2) and (3)	206.159(e) *Adjustments.* ..... (2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS. (3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS * * *.	There are no burden hours to report in this ICR. All burden hours associated with Form MMS–2014 are included in OMB Control Number 1010–0140 (Form MMS–2014), expires 10/31/2006.		
Total	.....	.....	107	[3] 20,504

[1] Includes an estimate of 1 response at 4.25 burden hours for 30 CFR 206.54(b)(2) for Indian oil transportation estimates.
[2] Includes an estimate of 1 response at 4.25 burden hours for 30 CFR 206.177(c)(2) and (c)(3) for Indian gas transportation estimates.
[3] Total 20,503.25 burden hours rounded up to 20,504 burden hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on July 22, 2005 (70 FR 42366) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 15, 2006.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: December 19, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

Editorial Note: This document was received at the Office of the Federal Register on May 11, 2006.

[FR Doc. E6–7436 Filed 5–15–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0155).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 204—Alternatives for Marginal Properties, subpart C—Accounting and Auditing Relief. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. This ICR is titled ''30 CFR part 204—Alternatives for Marginal Properties, Subpart C—Accounting and Auditing Relief.'' This ICR covers the regulatory language under 30 CFR part 204, as published in the Accounting and Auditing Relief for Marginal Properties final rule on September 13, 2004 (69 FR 55076). This citation explains how lessees and their designees can obtain accounting and auditing relief for production from Federal oil and gas leases and units and communitization agreements that qualify as marginal properties.

DATES: Submit written comments on or before June 15, 2006.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0155). Mail your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain, at no cost, a copy of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 204—Alternatives for Marginal Properties, Subpart C—Accounting and Auditing Relief.

OMB Control Number: 1010–0155.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal lands. The Secretary is required by various laws to manage mineral resources production on Federal lands, collect the royalties due, and distribute the funds in accordance with those laws. The product valuation determination process is essential to assure that royalty payments are based on the proper value of the minerals being removed. The MMS performs the royalty management functions for the Secretary.

Minerals produced from Federal leases vary greatly in the nature of occurrence, markets served, and production and processing methods. When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a

share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

Applicable citations of the laws pertaining to the accounting and auditing relief include:

(1) 30 CFR part 204;

(2) Sections 6 and 7 of Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104–200-Sept. 22, 1996; and

(3) Section 111 of Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]).

Section 7 of RSFA provides for MMS and states concerned to determine, on a case-by-case basis, the amount of marginal production that may be subject to either prepayment of royalty or accounting and auditing relief. The MMS amended its regulations in 2004 to provide guidance to lessees and designees seeking accounting and auditing relief for Federal marginal properties. For purposes of section 7, RSFA does not define marginal property but does say that any granted alternative is to promote production, reduce administrative costs, and increase net receipts to the Federal Government and the states. Under section 7, RSFA also provides that the state concerned with a marginal property must approve any use of an alternative.

There are two types of relief: cumulative royalty reports and payments relief, and other relief. Under 30 CFR 204.202, MMS requires notification from lessees or designees who request to take the cumulative royalty reporting and payment relief option. Under 30 CFR 204.203, MMS requires a relief request from lessees or designees who want to obtain any other type of accounting and auditing relief. This information collection is voluntary; only those lessees or designees who choose to obtain relief must supply this information.

A state may decide in advance that it will or will not allow one or both of the relief options for each particular year. To help states decide whether to allow one or both of the relief options, MMS will send states a Report of Marginal Properties by October 1 preceding the calendar year. Each state must notify MMS of its intent to allow or not allow one or both of the relief options by November 1 preceding the same calendar year.

The MMS will determine, depending on the type of accounting and auditing relief being sought by the lessee or designee, that a lessee or designee must file either a notification or a request for relief with MMS to obtain the applicable form of relief provided for under RSFA section 7. This will allow the lessee or designee to specify the type of relief requested under RSFA section 7 on a case-by-case basis.

For the other relief option, MMS and the state concerned will use the information supplied by the lessee or designee in their relief request to (1) identify the person making the request; (2) identify the marginal property for which relief is being requested; (3) determine the relief being sought by the lessee or designee; (4) determine if the relief should be granted or denied; and (5) monitor the lessee's continuing eligibility of the relief being taken. After consulting with the state concerned, MMS will either approve, deny, or modify requests in writing. Under RSFA section 7, both MMS and a state concerned with a marginal property must approve any accounting and auditing relief granted for a marginal property. Therefore, MMS and the state concerned must determine that the relief is in the best interests of the Federal Government and the state concerned.

Notification is required of lessees or designees who wish to take the cumulative reporting and payment relief option. A relief request is required of lessees or designees who wish to obtain any other type of individual accounting and auditing relief. This information collection under this rule is voluntary; only those lessees or designees who choose to obtain or retain the benefit of accounting and auditing relief must supply this information.

A response is required to obtain the benefit of accounting and auditing relief.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

Frequency: For Federal lessees/designees, one time, and then again only if changes occur; for states, annually.

Estimated Number and Description of Respondents: 1,010 Federal lessees/designees and 15 states.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 406 hours.

With participation in the relief program offered in 30 CFR part 204, MMS estimates an annual reporting burden hour saving of 694 hours for each subsequent year. This annual reporting burden hour saving is reflected in ICR 1010–0140 (expires 10/31/2006). We estimate approximately 138 total responses—134 responses from 1,010 Federal lessees/designees; and 4 responses from 15 states. Each state requires an annual in-depth analysis informing MMS of their decision to participate or not participate in accounting and auditing relief. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 204	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES Subpart C—Accounting and Auditing Relief				
204.202(b)(1)	*§ 204.202 What is the cumulative royalty reports and payments relief option?*. (b) To use the cumulative royalty reports and payments relief option, you must do all of the following. (1) Notify MMS in writing by January 31 of the calendar year for which you begin taking your relief. * * *	2	100	200
204.202(b)(2)	*§ 204.202 What is the cumulative royalty reports and payments relief option?* (2) Submit your royalty report and payment * * * by the end of February of the year following the calendar year for which you reported annually, * * * If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually; (3) Use the sales month prior to the month that you submit your annual report and payment * * * for the entire previous calendar year's production for which you are paying annually.* * *	Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006).		
204.202(b)(4), (b)(5), (c), (d)(1), (d)(2), (e)(1), and (e)(2).	*§ 204.202 What is the cumulative royalty reports and payments relief option?* (b) To use the cumulative royalty reports and payments relief option, you must * * * (4) Report one line of cumulative royalty information on Form MMS–2014 for the calendar year, * * * and (5) Report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property production. (c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest * * * from the date your payment was due under this section until the date MMS receives it. * * * (e) If you dispose of your ownership interest in a marginal property for which you have taken relief * * * you must: (1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and (2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest * * * from the date the payment was due * * *	Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006).		
204.203(b)	*§ 204.203 What is the other relief option?* (b) You must request approval from MMS * * * before taking relief under this option.	4	10	40
204.205(a) and (b)	*§ 204.205 How do I obtain accounting and auditing relief?* (a) To take cumulative reports and payments relief under § 204.202, you must notify MMS in writing by January 31 of the calendar year for which you begin taking your relief. (b) To obtain other relief under § 204.203, you must file a written request for relief with MMS.	Hour burden covered under § 204.203(b).		

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 204	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
204.206(a)(3)(i) and (b)(1)	*§ 204.206 What will MMS do when it receives my request for other relief?* When MMS receives your request for other relief under § 204.205(b), it will notify you in writing as follows: (a) If your request for relief is complete, MMS may either approve, deny, or modify your request in writing after consultation with any State * * * (3) If MMS modifies your relief request, MMS will notify you of the modifications. (i) You have 60 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing. (b) If your request for relief is not complete, MMS will notify you in writing * * * (1) You must submit the missing information within 60 days of your receipt of MMS's notice * * *	Hour burden covered under § 204.203(b).		
204.208 (c)(1) and (d)(1)	*§ 204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?* (c) If a State decides * * * that it will or will not allow one or both of the relief options * * * within 30 days * * * the State must: (1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow or not allow one or both of the relief options * * * (d) If a State decides in advance * * * that it will not allow one or both of the relief options * * * the State must: (1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow one or both of the relief options * * *	40	4	160
204.209(b)	*§ 204.209 What if a property ceases to qualify for relief obtained under this subpart?* (b) If a property is no longer eligible for relief * * * the relief for the property terminates as of December 31 of that calendar year. You must notify MMS in writing by December 31 that the relief for the property has terminated.	.25	24	6
204.210(c) and (d)	*§ 204.210 What if a property is approved as part of a nonqualifying agreement?* (c) * * * the volumes on which you report and pay royalty * * * must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM * * * Report and pay royalties for your production using the procedures in § 204.202(b).. (d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by the date due in § 204.202(b), you will owe late payment interest determined under 30 CFR 218.54 from the date your payment was due under § 204.202(b)(2) until the date MMS receives it.	Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006).		

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 204	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
204.214(b)(1) and (b)(2) ..	*§ 204.214(b) Is minimum royalty due on a property for which I took relief?* (b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and: (1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or (2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.	Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006).		
Total	.....	.....	138	406

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 et seq.) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on June 3, 2005 (70 FR 32647), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 15, 2006.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: December 28, 2005.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

Editorial Note: This document was received at the Office of the Federal Register on May 11, 2006.

[FR Doc. E6–7440 Filed 5–15–06; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–569]

In the Matter of Certain Endoscopic Probes for Use in Argon Plasma Coagulation Systems; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 10, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of ERBE Elektromedizin GmbH of Germany and ERBE USA, Inc. of Marietta, Georgia. A supplement to the complaint was filed on May 2, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain endoscopic probes for use in argon plasma coagulation systems by reason of infringement of claims 1, 3, 4, 11, 13, 35, 37, 38, 39, and 41 of U.S. Patent No.

5,720,745 and of infringement of U.S. Supplemental Trademark Registration No. 2,637,630. The complaint further alleges that an industry in the United States exists or is in the process of being established, as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 10, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain endoscopic probes for use in argon plasma coagulation systems by reason of infringement of claims 1, 3, 4, 11, 13, 35, 37, 38, 39, or 41 of U.S. Patent No. 5,720,745, and whether an industry in the United States exists or is in the process of being established, as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain endoscopic probes for use in argon plasma coagulation systems by reason of infringement of U.S. Supplemental Trademark Registration No. 2,637,630, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

ERBE Elektromedizin GmbH, Waldhörnlestrabe 17, 72072 Tübingen, Germany

ERBE USA, Inc., 2225 Northwest Parkway, Marietta, Georgia 30067.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Canady Technology, LLC, 144 Research Drive, Hampton, VA 23666.

Canady Technology Germany GmbH, Kanalstraβe 66–74, 12357 Berlin, Germany.

KLS Martin GmbH & Co. KG, Am Gansacker 1 B, 79224 Umkirch, Germany.

(c) The Commission investigative attorney, party to this investigation, is Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436.

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 11, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–7444 Filed 5–15–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–570]

In the Matter of Certain Flash Memory Chips, Flash Memory Systems, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 11, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Lexar Media, Inc. of Fremont, California. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory chips, flash memory systems, and products containing same by reason of infringement of claims 1 and 2 of U.S. Patent No. 6,801,979; claims 1–7 of U.S. Patent No. 6,397,314; and claims 1–13, 15, and 16 of U.S. Patent No. 6,978,342. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room

112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2767.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 10, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory chips, flash memory systems, or products containing same by reason of infringement of one or more of claims 1 and 2 of U.S. Patent No. 6,801,979, claims 1–7 of U.S. Patent No. 6,397,314, and claims 1–13, 15, and 16 of U.S. Patent No. 6,978,342, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Lexar Media, Inc., 47300 Bayside Parkway, Fremont, CA 94538.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Toshiba Corporation, 1–1–1, Shibaura, Minato-Ku, Tokyo 105–0023 Japan.

Toshiba America, Inc., 1251 Avenue of Americas, Suite 4100, New York, NY 10020.

Toshiba America Electronic Components, Inc., 19900 Macarthur Blvd., Suite 400, Irvine, CA 92612.

(c) The Commission investigative attorney, party to this investigation, is Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436.

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and enter both an initial and final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 11, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–7439 Filed 5–15–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Intent To Publish a Request for Proposal for the Selection of Channelers

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of intent to publish a Request for Proposal for the selection of Channelers requiring access to criminal history record information for noncriminal justice purposes pursuant to the National Crime Prevention and Privacy Compact Council's Outsourcing Rule and Standard.

SUMMARY: The FBI intends to publish a Request For Proposal (RFP) in an effort to select a limited number of third parties to serve as Channelers. Channelers will receive noncriminal justice applicant fingerprint submissions and collect associated fees, ensure fingerprint submissions are properly and adequately completed, electronically forward fingerprint submissions to the FBI's Criminal Justice Information Services (CJIS) Division for national noncriminal justice criminal history record checks, and receive electronic record check results for dissemination to Authorized Recipients that are permitted access to criminal history record information (CHRI) pursuant to Federal statute, Federal Executive order, or a State statute that has been approved by the United States Attorney General.

FOR FURTHER INFORMATION CONTACT: Ms. Kathrina L. Sliger, FBI Contracting Officer, Information Technology Contracts Unit, FBI CJIS Division, 1000 Custer Hollow Road, Module E–3, Clarksburg, WV 26306; telephone (304) 625–4142; e-mail *ksliger@leo.gov;* fax number (304) 625–5391.

SUPPLEMENTARY INFORMATION: The FBI's Criminal Justice Information Services (CJIS) Division, Clarksburg, West Virginia, provides identification services based on fingerprints and maintains a national repository of fingerprint identification information. Since 1999, the FBI has performed identification services using the Integrated Automated Fingerprint Identification System (IAFIS). The IAFIS is designed to process fingerprint information electronically.

The National Crime Prevention and Privacy Compact Act of 1998 (Compact) (title 42, United States Code, sections 14611–14616) provides a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes. The Compact established a fifteen-member National Crime Prevention and Privacy Compact Council (Council), whose members are appointed by the United States Attorney General, to promulgate rules, procedures, and standards governing the use of the Interstate Identification Index (III) CHRI for noncriminal justice purposes.

The Council published the ''Outsourcing of Noncriminal Justice Administrative Functions'' Interim

Final Rule (IFR) and two ''Security and Management Control Outsourcing Standards'' (Outsourcing Standards) in the **Federal Register** (FR) on December 16, 2004. *See* 69 FR 75243 and 69 FR 75350, respectively. The Council adopted the IFR as a final rule and published a combined Outsourcing Standard in the **Federal Register** on December 15, 2005. *See* 70 FR 74200 and 70 FR 74373, respectively. The rule permits an Authorized Recipient of CHRI to outsource noncriminal justice administrative functions relating to the processing of CHRI to a third party, subject to appropriate controls. The rule states that contracts or agreements providing for authorized outsourcing ''shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General.''

The purpose of this notice is to provide interested parties advance notice that the FBI will soon publish an RFP for Channelers pursuant to the Council's Outsourcing Rule and Standard. The number of Channelers that will eventually be approved is unknown at this time; however, the FBI will strive to strike a balance between the number of Channelers it has the capability to administer (i.e. the number of CJIS Wide Area Network connections the FBI may reasonably establish during the first year of this initiative) and the number needed to effectively and efficiently serve the needs of Authorized Recipients. The RFP is expected to be advertised in the FedBizOpps, formerly the Commerce Business Daily, within 30 days of publishing this notice.

Dated: April 6, 2006.

David Cuthbertson,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. E6–7365 Filed 5–15–06; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 9, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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
- 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.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: ERISA Summary Annual Report Requirement.

OMB Number: 1210–0040.

Frequency: Annually.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 749,000.

Number of Annual Responses: 228,686,000.

Estimated Time per Respondent: Approximately 45 minutes.

Total Burden Hours: 461,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $134,161,000.

Description: Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) generally requires employee benefit plan administrators annually to furnish a Summary Annual Report (SAR) to each plan participant and to certain beneficiaries. The SAR must fairly summarize the information included in the plan's most recent annual report filed with the Department of Labor.

The Department of Labor's regulation under section ERISA section 104(b)(3), codified at 29 CFR 2520.104b–10, prescribes the timing and format of the SAR. Plan administrators must furnish a copy of the SAR to each participant and to each beneficiary who is receiving benefits under the plan (other than welfare plan beneficiaries) within 9 months after the close of the plan year.

The SAR provides plan a timely and accurate description of their plan's financial condition. The participants and beneficiaries who receive the SAR can determine, based on the information it contains, whether they have concerns with the operation of the plan and whether to exercise their rights under ERISA, for example, by contacting the Department when problems with the plan are identified. Concerned calls from participants and beneficiaries are a critical component of the Department's compliance assistance and enforcement efforts.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–7406 Filed 5–15–06; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on May 22, 2006 via conference call. The meeting will begin at 2 p.m., and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Room.

STATUS OF MEETING: OPEN. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone may obtain call-in information by calling LSC's FOIA Information line at (202) 295–1629.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of October 1, 2005 through March 31, 2006.

3. Consider and act on other business.

4. Public comment.

FOR FURTHER INFORMATION CONTACT: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: May 11, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–4588 Filed 5–11–06; 5:16 pm]

BILLING CODE 7050–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Sunshine Act Meeting

TIME: 9:30 a.m., May 23, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7768, *Aircraft Accident Brief*—Controlled Flight Into Terrain, Learjet 35A, N30DK, San Diego, California, October 24, 2004.

7758, *Aircraft Accident Brief*—Departure From Controlled Flight, Learjet 24B, N600XJ, Helendale, California, December 23, 2003.

NEWS MEDIA CONTACT: Ted Lopatkiewicz, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, May 19, 2006.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: May 12, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–4618 Filed 5–12–06; 1:57am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company (Dominion); Surry Power Station, Unit Nos. 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

The proposed amendments would add a requirement to Title 10 of the Code of Federal Regulations, (10 CFR) part 50 license to restrict the minimum cooling time and burnup of spent fuel assemblies that will be placed into storage in the NUHOMS HD spent fuel dry storage system at Surry 1 and 2 starting in the summer of 2006. Specifically, the proposed amendments would add Figure 5.4–2 to the Technical Specifications (TSs) to ensure that the NUHOMS HD canister remains subcritical during operations in the Surry 1 and 2 spent fuel pool.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR part 50, § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The probability of occurrence or the consequences of an accident previously evaluated is not significantly increased.

Operation under 10 CFR 50.68 for use of the NUHOMS HD system and implementation of additional requirements on the cooling time and burnup of fuel that is to be loaded into the NUHOMS HD 32PTH DSC [Dry Shielded Canister] will not require any physical changes to Part 50 structures, systems, or components, nor will there be any changes to the performance requirements of existing structures, systems, or components. Handling of spent fuel storage casks has previously been evaluated for Surry. When older cask designs stored under the Surry ISFSI [Independent Spent Fuel Storage Installation] site specific license are returned to the station, they will be handled and controlled in the same manner as the initial loading and movement of these casks. The response of the plant to previously analyzed Part 50 accidents is not adversely impacted, and current analyses of radiological releases, including those for the fuel handling accident, will continue to bound activities related to spent fuel cask loading, handling, and storage.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created.

Neither fuel handling nor the loading and handling of the NUHOMS HD 32PTH DSC will be affected by operation under 10 CFR 50.68(b) or by placing additional constraints on selection of fuel to be stored in the DSC. When older cask designs stored under the Surry ISFSI site specific license are returned to the station, they will be handled and controlled in the same manner as the initial loading and movement of these casks. The existing process used to ensure that fuel assemblies selected for dry storage comply with the specific cask and ISFSI licensing requirements will be used to select the fuel assemblies to be placed in the NUHOMS HD 32PTH DSC. The requirements of the proposed new Technical Specification will only represent additional limitations that must be considered during this selection process.

(3) There is not a significant reduction in a margin of safety.

The Code of Federal Regulations identifies compliance with 10 CFR 50.68(b) as an acceptable alternative to compliance with 10 CFR 70.24. The emphasis of 10 CFR 70.24 is on detection of criticality events, while the requirements of 10 CFR 50.68(b) emphasize prevention of inadvertent criticality events. Operation under 10 CFR 50.68(b) is therefore preferable to ensure that Surry complies with the intent of General Design Criterion 62, which specifically directs that criticality should be prevented during fuel storage and handling. The existing criticality limits for the Surry Spent Fuel Pool and New Fuel Storage Area will be maintained. The NUHOMS HD spent fuel storage system is currently under review for general licensing, and has been shown to comply with the criticality requirements identified in 10 CFR part 72. Compliance with the proposed Surry Technical Specification will further ensure that the system remains safely subcritical during all handling and storage operations (*e.g.,* load, unloading, handling, decontamination, etc.) that are conducted at the station prior to transfer of the DSC to the ISFSI, even under the more restrictive condition of assuming the DSC is fully loaded with fuel of the maximum allowable

reactivity and flooded with unborated water. Application of a fuel burnup credit in this criticality analysis ensures that the full soluble boron concentration required in the Spent Fuel Pool water by Surry plant Technical Specifications is available to provide defense in depth to an inadvertent criticality event. The older cask designs stored under the Surry ISFSI site specific license will be handled in the same manner used to initially load and move these casks, and the criticality requirements that were previously determined to be acceptable for safe loading, unloading and handling of these casks will remain applicable.

Based on the above discussion, Surry operation under 10 CFR 50.68(b) and implementation of the proposed Technical Specification for use of the NUHOMS HD dry storage system, and continued handling of older cask designs under the original licensing basis for these casks, will not involve a significant increase in the probability or consequences of an accident previously evaluated. The possibility of a new or different kind of accident from any accident previously evaluated is also not created, and there is no significant reduction in a margin of safety. Therefore the requirements of 10 CFR 50.92(c) are met, and there is not a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day period provided that its final determination is that the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room (PDR) on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendments. If the final determination is that the amendments request involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Ms. Lillian M. Cuoco, Esquire, Senior Counsel, Dominion Resources Services, Inc., Building 475, 5th Floor, Rope Ferry Road, Waterford, Connecticut 06385, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated February 14, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of May, 2006.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–7497 Filed 5–15–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008]

Dominion Nuclear North Anna, LLC; Notice of Intent To Prepare a Supplement to the Draft Environmental Impact Statement for the North Anna ESP Application

On September 25, 2003, the U.S. Nuclear Regulatory Commission (NRC, or the Commission) received an application pursuant to Title 10 of the Code of Federal Regulations, Part 52 (10 CFR part 52) from Dominion Nuclear North Anna, LLC (Dominion) for an early site permit (ESP) for the North Anna ESP site located in Louisa County, Virginia near the town of Mineral. On December 10, 2004, the NRC issued a **Federal Register** notice (69 FR 71854) announcing the availability of NUREG–1811, ''Draft Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site'' (DEIS) and sought comment on the DEIS. On April 13, 2006, Dominion submitted a revision to its application. The revision to the application described changes to the cooling water system for postulated Unit 3 at the North Anna ESP site and an increase in power level for both postulated Units 3 and 4.

The purpose of this notice is to inform the public that pursuant to 10 CFR 51.72, the NRC will be preparing a supplement to its DEIS in support of the review of the ESP application. A subsequent **Federal Register** notice will announce the availability of the supplement to the DEIS and will request public comments on the supplement.

An applicant may seek an early site permit in accordance with subpart A of 10 CFR part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the term of an ESP (up to 20 years), the permit may be referenced in an application for a CP or COL. The staff evaluated possible alternatives to the proposed action (issuance of an ESP at the North Anna ESP site) including the no action alternative and alternative sites in its DEIS to determine if there was an obviously superior alternate site.

In the supplement to the DEIS the staff will evaluate only the impacts of the changes proposed for the cooling system for postulated Unit 3 and the power increase from 4300–4500 MWt for postulated Units 3 and 4. Scoping was previously conducted for the original DEIS and the the changes described in the revision to the application do not appear to change the scope of the environmental evaluation required by 10 CFR 52.18. Therefore, pursuant to 10 CFR 51.72(c), additional scoping is unnecessary and will not be conducted. The Final Environmental Impact Statement will contain both the staff's evaluation of the changes proposed in the April 13, 2006, revision to the application and the staff's evaluation of those areas that were not affected by the revision.

A copy of the application, including the environmental report, is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the revised application is ML061180180. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The Louisa County Library, located at 881 Davis Highway, Mineral, Virginia has agreed to make the application available to local residents. The application is also available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/esp/north-anna.html.* For further information regarding the proposed action, contact Mr. Nitin Patel, Project Manager at telephone number 301–415–3201 or by mail at U.S. Nuclear Regulatory Commission, ATTN: Nitin Patel, Mail Stop 0–4D9A, One White Flint North,

11555 Rockville Pike, Rockville, Maryland 20852–2738. For further information regarding the environmental impact statement, contact Mr. Jack Cushing, Senior Environmental Project Manager, at telephone number 301–415–1424, or by mail at U.S. Nuclear Regulatory Commission, ATTN: Jack Cushing, Mail Stop 0–11F1, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Dated at Rockville, Maryland, this 10th day of May 2006.

For the Nuclear Regulatory Commission.

Jack Cushing,

Acting Chief, New Reactors Environmental Projects Branch, Division of New Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–7426 Filed 5–15–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products, suppliers or bidders of the United States in airport construction projects.

EFFECTIVE DATE: May 16, 2006.

FOR FURTHER INFORMATION CONTACT: Dawn Shackleford, Director for International Procurement, Office of the United States Trade Representative, (202) 395–9461, or Behnaz Kibria, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9589.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative (USTR) has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (codified at 49 U.S.C. 50104) (''the Act''), requires USTR to decide whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Rob Portman,

United States Trade Representative.

[FR Doc. E6–7437 Filed 5–15–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the Dominican Republic-Central America-United States Free Trade Agreement for Honduras and Nicaragua

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

DATES: *Effective Date:* May 16, 2006.

FOR FURTHER INFORMATION CONTACT: Dawn Shackleford, Director for International Procurement, Office of the United States Trade Representative, (202) 395–9461, or Jason Kearns, Associate General Counsel, Office of the United States Trade Representative, (202) 395–9439.

On August 5, 2004, the United States, Honduras and Nicaragua entered into the Dominican Republic-Central America-United States Free Trade Agreement (''the CAFTA–DR''). Chapter 9 of the CAFTA–DR sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1.2(b)(i) of the CAFTA–DR. On August 2, 2005, the President signed into law the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''the CAFTA-DR Act'') (Pub. L. 109–53, 119 Stat. 462) (19 U.S.C. 4001 note). In section 101(a) of the CAFTA–DR Act, the Congress approved the CAFTA–DR. The CAFTA–DR entered into force on April 1, 2006, for Honduras and Nicaragua.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Rob Portman, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of the CAFTA–DR, do hereby determine that:

1. Honduras and Nicaragua are countries, other than major industrialized countries, which, pursuant to the CAFTA–DR, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Honduras and Nicaragua are so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Honduras and Nicaragua (*i.e.,* goods and services covered by the Schedules of the United States in Annex 9.1.2(b)(i) of the CAFTA–DR) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Honduras and Nicaragua, this waiver shall be applied by all entities listed in the Schedule of the United States to Section A of Annex 9.1.2(b)(i) and in List A of Section C of Annex 9.1.2(b)(i) of the CAFTA–DR.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: May 8, 2006.

Rob Portman,

United States Trade Representative.

[FR Doc. E6–7442 Filed 5–15–06; 8:45 am]

BILLING CODE 3190–W6–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Overseas Private Investment Corporation (OPIC) has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and ways to minimize the reporting burden, including automated collection techniques by using other forms of technology. The proposed information collection request is summarized below.

DATES: All comments must be received by OMB within 30 calendar days from the publication date of this Notice.

ADDRESSES: Requests for information regarding this information collection, including a copy of the proposed information collection and supporting documentation, may be obtained from the Agency Submitting Officer below. Comments on the survey should be submitted to the OMB contact listed below.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Essie Bryant, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, telephone (202) 336–8563.

OMB Contact: Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, Attention: Mr. David Rostker, OPIC Desk Officer, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Type of Request: New information collection.

Title: 2006 OPIC Client Satisfaction Survey.

OMB Approval Number: None.

Frequency of Response: Once per client.

Type of Respondents: Individual business officer representatives of U.S. companies sponsoring projects overseas.

Respondent's Obligation: Voluntary.

Affected Public: U.S. companies or citizens sponsoring projects overseas.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden: $0.

Estimated Federal Cost: $14,465.00.

Authority for Information Collection: Sections 231 and 234 of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses of Information Collection): OPIC is conducting a telephone survey of its clients to determine their satisfaction with its products and services. OPIC will use the survey results to develop strategies to improve customer service. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of OPIC, including whether the information collected will have practical utility; (2) the accuracy of the OPIC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: May 10, 2006.

Eli Landy,

Senior Counsel for Administrative Law, Department of Legal Affairs.

[FR Doc. 06–4536 Filed 5–15–06; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53783; File No. SR-ISE–2005–60]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

May 10, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2005, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the Exchange. On May 5, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 9, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] Amendment No. 2 replaced the text of proposed ISE Rules 408(a) and 807(a) in their entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rules 408(a), 502(h), 503(h), 807(a), and 1400 to enable the initial and continued listing and trading on the Exchange of Fund Shares that hold specified non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. The text of the proposed rule change is provided below (*italics* indicates additions; [brackets] indicate deletions):

* * * * *

Rule 408. Prevention of the Misuse of Material Nonpublic Information

(a) Every Member, other than a lessor that is neither registered, nor required to be registered, as a broker-dealer under section 15 of the Exchange Act, shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Member's business, to prevent the misuse of material nonpublic information by such Member or persons associated with such Member in violation of the Exchange Act and Exchange Rules.

(1) Misuse of material nonpublic information includes, but is not limited to:

(i) Trading in any securities issued by a corporation *or Funds, as defined in Rule 502(h), or a trust or similar entities*, or in any related securities or related options or other derivative securities, or *in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* while in possession of material nonpublic information concerning that corporation *or those Funds or that trust or similar entities*;

(ii) Trading in an underlying security or related options or other derivative securities, or *in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* while in possession of material nonpublic information concerning imminent transactions in the

above; [underlying security or related securities;] and

(iii) Disclosing to another person any material nonpublic information involving a corporation *or Funds or a trust or similar entities* whose shares are publicly traded or an imminent transaction in an underlying security or related securities *or in the underlying non-U.S. currency or any related non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* for the purpose of facilitating the possible misuse of such material nonpublic information.

(2) No change.

(b)–(c) No change.

* * * * *

Rule 502. Criteria for Underlying Securities

* * * * *

(h) Securities deemed appropriate for options trading shall include shares or other securities (''Fund Shares'') that *(i)* represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are [principally] traded on a national securities exchange or through the facilities of a national securities association and *are defined as an ''NMS stock'' under Rule 600 of Regulation NMS* [reported as ''national market'' securities], and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) *or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust* (''Funds''); provided that all of the following conditions are met:

(1) Any non-U.S. component securities of [the] *an* index or portfolio *of securities* on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(2) *Component* securities *of an index or portfolio of securities on which the Fund Shares are based* for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index;

(3) *Component* securities *of an index or portfolio of securities on which the Fund Shares are based* for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index; [and]

(4) For Funds that hold a specified non-U.S. currency deposited with the trust, the Exchange has entered into an appropriate comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities exchange where the underlying Funds are listed and traded; and

[(4)](*5*) The Fund Shares either (i) meet the criteria and guidelines set forth in paragraphs (a) and (b) above; or (ii) the Fund Shares are available for creation or redemption each business day from or through the *issuing trust, investment company or other entity* [Fund] in cash or in kind at a price related to net asset value, and the *issuer* [Fund] is obligated to issue Fund Shares in a specified aggregate number even if some or all of the [securities] *investment assets* required to be deposited have not been received by the *issuer* [Fund], subject to the condition that the person obligated to deposit the [securities] *investment assets* has undertaken to deliver them [securities] as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the *issuer of Fund Shares* [Fund], all as described in the *Fund Shares'* [Fund's] prospectus.

(i) through (j) No change.

Rule 503. Withdrawal of Approval of Underlying Securities

* * * * *

(h) Fund Shares approved for options trading pursuant to Rule 502(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares if the [issuer is] *Fund Shares are* delisted from trading as provided in subparagraph (b)(*5*)[(6)] of this Rule *or the Fund Shares are halted from trading on their primary market.* In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Fund Shares in any of the following circumstances:

(1) In the case of options covering Fund Shares approved pursuant to Rule 502(h)(*5*)[4](i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of this Rule 503;

(2) In the case of options covering Fund Shares approved pursuant to Rule 502(h)(*5*)[(4)](ii), following the initial twelve-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange or [as NMS securities] through the facilities of a national securities association *and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS*, there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 or more consecutive trading days;

(3)–(4) No change.

(i) through (j) No change.

* * * * *

Rule 807. Securities Accounts and Orders of Market Makers

(a) Identification of Accounts. *A Primary Market Maker in the Fund Shares, as defined in Rule 502(h), is obligated to conduct all trading in the Fund Shares in account(s) that have been reported to the Exchange. In addition,* [I]*i*n a manner prescribed by the Exchange, each market maker shall file with the Exchange and keep current a list identifying all accounts for stock, options*, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* and related securities trading in which the market maker may, directly or indirectly, engage in trading activities or over which it exercises investment direction. No market maker shall engage in stock, options*, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* or related securities trading in an account which has not been reported pursuant to this Rule.

(b)–(c) No change.

* * * * *

Rule 1400. Maintenance, Retention and Furnishing of Books, Records and Other Information

(a)–(b) No change.

Supplementary Material to Rule 1400

.01 In addition to the existing obligations under Exchange rules regarding the production of books and records, a Primary Market Maker in non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such

currency, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable non-U.S.-currency options, futures or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend ISE Rules 408(a), 502(h), 503(h), 807(a), and 1400 to enable the initial and continued listing and trading on the Exchange of Fund Shares that hold specified non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Currently, the term ''Fund Shares,'' as defined in ISE Rule 502(h), requires that the investment assets held by a trust, investment company, or other similar entity consist of portfolios of securities. As proposed, amended ISE Rule 502(h) would also permit the investment assets to consist of a trust that holds a specified non-U.S. currency deposited with the trust.

In particular, the proposed amendment to ISE Rule 502(h) would permit the Exchange to list options on the Euro Currency Trust (''Trust''). The Trust issues Euro Shares (''Shares'') that represent units of fractional undivided beneficial interest in, and ownership of, the Trust. PADCO Advisors II, Inc., d/b/a Rydex Investments, is the sponsor of the Trust (''Sponsor'')[5] and may be deemed the ''issuer'' of the Shares pursuant to section 2(a)(4) of the Securities Act of 1933, as amended.[6] The Bank of New York is the trustee of the Trust (''Trustee''), JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust (''Depository''), and Rydex Distributors, Inc. is the distributor for the Trust (''Distributor''). The Trust intends to issue additional Shares on a continuous basis through the Trustee. The Sponsor, Trustee, Depository, and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated.

As stated in the Trust's Registration Statement,[7] the investment objective of the Trust is for the Shares to reflect the price of the euro. The Shares are intended to provide institutional and retail investors with a simple, cost-effective means of gaining investment benefits similar to those of holding euro.[8] The Sponsor believes that the Trust is the first exchange traded fund (''ETF'')[9] whose assets are limited to a particular foreign currency. The Shares may be purchased from the Trust only in one or more blocks of 50,000 Shares, as described in the prospectus under ''Creation and Redemption of Shares.'' A block of 50,000 shares is called a Basket. The Trust issues Shares in Baskets on a continuous basis to certain authorized participants (''Authorized Participants'') as described in the prospectus under ''Plan of Distribution.'' Each Basket, when created, is offered and sold to an Authorized Participant at a price in euro equal to the net asset value (''NAV'') for 50,000 Shares on the day that the order to create the Basket is accepted by the Trustee.

On December 12, 2005, the Shares were sold to the public by Authorized Participants at varying prices in dollars by reference to, among other things, the market price of euro and the trading price of the Shares on the New York Stock Exchange (''NYSE'') at the time of each sale. The Shares trade on the NYSE under the symbol ''FXE.'' The Shares may also trade in other markets.

The Exchange believes that permitting options on foreign currency-based Fund Shares to be traded on the Exchange is consistent with the Commission's recent approval order of a rule change filed by the NYSE to list and trade shares of the Trust.[10] This rule change to ISE's listing criteria for Fund Shares is intended to provide appropriate listing standards for options on shares of these and similar types of foreign currency-based Fund Shares that may be listed in the future.

Fund Shares will continue to need to satisfy the listing standards in ISE Rule 502(h). Specifically, the Fund Shares must be traded on a national securities exchange or through the facilities of a national securities association and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS.[11] The Fund Shares must also either: (1) Meet the criteria and guidelines under ISE Rules 502(a) and 502(b) (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuer in cash or in-kind at a price related to net asset value, and the issuer is obligated to issue Fund Shares in a specified aggregate number even if some or all of the investments required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible, and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as described in the issuer's prospectus.

Under the applicable continued listing criteria in ISE Rule 503(h), the Fund Shares may be delisted as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Fund

[5] The Sponsor maintains a public Web site on behalf of the Trust, *http://www.currencyshares.com*, which contains information about the Trust and the Shares.

[6] Rydex Investments is not an ''issuer'' as per ISE rules.

[7] The Sponsor, on behalf of the Trust, filed the Form S–1 (the ''Registration Statement'') on June 7, 2005, Amendment No. 1 thereto on August 12, 2005, Amendment No. 2 thereto on October 25, 2005, Amendment No. 3 thereto on November 28, 2005, and Amendment No. 4 thereto on December 6, 2005. *See* Registration No. 333–125581.

[8] The Exchange notes that the Commission has permitted the listing of prior securities products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.,* Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (approving listing and trading on NYSE of StreetTRACKS® Gold Shares); 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (SR–PHLX–95–42) (approving the listing of dollar-denominated delivery of foreign currency options on the Japanese Yen; 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (SR–NYSE–94–41) (approving listing standards for, among other things, currency and currency index warrants); and 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (SR–PHLX–81–4) (approving the listing of standardized options on foreign currencies).

[9] The Exchanges notes that the Trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act'') and is not required to register under the 1940 Act.

[10] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005).

[11] In light of the implementation of certain aspects of Regulation NMS, the Exchange hereby seeks to amend ISE Rule 502(h) to reflect that Fund Shares must be National Market System stocks as defined under Rule 600 of Regulation NMS, instead of ''national market'' securities.

Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (2) the value of the euro is no longer calculated or available;[12] or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Fund Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are halted from trading on their primary market.

Finally, the Exchange represents that the expansion of the types of investments that may be held by a Fund Share under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits[13] or margin.[14]

The Exchange is also proposing to amend ISE Rule 408(a) to ensure that, in connection with trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency, the ISE Primary Market Maker does not use any material nonpublic information it might have or receive from any person associated with it in the applicable non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency. Finally, the Exchange is proposing to amend ISE Rules 807(a) and 1400 to ensure that market makers handling Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency.

The Exchange represents that it has an adequate surveillance program in place for options on the Shares, and intends to apply those same program procedures that it applies to options on Fund Shares currently traded on the Exchange. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Specifically, ISE can obtain such information from the Philadelphia Stock Exchange (''Phlx'') in connection with euro options trading on the Phlx and from the Chicago Mercantile Exchange (''CME'') and the London International Financial Futures Exchange (''LIFFE'') in connection with euro futures trading on those exchanges.[15]

2. Basis

The Exchange believes that, with the commencement of trading of a currency-based ETF on the NYSE, amending its rules to accommodate the listing and trading of options on publicly traded shares or other securities that hold investment assets consisting of foreign currency will benefit investors by providing them with the same valuable risk management tool that is currently available with respect to other publicly traded ETFs whose investment assets consist of securities. Accordingly, the proposed rule change is consistent with section 6(b) of the Act, in general and furthers the objectives of section 6(b)(5) in particular, in that it would remove impediments to and perfect the mechanism for a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, as amended; or

(b) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2005–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–60 and should be submitted by June 6, 2006.

[12] Euro pricing information based on the euro spot price is available to investors on 24-hour basis from various financial information service providers. There are a variety of other public Web sites providing information on foreign currency and euro, including Bloomberg, CBS MarketWatch and Yahoo! Finance. The Trust Web site's euro spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The Bullion Desk is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor or the Exchange. In the event that the Trust's Web site should cease to provide this euro spot price information, the Fund Shares shall fail this maintenance requirement and may be delisted by the Exchange.

[13] *See* ISE Rules 412 and 414.

[14] *See* ISE Rule 1202.

[15] Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7454 Filed 5–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53780; File No. SR–NYSE–2006–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Exchange Rule 104(d) Governing Specialist Trading in the NYSE Hybrid Market

May 10, 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 April 7, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange Rule 104(d) governing specialist trading in the NYSE HYBRID MARKET SM (''Hybrid Market'').[3] Specifically, the Exchange proposes to amend Exchange Rule 104(d) to provide that specialists shall have the ability to maintain undisplayed reserve interest on behalf of the dealer account at the Exchange best bid and offer, provided at least 1,000 shares of dealer interest is displayed at that price, on the same side of the market as the reserve interest. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. 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 notes that the Hybrid Market was approved by the Commission on March 22, 2006.[4] In the Hybrid Market, Exchange Rule 104(d) provides that specialists may, but are not required to, have non-displayed ''reserve'' interest at the best bid and offer. Reserve interest is interest at the best bid or offer that is not displayed. Reserve interest will participate in automatic executions after displayed interest on that side trades. Currently, the specialist must have a minimum amount of 2,000 shares displayed at the best bid or offer in order to have reserve interest on that side of the quote. Floor brokers also are permitted to have reserve interest.[5] However, Floor brokers are only required to display 1,000 shares at the best bid or offer in order to have reserve interest. Accordingly, the Exchange proposes to conform the minimum display requirements for reserve interest for specialists and Floor brokers. Therefore, the Exchange proposes to amend Exchange Rule 104(d)(i) to provide that specialists shall have the ability to maintain undisplayed reserve interest on behalf of the dealer account at the Exchange best bid and offer, provided at least 1,000 shares of dealer interest is displayed at that price, on the same side of the market as the reserve interest.

In addition, the Exchange proposes to amend Exchange Rule 104(d)(ii) to conform it to the 1,000 share minimum display requirement. Thus, this rule will require that after an execution, if specialist interest remains at the best bid or offer, the amount of such displayed interest will be replenished by the specialist's reserve interest, if any, so that at least a minimum of 1,000 shares (instead of the current 2,000 shares) of specialist interest is displayed or whatever specialist interest remains at the best bid or offer, if less than 1,000 shares (instead of the current 2,000 shares).

The Exchange believes that it is best to have a uniform standard for the minimum amount of interest required to be displayed at the best bid or offer in order to have reserve interest as it will deter market participants from trying to deduce if a certain amount of liquidity on the Display Book® is associated with a Floor broker versus a specialist.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change also is designed to support the principles of section 11A(a)(1) of the Act[7] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change 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 Exchange has neither solicited nor received written comments on the proposed rule change.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 22, 2006, the Commission approved the Exchange's proposal to establish a ''Hybrid Market.'' *See* Securities Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006) (''Hybrid Market Approval Order''). In the Hybrid Market Approval Order, the Commission approved the Exchange's plan to implement the Hybrid Market in multiple phases. To date, the Exchange has not implemented the approved changes to Exchange Rule 104(d). The Commission notes that in this proposal, the Exchange proposes to amend the text of Rule 104(d) as approved in the Hybrid Market Approval Order. Further, the Commission notes that the Exchange's description of Rule 104(d) herein refers to the approved text of Rule 104(d).

[4] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[5] *See* Exchange Rule 70.20(c)(ii).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–24 and should be submitted on or before June 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7392 Filed 5–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53782; File No. SR–NYSE–2006–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Exchange Rule 104 Regarding the Requirement That Specialists Obtain Floor Official Approval for Destabilizing Dealer Account Transactions That Match the National Best Bid or Offer

May 10, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On April 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 104 (Dealings by Specialists) to permit specialists to effect destabilizing dealer account transactions when matching the national best bid or offer without requiring that they obtain Floor Official approval.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

Dealings by Specialists

Rule 104

No change in (a) through .10(4)

(5)(i) Transactions on the Exchange for his own account of a member acting as specialist are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's position to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market. The following types of transactions to establish or increase a position are not to be effected except when they are reasonably necessary to render the specialist's position adequate to such needs:

(A) A purchase at a price above the last sale in the same session:

(B) The purchase of more than 50% of the stock offered in the market at a price equal to the last sale where such transaction would be on a ''zero plus tic'' (i.e., the last sale price was above the previous different regular way sale price); and

(C) Failing to reoffer or rebid where necessary after effecting transactions described in (A) and (B) above.

Transactions of these types may, nevertheless, be effected with the approval of a Floor Official or in less active markets where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

(ii) Notwithstanding the provisions of subparagraphs (5)(i)(A) and (B) above, whenever a specialist effects a principal purchase of a [speciality] *specialty* stock, in another participating market center through ITS, at or above the price at which he holds orders to sell that stock, such orders which remain unexecuted on the Floor must be filled by the specialist buying the stock for his own account, at the same price at which he effected his principal transaction through ITS unless, effecting such a principal transaction on the Floor, at that price, would (a) be inconsistent with the maintenance of fair and orderly markets; or (b) result in the election of stop orders.

(iii) Whenever a specialist effects a principal sale of a specialty stock, in

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to the rule text of the proposed rule change.

another participating market center through ITS, at or below the price at which he holds orders to buy that stock, such orders which remain unexecuted on the Floor must be filled by the specialist by selling the stock for his own account, at the same price at which be effected his principal transaction through ITS subject to the same conditions as set forth in (ii)(a) and (b) above and provided further that effecting such a principal transaction on the Floor, at that price, would not be precluded by the short selling rules, or would not result in a sale to a stabilizing bid.

(iv) Notwithstanding the provisions of (5)(i)(A) and (B) above, a specialist may effect a principal purchase of a specialty security to establish or increase a position at a price above the last sale in the same session at a price that matches the then current national best bid or, in the case of a sale, that matches the then current national best offer.

(6)(i) Transactions on the Exchange by a specialist for his own account in liquidating or decreasing his position in a specialty stock are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market and in this connection:

(A) The specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary in relation to the specialist's overall position in the stocks in which he is registered[;] , and the specialist has obtained the prior approval of a Floor Official;

(B) The specialist may liquidate a position by selling a security on a direct or zero minus tick or by purchasing a security on a direct or zero plus tick without the need to obtain Floor Official approval if such transaction is effected at a price that matches the then current national best bid or offer;

[(B)] *(C)* The specialist should maintain a fair and orderly market during liquidation and, after reliquifying, should re-enter the market to offset imbalances between supply and demand. The selling of stock on a direct minus tick or a zero minus tick, or the purchasing of stock on a direct plus tick or a zero plus tick should be effected in conjunction with the specialist's re-entry in the market on the opposite side of the market from the liquidating transaction where the imbalance of supply and demand indicates that immediately succeeding transactions may result in a lower price (following the specialist's sale of stock on a direct minus tick or a zero minus tick) or a higher price (following the specialist's purchase of stock on a direct plus tick or a zero plus tick). During any period of volatile or unusual market conditions resulting in a significant price movement in the subject security, the specialist's transactions in re-entering the market following a liquidating transaction effected by selling stock on a direct minus tick or zero minus tick, or purchasing stock on a direct plus tick or zero plus tick, should, at a minimum, reflect the specialist's usual level of dealer participation in the subject security. During such periods of unusual price movement in a security, any series of such transactions which may be effected in a brief period of time should be accompanied by the specialist's re-entry in the market and effecting transactions which reflect a significant degree of dealer participation;

[(C)] *(D)* Transactions by a specialist for his or her dealer account in liquidating or decreasing a position in a specialty security must yield parity to and may not claim precedence based on size over a customer order in the crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order that has been included in the quote prior to the transaction. However, this provision shall not apply to automatic executions involving the specialist dealer account.

(ii) Notwithstanding the provisions of subparagraph (6)(i)(A) above, whenever a specialist effects a principal purchase (sale) of a specialty stock, in another participating market center through ITS, at or above (at or below) the price at which he holds orders to sell (buy) that stock, such orders which remain unexecuted on the Floor must be filled by the specialist by buying (selling) the stock for his own account, at the same price at which he effected his principal transaction through ITS subject to the same conditions as set forth in subparagraphs (5)(ii) and (iii) above.

[No change to remainder of Rule]

* * * * *

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 NYSE included statements concerning the purpose of and basis for the proposed rule change, as amended. 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

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rules 104.10(5) and (6) describe certain types of transactions that are not to be effected unless they are reasonably necessary to render the specialist's position adequate to the needs of the market. In effect, these restrictions generally require specialists' transactions for their own accounts to be ''stabilizing'' (*i.e.*, against the trend of the market) and prohibit specialists from making transactions that are ''destabilizing'' (*i.e.*, with the market trend by buying on plus ticks and selling on minus ticks), except with the approval of a Floor Official.

The Exchange is proposing to allow specialists to effect proprietary transactions on a destabilizing basis for their own account when such trades are effected at a price that matches the current national best bid or offer (''NBBO''). In certain circumstances today, such as trading in exchange traded funds (''ETFs''), specialists are not currently restricted under NYSE Rule 104 from effecting proprietary destabilizing transactions that bring an ETF into parity with the value of the index on which the ETF is based. The Exchange believes that this recognizes that specialists are not leading the market through proprietary transactions in these instances, but rather following the market as set by the independent judgment of other market participants.[4]

Similarly, the Exchange believes that amending NYSE Rules 104.10(5) and (6) to permit specialists to effect a destabilizing proprietary trade in an equity security at a price established independent of the specialist should not be viewed as leading the market. The Exchange states that the standard of each specialist proprietary trade meeting the test of reasonable necessity would continue to apply to any such destabilizing trade.

[4] *See* Securities Exchange Act Release No. 49087 (January 15, 2004), 69 FR 3622 (January 26, 2004) (SR–Amex–2002–116) (''[T]he Commission believes that because ETFs are priced derivatively, an Exchange specialist would not be able to manipulate the pricing of an ETF.'').

In addition, the Exchange notes that the time required to obtain Floor Official approval for such transactions can have the effect of delaying trading and could result in inferior execution prices for customer orders.

Finally, the Exchange believes that removing these restrictions should enhance the specialist's ability to make competitive markets since the trades would be done at prices matching the then current national best bid or offer.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [5] that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, would not 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 Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change, as amended. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2006–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–SR–NYSE–2006–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–07 and should be submitted on or before June 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7453 Filed 5–15–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Program: Cooperative Agreements for Work Incentives Planning and Assistance Projects; Program Announcement No. SSA–OESP–06–1

AGENCY: Social Security Administration.

ACTION: Announcement of the availability of fiscal year 2006 cooperative agreement funds and request for applications.

SUMMARY: The Social Security Administration (SSA) announces its intention to competitively award cooperative agreements to establish community-based work incentives planning and assistance projects in every State, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands. (Throughout this announcement, the term "'State'" will be used to refer to all U.S. States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands.)

The purpose of these projects is to disseminate accurate information to beneficiaries with disabilities (including transition-to-work aged youth) about work incentives programs and issues related to such programs, to enable them to make informed choices about working and whether or when to assign their Ticket to Work, as well as how available work incentives can facilitate their transition into the workforce. The ultimate goal of the work incentives planning and assistance projects is to assist SSA beneficiaries with disabilities succeed in their return to work efforts.

DATES: The closing date for receipt of cooperative agreement applications under this announcement is July 1, 2006. Prospective applicants are also asked to submit, preferably by May 30, 2006, an e-mail, a fax, post card, or letter of intent that includes (1) the program announcement number (SSA–OESP–06–1) and title (Work Incentives Planning and Assistance Program); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person. This notice of intent is not binding, and does

not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Office of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235 or e-mailed to *Jenny.Deboy@ssa.gov.*

FURTHER INFORMATION CONTACT: The Internet is the primary means recommended for obtaining information on the program content of this announcement. If an applicant has a question about this announcement, that question should be referred to the following Internet e-mail address: *Jenny.Deboy@ssa.gov.* When sending in a question, applicants should include the program announcement number SSA–OESP–06–1 and the date of this announcement. In the rare instances when an organization may not have access to the Internet, an applicant with a question about the program content may contact: Jenny Deboy, Project Officer, or Regina Bowden, Team Leader, Social Security Administration, Office of Employment Support Programs, Office of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The telephone numbers are: Jenny Deboy, (410) 965–8658, or Regina Bowden, (410) 965–7145. The fax number is (410) 966–1278.

To obtain an application kit, see the instructions under Part IV, Section A. For information regarding the application package where Internet access is not available, contact: Phyllis Y. Smith, Team Leader, or Gary Stammer, Grants Management Officer, Social Security Administration, Office of Acquisition and Grants, Grants Management Team, 7111 Security Boulevard, 1st Floor—Rear Entrance, Baltimore, Maryland 21244. The telephone numbers are Phyllis Y. Smith, (410) 965–9518, or Gary Stammer, (410) 965–9501. The fax number is (410) 966–9310.

SUPPLEMENTARY INFORMATION: The Social Security Protection Act of 2004 (Pub. L. 108–203) reauthorized funding through FY 2009 for the WIPA program, which was initially authorized by the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170), enacted on December 17, 1999. The WIPA Program is designed to provide work incentives planning, assistance, and outreach services to SSA's beneficiaries with disabilities nationwide, in all geographic areas and U.S. territories.

SSA initially made announcements of cooperative agreement funds and requested applications for a 5-year period in FY 2000 and FY 2001. All currently funded Benefits Planning, Assistance and Outreach (BPAO) cooperative agreement awards will expire on September 29, 2006.

This announcement is to request applications for awards, which will begin on September 30, 2006, to provide work incentives planning, assistance and outreach services to all SSA beneficiaries with disabilities seeking employment nationwide. All currently funded BPAO cooperative agreements will expire on September 29, 2006. Subject to the availability of funds, SSA anticipates minimum awards of $100,000 for individual state WIPA projects (Minimum awards for territories remain at $50,000) and a maximum of $300,000 will be available to fund specific WIPA projects annually. Awardees are required to contribute a non-Federal match of project costs of at least 5% of the total project cost. The non-Federal share may be cash or in-kind (property or services). Awards made under this announcement may be renewed annually through FY 2009. Future funding will be contingent upon satisfactory progress in achieving the objectives of the project, the availability of fiscal year funds and the continued relevance of the project activity to the Social Security Administration. The total period of performance, if renewed annually, will be 3 years, September 30, 2006–September 29, 2009.

SSA will conduct pre-application seminars to provide interested WIPA applicants with guidance and technical assistance in preparing their applications. Information about where and when the seminars will be held will be on SSA's Web site at: *http://www.socialsecurity.gov/work/WIPARFA.html.*

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I. Funding Opportunity Description

A. Background

Section 1149 of the Social Security Act, as added by section 121 of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), requires the Commissioner of Social Security (the Commissioner) to establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to beneficiaries with disabilities on work incentives programs and issues related to such programs to assist them in their employment efforts. The Commissioner has established a competitive program of cooperative agreements to provide work incentives planning, assistance and outreach. This SSA program is called the Work Incentives Planning and Assistance (WIPA) Program, formerly referred to as the Benefits Planning, Assistance and Outreach (BPAO) Program. The WIPA program also provides information on the availability of protection and advocacy services to beneficiaries with disabilities, including beneficiaries participating in the Ticket to Work and Self-Sufficiency Program established under section 1148, the Supplemental Security Income (SSI) program established under section 1619, and other programs that are designed to encourage beneficiaries with disabilities to seek, maintain and regain employment.

The WIPA Program is an important part of SSA's employment strategy for beneficiaries with disabilities. One of SSA's goals in implementing TWWIIA is to help achieve a substantial increase in the number of beneficiaries with disabilities who return to work and achieve greater self-sufficiency.

In support of this goal, SSA is seeking applications from any State or local government (excluding any State agency administering the State Medicaid program), public or private organization, or nonprofit or for-profit organization (for-profit organizations may apply with the understanding that no cooperative agreement funds may be paid as profit to any cooperative agreement awardee), as well as Native American tribal organizations that the Commissioner determines is qualified to provide work incentives planning services. Applicants will emphasize the WIPA Program's efforts to provide Social Security beneficiaries receiving Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) based on disability and/or blindness with work incentives planning, assistance and outreach services to assist them in their return to work efforts. Applicants are also strongly encouraged to partner with their local Department of Labor (DOL) One-Stop Career Center which serves as a ''port of entry'' for jobs for beneficiaries, as well as with other local partners that provide employment-related services to SSA beneficiaries with disabilities. Currently, DOL One-Stop Career Centers have many invaluable employment-related resources and supports that can help ensure a disabled beneficiary's success in seeking and maintaining employment.

While SSA recognizes not every SSDI or SSI beneficiary with a disability will use work incentives planning and assistance services, awardees must make these services available to all eligible beneficiaries within a WIPA awardee's assigned geographic area.

Note: All applications will be reviewed to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be forwarded to an independent panel of reviewers for evaluation. The results of this review and evaluation will assist the Commissioner in making award decisions. Although the results of this review and evaluation are a primary factor considered in making award decisions, the evaluated score is not the only factor used. In selecting eligible applicants to be funded, consideration may be given to issues such as experience, past performance, proposed costs, the need to achieve an equitable distribution of WIPA projects among geographic regions of the country, as well as, the need to achieve an equitable distribution of WIPA projects among disability and minority populations.

B. Work Incentives Planning and Assistance (WIPA) Service Plan

In order to be considered for an award, WIPA applicants must provide a detailed written plan for how they will deliver the full range of work incentives planning and assistance services; have the resources, management, qualifications and experience necessary to successfully administer the project, as well as provide a written Quality Assurance (QA) plan that demonstrates the efficacy of the service delivery plan. Applicants should also provide supporting documentation regarding how they will work with the Department of Labor (DOL) One-Stop Career Centers; and a written assurance that they will work in collaboration with the Program Manager for Recruitment and Outreach (PMRO).

Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *http://www.socialsecurity.gov/work/WIPARFA.html.*

Applicants should address in their written plan:

- Their understanding of work incentives planning and assistance services as they relate to a beneficiary's return to work efforts, including other Federal, State, and local benefits programs (designed to assist beneficiaries with disabilities with employment) with which they have worked in the past;
- How they will develop and maintain their partnering efforts and relationship with other employment-related local organizations, including DOL One-Stops, to maximize a beneficiary's return to work efforts;
- Their ability to participate with the PMRO in conducting and coordinating outreach activities. [Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *http://www.socialsecurity.gov/work/WIPARFA.html.*] In view of the fact that the PMRO has primary responsibility for outreach, WIPA projects should designate no more than 10% of their project resources to other outreach efforts;
- Provide a list of specific resources, services and supports that will be involved in the project and their roles as they relate to work incentives and a beneficiary's return to work efforts;
- A detailed plan for monitoring beneficiary progress, case management and follow-up;
- A documented process for collecting beneficiary-related Management Information (MI) and assuring that a Quality Assurance (QA) plan is in place that evaluates the work incentives planning and assistance services provided; [Note: Applicants should document that they agree to collect Social Security Numbers (SSNs) of beneficiaries and include them in the SSA approved data collection system so that SSA may further evaluate the work incentives services provided.]
- Written procedures for addressing potential organizational conflict of interest in regards to the delivery of WIPA services and other programs or services offered by the organization; and,
- Written grievance procedures for beneficiaries and evidence of its compliance which will be submitted to SSA quarterly.

Each applicant should address the proposed number of beneficiaries with disabilities it expects to serve.

Awardees are encouraged to hire and staff their offices with individuals with disabilities who have used work incentives to successfully go to work. These individuals should conduct as many of the day-to-day operational functions as possible.

Awardees must state how they will ensure equitable access and services for all beneficiary disability groups. This requirement may be met by partnering with other community-based organizations.

In providing work incentives-related education and planning, WIPA projects must make concerted and aggressive efforts to address the needs of underserved individuals with disabilities from diverse ethnic and racial backgrounds (e.g., African Americans, Native Americans, Native Hawaiians or Other Pacific Islanders, Alaskan Natives, Asian-Americans, and Hispanics). In particular, applicants should show how they will collaborate with PMRO to conduct outreach in ways that ensure interaction with diverse communities specific to their requested geographic area. Applicants who serve tribal lands and sovereign nations must also provide documentation of how they will ensure equitable access and services for Native-American and Alaskan-Native populations. Applicants must indicate if formal agreements with tribal governments or Section 121 VR Programs, etc. are in place.

The applicants must also describe how they will address any special cultural requirements of populations (e.g., Native Americans) within the targeted geographic area, as well as non-English speaking populations and SSI beneficiaries as young as age 14.

Applicants must have established strong working relationships with other agencies that are already providing services designed to enhance the employability, employment and career advancement of beneficiaries with disabilities, particularly, DOL One-Stop

Career Centers which provide employment support by assisting a beneficiary with interview techniques, resume writing, job coaching, and a variety of other support services that lead to employment. A full explanation of these collaborative efforts should be provided.

In addition to DOL One-Stop Career Centers, awardees are encouraged to collaborate with other public and/or private organizations (e.g., SSA Field Offices, Centers for Medicare and Medicaid Services (CMS), Vocational Rehabilitation (VR) Agencies, Employment Networks (ENs), Minority Commission, Public Schools, Department of Education, and Mental Health organizations), through interagency agreements or other mechanisms, to integrate and strengthen work incentives planning and assistance services with employment services available to beneficiaries with disabilities.

Because of the life transitions that youth with disabilities experience, it is important to target specific services to this population. Each project must make WIPA services available to SSI beneficiaries as young as age 14 and state how they will target and serve transition-aged youth.

Where applicable, applicants must indicate the ability to work closely with the SSA Youth Transition Process Demonstration (YTD) projects that are currently located in California, Colorado, Iowa, New York, Maryland and Mississippi. These six states were awarded grants in October 2003 to develop service delivery systems that demonstrate how communities can integrate services and resources to achieve positive transition results for youth from secondary education to either post-secondary education and/or employment. The YTD projects work with youth ages 14–25 who receive SSI or SSDI benefit payments based on their own disability and/or blindness, or youth at risk of receiving such benefits. Additional information regarding the YTD projects may be found at *http://www.socialsecurity.gov/disabilityresearch.*

Applicants must provide evidence of collaborative relationships with relevant agencies through references in regards to work incentives experience, letters of intent, memoranda of understanding, etc. Applicants should not request references, letters of intent or commitment from SSA field offices as SSA will assure field office cooperation.

The WIPA awardees will collect data pertaining to work incentives planning, assistance, and outreach activities as described in Part IV, Section C, Reporting; and cooperate with SSA in providing the information needed to evaluate the quality of the services being provided and for an assessment of the success of the WIPA Program.

Where applicable, applicants should indicate if they are participants of the Disability Program Navigator (DPN) initiative, a program established by the Social Security Administration (SSA) and the Employment and Training Administration (ETA) of the Department of Labor (DOL). Participants in the DPN initiative must fully explain how, with WIPA personnel and DPN personnel working collaboratively, they will provide seamless services to beneficiaries seeking employment.

C. Community Work Incentives Coordinator Responsibilities and Competencies

1. Responsibilities

The WIPA cooperative agreement awardees shall select individuals who will act as Community Work Incentives Coordinators (CWICs). The CWICs will provide work incentives planning and assistance directly to beneficiaries with disabilities to assist them in their employment efforts; and conduct outreach efforts in collaboration with SSA's Program Manager for Recruitment and Outreach (PMRO) contractor to beneficiaries with disabilities (and their families) who are potentially eligible to participate in Federal or State work incentives programs. As part of work incentives planning and assistance, CWICs will also screen and refer beneficiaries with disabilities to the appropriate Employment Networks (ENs) based on the beneficiary's expressed needs and types of impairments. CWICs are also required to work in cooperation with SSA's Area Work Incentives Coordinators (AWICs), Federal, State, local and private agencies and other nonprofit organizations that serve beneficiaries with disabilities seeking employment. CWICs will also provide general information on the adequacy of health benefits coverage that may be offered by an employer of a beneficiary with a disability; the extent to which other health benefits coverage may be available to that beneficiary in coordination with Medicare and/or Medicaid; and the availability of protection and advocacy services for beneficiaries with disabilities and how to access such services.

2. Competencies and Credentialing

Applicants must ensure that CWICs have the skills required to competently provide work incentives planning and assistance services that assist beneficiaries in their employment efforts. WIPA awardees will be required to provide documentation to SSA that CWIC personnel meet the requirements below. SSA will use this documentation to credential CWIC personnel before they may begin providing beneficiary services.

SSA prefers that CWICs have attained a bachelor's degree in a relevant field, or possess relevant experience. CWICs may possess a combination of education and experience if the experience provides the knowledge, skills and abilities required to successfully perform the duties of the position as shown below. Former beneficiaries may substitute up to two years of full-time work for the education requirement if they can demonstrate that they used SSA work incentives to successfully gain employment. All CWICs must demonstrate successful completion of required SSA sponsored work incentives training or shall complete said training within 3 months of hire.

CWICs should bring the following knowledge, skills, and abilities to the position:

- Basic math skills, with an emphasis on problem solving;
- Deductive ability with analytical thinking and creative problem solving skills;
- Demonstrate competent interviewing and partnering skills;
- Demonstrated computer proficiency;
- Demonstrated ability at linking individual's with disabilities with employment opportunities;
- Ability to interpret Federal, State, and local laws, regulations, and administrative code about public benefits;
- Communication skills (written and verbal);
- Knowledge of terminology used to describe certain disabilities and awareness of cultural and political issues pertaining to various populations and to various disabilities; and
- Basic computer skills.

CWICs are required to be proficient in the following knowledge, skills, and abilities:

- Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability programs;
- Knowledge of SSA and other Federal, State and local work incentives programs;
- Knowledge of all public benefits programs, basic operations and inter-relationships among the programs, specifically in terms of their impact upon employment;
- Translating technical information for lay individuals;

• Accessing information in a variety of ways (including the ability to be able to recognize when additional information is needed);

• How to access specific Employment Network (EN) information;

• Interpersonal skills (e.g., recognize and help people manage anger and conflict, enjoy working with individuals); Counseling and evaluation-related skills (ability to listen, evaluate alternatives, advise on potential course of action);

• Knowledge of SSA field office structure and how to work with various SSA work incentives specialists e.g., Area Work Incentives Coordinators (AWICs), Plan to Achieve Self Support (PASS) Specialists, Work Incentives Liaisons (WILs); and

• Knowledge of ethics (e.g., confidentiality, conflict of interest).

• Ability to manage beneficiary case files and information electronically.

The applicant must clearly explain how it will ensure all individuals hired as CWICs will possess or acquire the relevant knowledge, skills and abilities. SSA may contract with separate entities to provide technical assistance and training to awardees on an ongoing basis about SSA's programs and work incentives, Medicare and Medicaid, and other Federal work incentives programs.

Note: Due to the fact that Community Work Incentives Coordinators (CWICs) will have access to confidential beneficiary information they may be subject to SSA conducted background checks and fingerprinting in accordance with SSA personnel suitability requirements. SSA will distribute the necessary forms and consents for completion upon award.

D. Work Incentives Planning and Assistance Services Defined

1. Work Incentives Planning Services

Work incentives planning services requires an in-depth understanding of the beneficiary's current situation and how available work incentives can impact on a beneficiary's employment efforts. CWICs will establish written benefits analysis plans for beneficiaries with disabilities outlining their employment options and develop long-term supports that may be needed to ensure a beneficiary's success in regards to employment. CWICs will also, based upon a beneficiary's needs, make referrals to Employment Networks (ENs) or Vocational Rehabilitation (VR) when appropriate. CWICs will also provide periodic, follow-up planning services to ensure that the information, analysis, and guidance is updated as new conditions (with regard to the applicable programs or to the beneficiary's situation) arise.

To provide work incentives planning services, CWICs will:

• Obtain and evaluate comprehensive information about a beneficiary with a disability on the following:

—Beneficiary's background information,
—Disabling Impairments/Conditions,
—Educational and vocational background,
—Employment and earnings,
—Resources,
—Federal, State and local benefits,
—Health insurance,
—Work expenses,
—Work Incentives, and
—Service(s) and supports;

• Assess the potential impacts of employment and other changes on a beneficiary's Federal, State and local benefits eligibility and overall financial well-being;

• Provide detailed information and assist the beneficiary in understanding and assessing the potential impacts of employment and/or other actions or changes on his/her life situation, and provide specific guidance regarding the effects of various work incentives;

• Develop a comprehensive framework of possible options available to a beneficiary and projected results for each as part of the career development and employment process; and

• Ensure confidentiality of all information provided.

2. Work Incentives Assistance Services

Work incentives assistance involves the delivery of accurate information and direct supports for the purpose of assisting a beneficiary in determining the most advantageous work incentives to use in going or returning to work. Work incentives assistance also involves providing information and referral (specifically in terms of Ticket assignment to Employment Networks (ENs) and Vocational Rehabilitation (VR), as well as problem-solving services as needed. Work incentives assistance will generally build on previous planning services and include periodic updates of a beneficiary's specific information, reassessment of benefit(s) and overall impact, education and advisement, and additional services for monitoring and managing work incentives to ensure a beneficiary's success in their employment efforts.

To provide work incentives assistance services, CWICs will:

• Emphasize employment through the use of work incentives planning, leading to greater self-sufficiency and employment for beneficiaries with disabilities;

• Refer beneficiaries to Vocational Rehabilitation (VR), Employment Networks (ENs), DOL One-Stop Career Centers, as well as other organizations that emphasize/provide seamless employment-related supports and ticket assignments.

• Assist beneficiaries with disabilities to resolve problems related to work efforts, higher education and work attainment or continuation of work;

• Provide ongoing, comprehensive work incentives monitoring and management assistance to beneficiaries who are employed or seeking employment; and

• Provide long-term work incentives management on a scheduled, continuous basis, allowing for the planning and provision of supports at regular checkpoints, as well as critical transition points in a beneficiary's receipt of benefits, improvement of medical condition, work attempts, training and employment;

• Provide ongoing direct assistance to a beneficiary in the development of a comprehensive, long-term work plan to guide the effective use of Federal, State and local work incentives. Specific components of the plan must address:

—Desired return to work and self-sufficiency outcomes,
—Related steps or activities necessary to achieve outcomes,
—Associated dates or timeframes,
—Building on initial work incentives planning efforts including information gathering, analysis and advisement, and
—Benefits/financial analysis (pre and post-employment);

• Provide intensive assistance to beneficiaries, their key stakeholders, and their support teams in making informed choices and establishing employment-related goals. Needed assistance may include, but is not limited to, the following:

—Explanations, descriptions, and written plans on how SSDI and SSI work incentives programs may lead to self-supporting employment by developing a Plan for Achieving Self-Support (PASS); the use of Impairment Related Work Expenses (IRWEs); the use of a Subsidy; Ability to claim Unincurred Business Expenses; Continued Payments Under a Vocational Rehabilitation Program (also known as Section 301); as well as the possibility of reinstatement of benefits when necessary without filing a new application;
—Explanations, descriptions, and written plans on how the SSI 1619(a) and 1619(b) provisions and requirements may lead to self-supporting employment by allowing for continued medical assistance

coverage; earned income exclusion; student earned income exclusion; property essential to self-support; as well as the possibility of reinstatement of benefits when necessary without filing a new application;

—Explanations, descriptions, and written plans on how the SSDI trial work period (TWP) and extended period of eligibility (EPE) provisions may lead to self-supporting employment by allowing payment of benefits for a specified period of time dependent upon the amount of earnings;

—Advocating for work supports on behalf of a beneficiary with other agencies and programs, which requires in-person, telephone and/or written communication with the beneficiaries, other individuals and other involved parties, generally, over a period of several weeks to several months.

• Provide ongoing follow-up assistance to beneficiaries who have previously received work incentives planning and/or other types of work incentives assistance services, and assist them and other involved parties to:

—Update information,

—Refer to Employment Networks (ENs) or Vocational Rehabilitation, when necessary,

—Reassess impact of employment and other changes on benefits and work incentives, and

—Provide additional guidance on work incentives options, issues and management strategies.

• Assist beneficiaries to update work incentives management plans throughout their employment efforts;

• Collaborate with SSA's Program Manager for Recruitment and Outreach (PMRO) to conduct outreach to beneficiaries with disabilities about the use of work incentives to work.

3. Support to PMRO Work Incentives Education/Ticket Marketing/Recruitment

The WIPA awardees will be required to provide local CWIC support to the PMRO in order to provide community-based Work Incentives Educational Seminars for beneficiaries with disabilities to learn about available work incentives. These local Work Incentives Education/Ticket Marketing/Recruitment meetings are intended to provide accessible, scenario based learning opportunities for beneficiaries with disabilities to understand the availability and use of work incentives to assist them in their return to work efforts. In addition, Vocational Rehabilitation (VR), Employment Networks (ENs) and other employers will also be invited to participate to introduce their services at the end of these meetings so that beneficiaries who want to work will be informed about available employment support services and opportunities in the community.

The PMRO has primary responsibility for outreach. In support of PMRO activities, WIPAs should designate a maximum of 10% of their staff time to ticket marketing/recruiting efforts under the direction of the PMRO.

Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *http://www.socialsecurity.gov/work/WIPARFA.html*.

The WIPA should make staff resources available at least one day per week to assist the PMRO to:

• Identify accessible local venues for holding meetings, preference should be given to DOL One-Stop Career Centers;

• Conduct regular (at least weekly) work incentives education and Ticket to Work recruitment sessions in collaboration with the PMRO, SSA staff, the local Workforce Investment Board s Disability Program Navigators, local Employment Networks (ENs), Vocational Rehabilitation (VR), employers and other potential partners.

• At the weekly sessions present with the assistance of local SSA staff (if available) a 60–90 minute scenario-based work incentives overview to be provided (in accessible formats) by the PMRO.

4. Additional Work Incentives Outreach Services

Work incentives outreach activities are educational efforts to inform beneficiaries of available work incentives, as well as the services and supports available to enable them to access and benefit from those work incentives in terms of working. In view of the fact that the PMRO has primary responsibility for outreach, WIPA's should designate no more than 10% of their project resources for other local outreach efforts; excluding those resources allocated to the PMRO Work Incentives Educational Seminars. WIPA's will be provided such things as marketing materials, developed by the PMRO. Each project will support the PMRO in doing outreach, participate with them, and coordinate any outreach activities through them. Outreach activities should be targeted directly to SSDI and SSI beneficiaries with disabilities, their families, to advocacy groups, service provider agencies, and employers that have regular contact with them. Outreach activities should be directed toward and sensitive to the needs of individuals from diverse ethnic backgrounds, persons with English as their second language, as well as non-English speaking persons, individuals residing in highly urban or rural areas, and other traditionally underserved groups.

To conduct ongoing local outreach, CWICs will:

• Prepare and disseminate information explaining the Ticket to Work Program and other Federal, State or local work incentives programs and their interrelationships; and

• Work in cooperation with the Program Manager Recruiting and Outreach (PMRO) contractor to market the Ticket to Work Program, as well as other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, such as DOL One-Stop Career Centers and with other agencies and organizations that focus on vocational rehabilitation and work-related training and counseling.

To assist SSA in assessing the scope and usefulness of outreach and information provided under this program, each project is required to demonstrate a collaborative effort among other community-based organizations experienced in providing services to people with disabilities, particularly DOL One-Stop Career Centers. Applicants should provide proof that the assigned Project Director possesses work incentives management experience and has knowledge on all of SSA's work incentives available to beneficiaries with disabilities.

In addition, projects will conduct regular work incentives education and Ticket to Work outreach sessions in collaboration with the PMRO, SSA staff, the local Workforce Investment Board's Disability Program Navigators, Vocational Rehabilitation (VR), local Employment Networks (ENs) and other potential partners. Projects will also need to coordinate joint outreach services with the SSA Area Work Incentives Coordinator (AWIC) to include attendance at quarterly Training and Technical Assistance meetings with the AWIC.

5. Costs

Federal cooperative agreement funds may be used for allowable costs incurred by WIPA awardees in conducting direct work incentives planning and assistance services to SSA's beneficiaries with disabilities. These costs could include administrative and overall project management costs, within the

limitations discussed in Section II, Award Information. Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No SSDI or SSI beneficiary can be charged for any service delivered under a WIPA project cooperative agreement, including the preparation of a PASS. Work incentives planning and assistance services are intended to be free and must be made accessible to all SSA beneficiaries with disabilities in the project's geographical area.

E. Additional Conditions for Award of a Cooperative Agreement

Upon award, the WIPA cooperative agreement awardees shall:

1. Employ CWICs and require them to complete an approved initial four day training session within 3 months of award. SSA, or its designated technical assistance and training contractor, will provide technical assistance and training to WIPA projects about SSA's programs and work incentives (e.g., TWP, EPE, IRWE, PASS, 1619(a) and (b), and Medicaid buy-in provisions/ Balanced Budget Act; Medicare and Medicaid; and on other Federal work incentives programs.

CWICs will be trained on how to screen and refer beneficiaries with disabilities to the appropriate ENs based on the beneficiary's expressed needs and types of impairments.

WIPA awardees must provide training and technical assistance to their CWICs about applicable State and local programs and the effects that these programs have on other programs' eligibility and benefits.

2. Ensure that CWICs are provided periodic refresher, update and new hire training sessions, as needed, and take part in the evaluation of training activities and the evaluation of ongoing training needs evaluation by SSA or its designated contractor.

3. Ensure that CWICs have completed work incentives training within 3 months of award, develop a local outreach strategy and begin to implement outreach, in collaboration with PMRO, within 3 months of award.

4. Obtain approval from SSA of management information system data collection elements and procedures with SSA to assure compatibility with the national data base collection program (within 60 days after award); [**Note:** Applicants should document that they agree to collect Social Security Numbers (SSNs) of beneficiaries and include them in the SSA approved data collection system so that SSA may further evaluate the work incentives services provided.]

5. Develop and submit quarterly program progress reports that contain management information to SSA's Office of Acquisition and Grants (OAG) and SSA's Office of Employment Support Programs;

6. Develop and submit bi-annual financial reports to SSA, OAG;

7. Provide to SSA for approval and prior to implementation a detailed description of any and all planned changes to the project design;

8. Cooperate with SSA in scheduling and conducting site visits, and allow SSA immediate access to WIPA facilities, personnel, and SSA beneficiaries upon request;

9. Develop and maintain a collaborative working relationship with the local servicing SSA field offices;

10. Implement an ongoing management and quality assurance process set by SSA.

II. Award Information

Legislative authority for this cooperative agreement program is in section 1149 of the Social Security Act (the Act), as established by section 121 of Public Law 106–170 and subsequent reauthorization in section 407 of Public Law 108–203. The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, Title 20, parts 435 and 437 (as published in the May 27, 2003 **Federal Register** at 68 FR 28710 and 28727). Applicants are urged to review the requirements in the applicable regulations.

All awards made under this program are in the form of cooperative agreements. A cooperative agreement anticipates substantial involvement between SSA and the awardee during the performance of the project. Involvement shall include SSA collaboration or participation in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving project design and scope, hiring of personnel, service delivery priorities, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

Actual funding availability during this period is subject to annual appropriation by Congress. SSA anticipates that the award under this announcement will be made by September 30, 2006.

SSA will award cooperative agreements to qualified entities based on the number of beneficiaries with disabilities receiving SSDI and /or SSI benefits who reside in the geographic area to be served.

Subject to the availability of funds, SSA anticipates that a minimum of $100,000 for individual state WIPA projects (Minimum awards for territories remains at $50,000) and a maximum of $300,000 will be available to fund specific WIPA projects annually. Attached is a chart which depicts state-by-state beneficiary populations.

SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, whenever it determines that the awardee has failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination, and the effective date of the suspension or termination.

III. Eligibility Information

A. Eligible Applicants

A cooperative agreement may be awarded to any State or local government (excluding any State administering the State Medicaid program), public or private organization, or nonprofit or for-profit organization (for profit organizations may apply with the understanding that no cooperative agreement funds may be paid as profit to any awardee), as well as Native American tribal organizations that the Commissioner determines is qualified to provide work incentives planning, assistance and outreach services to all SSDI and SSI beneficiaries with disabilities, within the targeted geographic area. Partners may include; but are not limited to, Centers for Independent Living established under title VII of the Rehabilitation Act of 1973, protection and advocacy organizations, Native American tribal entities, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973, State Developmental Disabilities Councils established in accordance with section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and State agencies administering the State program funded under part A of title IV of the Act. The Commissioner may also award a cooperative agreement to a State or local Workforce Investment Board, a Department of Labor (DOL) One-Stop Career Center System established under the Workforce Improvement Act of 1998, or a State Vocational Rehabilitation (VR) agency.

Note: SSA will not further consider applications for independent panel review

that do not meet the organizational eligibility criteria as noted above.

Note: For-profit organizations may apply with the understanding that no cooperative agreement funds may be profit to an awardee of a cooperative agreement. Profit is considered as any amount in excess of the allowable costs of the cooperative agreement awardee. A for-profit organization is a cooperation or other legal entity that is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf. Applications will not be further considered for independent panel review that do not meet all eligibility criteria at the time of submission of applications.

Cooperative agreements may not be awarded to:

- Any individual;
- Social Security Administration Field Offices;
- Any State agency administering the State Medicaid program under title XIX of the Act;
- Any organization described in section 501(c)(4) of the Internal Revenue Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611)

B. Policies Regarding Potential Conflict of Interest in WIPA Service Delivery

All applicants applying for a cooperative agreement must fully document how they will ensure there will be no conflict of interest between providing work incentives planning and assistance services and delivering employment network-related services or protection and advocacy-related services to beneficiaries with disabilities in their employment efforts. In particular, they must demonstrate how issues will be resolved when a complaint or issue is against a Community Work Incentives Coordinator (CWIC) or WIPA organization. Also, State Vocational Rehabilitation (VR) agencies and other organizations that are, or will apply to be a WIPA project, under SSA's Ticket to Work and Self-Sufficiency Program, must fully explain how they will resolve potential conflict of interest issues in the event it also receives a cooperative agreement to provide work incentives planning and assistance services. This is especially important in the areas of providing beneficiaries complete information regarding other organizations from which they may choose to receive employment services.

Note: SSA will not accept for further consider applications for independent panel review that do not include documented policies and procedures regarding the resolution of potential conflict of interest issues as noted above.

C. Cost Sharing or Matching

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the total cost of each project. The total cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). The non-Federal share may be cash or in-kind (property or services) contributions.

Note: SSA will not accept for further consideration applications for independent panel review that do not document their agreement to cost sharing/matching as noted above.

IV. Application and Submission Information

A. Address To Request Application

It is required that an electronic application be submitted through *http://www.grants.gov* for Funding Opportunity Number SSA–OESP–06–1. The *http://www.grants.gov*, ''Get Started'' webpage is available to help explain the registration and application submission process. In addition, new Federal grant applicants may find the Grants.gov Registration Brochure on the above noted Web site to be helpful.

If you experience problems with the steps related to registering to do business with the Federal government or application submission, your first point of contact is the Grants.gov support staff at *support@grants.gov,* 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Gary Stammer, 410–965–9501; Dave Allshouse, 410–965–9262; Audrey Adams, 410–965–9469; Mary Biddle, 410–965–9503; Ann Dwayer, 410–965–9534; Phyllis Y. Smith, 410–965–9518.

If extenuating circumstances prevent you from submitting an application through *http://www.grants.gov*, please contact the SSA Grants Management Team for possible prior approval to download, complete and submit an application by mail. Please fax inquiries regarding the application process to the Grants Management Team at 410–966–9310 or mail to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–OESP–06–1, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, Md. 21244. To ensure receipt of the proper application package, please include program announcement number SSA–OESP–06–1 and the date of this announcement.

B. Content and Form of Application Submission

Prospective applicants are asked to submit, preferably by May 30, 2006, an e-mail, a fax, post card, or letter of intent that includes:

(a) The program announcement number (SSA–OESP–06–1) and title, Work Incentives Planning and Assistance (WIPA) Program;

(b) The name of the agency or organization that is applying; and

(c) The name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person.

The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Office of Beneficiary Outreach and Employment Support, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401; or e-mailed to *Jenny.Deboy@ssa.gov* or *Regina.Bowden@ssa.gov.*

C. Electronic Applications

When submitting an application electronically *http://www.grants.gov* automatically ensures a complete application is submitted.

D. Mailed Applications

Applications that are not submitted by July 1, 2006 are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered. Applicants that do not have not have access to the internet should contact the Office of Acquisitions and Grants Management Team for further details on how to complete an application.

All applications that meet the deadline of July 1, 2006 will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated.

- Length: The program narrative portion of the application may not exceed 50 double-spaced pages (or 25 single-spaced pages) on one side of the paper only, using standard (8½″ x 11″) size paper, and 12-point font.

Attachments that support the program narrative count towards the 50-page limit; resumes and letters of support do not count within the 50-page limit.

E. Checklist for a Complete Application

The checklist below is a guide to ensure that the application package has been properly prepared.

• An original, signed and dated application plus at least two copies (if submitting paper application as opposed to an electronic application.) If submitting paper application, seven additional copies are optional but will expedite processing.

Note: When submitting an application electronically *http://www.grants.gov* automatically ensures a complete application is submitted.

• The project narrative portion of the application, which includes the applicant's detailed service delivery plan, may not exceed fifty double-spaced pages (twenty-five single-spaced pages) on one side of the paper only, using standard (8½″ x 11″) size paper, and 12-point font. Attachments that support the program narrative count towards the 50-page limit; resumes and letters of support do not count in the 50-page limit.

• Attachments/Appendices, when included, should be used only to provide supporting documentation. Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to reviewers.

• A complete application, which consists of the following items in this order:

(1) Part I (Face page)—Application for Federal Assistance;

(2) Table of Contents;

(3) Brief Project Summary or Synopsis (not to exceed one page);

(4) Part II—Budget Information, Sections A through G;

(5) Budget Justification (in Section B Budget Categories, explain how amounts were computed), including subcontract organization budgets;

(6) Part III—Application Narrative and Appendices; [**Note:** Project Narrative should include the required detailed service delivery plan.]

(7) Part IV—Assurances;

(8) Additional Assurances and Certifications—regarding Lobbying and regarding Drug-Free Workplace; and

F. Guidelines for Application Submission

All applications for this cooperative agreement project must be submitted on the prescribed forms. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award. Submission through Grants.gov generates signatures in all required fields. It is important that only an authorized representative submit the application.

In item 12 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OESP–06–1). The applicant also is encouraged to select a short descriptive project title.

Prospective applicants are asked to submit, preferably by May 30, 2006, an e-mail, fax, post card, or letter of intent that includes (1) the program announcement number (SSA–OESP–06–1) and title (Work Incentives Planning and Assistance (WIPA) Program); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person. The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401; or e-mailed to *Jenny.Deboy@ssa.gov* or *Regina.Bowden@ssa.gov.*

G. Submission Dates and Times

All applications must be submitted by the closing date of July 1, 2006. When authorized by the SSA Grants Management Team, applications may be mailed or hand-delivered to: Grants Management Team, Office of Acquisition and Grants, OAG, Social Security Administration, Attention: SSA–OESP–06–1, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

• Received from Grants.gov on or before the deadline date; or

• When a mailed application has been authorized by the Grants Management Team, received at the above address on or before the deadline date; or

• When a mailed application has been authorized by the Grants Management Team, mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by July 1, 2006. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private-metered postmarks are not acceptable as proof of timely mailing.

H. Intergovernmental Review

The applicant organization is to check with your State's Single Point of Contact (SPOC) to find out about and comply with your State's process under Executive Order 12372. SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

I. Funding Restrictions

Construction expenses: SSA programs do not have construction authority but may support limited alteration and renovation costs. Amounts included under this category must be fully explained under Section F of the application.

J. Other Submission Requirements

Application packages are provided at *http://www.grants.gov.* If extenuating circumstances prevent you from submitting an application through *http://www.grants.gov* please contact the SSA Grants Management Team (at the Office of Acquisitions and Grants (OAG), Social Security Administration, Grants Management Team, Attention: SSA–OESP–06–1, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244) for possible prior approval to download, complete and submit an application package by mail.

All applicants for Federal grants and cooperative agreements on or after October 1, 2003 are required to provide a Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number. The DUNS number is required whether an applicant is submitting a paper application or using the government-wide electronic portal (Grants.gov). Organizations should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible. Organizations can receive a DUNS number at no cost by

calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

V. Application Review Information

A. Criteria

Upon receipt, all applications will be reviewed to determine completeness and conformity to the requirements of this announcement. If an applicant is determined to be ineligible or the application is incomplete or nonconforming to the requirements of this announcement, the application will be returned to the applicant and will no longer be considered for award. Applications that are complete and conform to the requirements of this announcement will then be forwarded to an independent panel of reviewers for evaluation.

B. Review and Selection Process

The results of this review and evaluation will assist the Commissioner of Social Security in making the award decision. Although the results of this review and evaluation are a primary factor considered in making the decisions, the evaluated score is not the only factor used. In selecting eligible applicants to be funded, consideration will be given to issues such as experience, past performance, proposed costs, the need to achieve an equitable distribution of WIPA projects among geographic regions of the country, as well as the need to achieve an equitable distribution of WIPA projects among disability and minority populations.

There are four categories of criteria used to score applications: Relevance/adequacy of project design and scope; resources and management; quality assurance, and collaboration/partnerships. The total points possible for an application are 100. Following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses):

1. Relevance/Adequacy of Project Design and Scope (50 Points)

The adequacy of the project design and scope will be evaluated based on the following criteria in descending order of priority:

- The applicant's description of the project operations, including the project's documented knowledge of work incentives as they relate to employment and how the project will provide services to beneficiaries with disabilities regarding employment (e.g., identify how project will notify potential beneficiaries about the availability of work incentives planning and assistance services, location(s) for providing services, ability to travel to the beneficiary, etc.) and the quality of the project design;
- Applicant's evidence that their project design and scope will successfully assist beneficiaries with disabilities obtain, regain or maintain gainful employment;
- The applicant's clear and concise statement of the project goals and objectives; and process(es) for collecting SSA required management information; specification of data sources; including how they will interact with the SSA approved national data base;
- The applicant's description of how the project will address provision of work incentives planning, assistance and outreach to populations with special cultural or language requirements specific to their geographic area;
- The applicant's plan for providing work incentives planning, assistance and outreach to transition-to-work-aged SSI youth;
- The applicant's identification of problems that may arise and how they will be resolved; e.g., how dropouts and inadequate numbers of beneficiary participants will be handled.
- If appropriate in the applicant's State or Region, a plan for providing seamless employment services to individuals seeking to enter the workforce through the SSA DOL/ETA Disability Program Navigator (DPN) initiative and existing Employment Networks (ENs). [**Note:** Applicants in a State or Region that do not have a DPN or EN need not address this issue in their application and may receive all available points for this criteria. Evaluation panels will not use this sub-criteria in the application evaluation for those States or Regions where it is not applicable.]
- If appropriate in the applicant's State, a plan for providing work incentives planning, assistance and outreach to States involved in the Youth Transition Process Demonstration; [**Note:** Applicants in a State or Region that do not have a YTD need not address this issue in their application and may receive all available points for this criteria. Evaluation panels will not use this sub-criteria in the application evaluation for those States or Regions where it is not applicable.]

2. Resources and Management (20 Points)

Resources and management will be evaluated based on the following:

- The applicant's documentation that the Project Directors and CWICs have the necessary experience to successfully implement the program requirements described in this RFA; (Specifically, projects successfully involving return-to-work initiatives for SSDI and SSI beneficiaries with disabilities.)
- The applicant's description and adequacy of the proposed infrastructure and organization of the project, including the existence of the necessary administrative resources to effectively carry out the program requirements;
- The applicant's plan for providing personnel who meet the qualification criteria cited in this RFA under Section I as evidenced by training and experience which indicates that they have the skills required to competently provide work incentives planning and assistance services;
- The applicant's plan for providing staff members who are individuals with disabilities to conduct the day-to-day operational functions;
- The applicant's evidence of sufficient resources, including personnel, time, funds, and facilities that will be available to support beneficiaries with disabilities obtain, maintain or regain employment under this program. The applicant's evidence of adequate facilities should include accessibility to public transportation, elevators, and ramps.

3. Quality Assurance (20 Points)

The applicant's quality assurance plan will be evaluated based on the following:

- The applicant's plan for ensuring ongoing training needs (refresher and update training) of CWICs and other personnel, as appropriate, to ensure that personnel maintain knowledge, skills, and abilities as required to perform their job duties;
- The applicant's plan for using management information data and caseload reviews to improve processes such as beneficiary case-management and follow-up services and to ensure that all work incentives information given to beneficiaries is accurate and applicable. The applicant's plan must include how it intends to track the progress and outcomes of beneficiaries based on services provided by the CWIC. SSA is interested in identifying beneficiary outcomes under the WIPA Program to determine the extent to which beneficiaries with disabilities achieve their employment, financial, and health care goals. Therefore, SSA is requiring that cooperative agreement awardees collect beneficiary specific data regarding the employment status, benefit status, and income of beneficiaries before and after providing services under these cooperative agreements;
- The applicant's evidence of existing case management and monitoring

systems and techniques, including a management information system;

• The applicant's detailed quality assurance plan and how well it complies with the requirements of this RFA in terms of data collection, reporting, and ensuring that only accurate information is provided to beneficiaries with disabilities and others interested parties, as appropriate.

4. Collaboration/Partnerships (10 Points)

The applicant s collaborative activities and partnerships will be evaluated based on the following:

• Evidence of the applicant s working relationship with the local DOL One-Stop Career Center;

• Applicant s evidence of other collaborative activities with relevant agencies, (e.g., Vocational Rehabilitation, Centers for Medicare and Medicaid Services (CMS), Dept. of Education, Minority Commission, Workforce Centers, Employment Networks, Mental Health organizations) in providing work incentives planning and assistance services; and extent to which the applicant partnered in collaborative efforts with these organizations, including letters of intent or written assurances from cited organizations;

• The applicant s plan to work in collaboration/cooperation with the PMRO. [**Note:** Additional information regarding how WIPA projects will work with the PMRO may be found at *http://www.socialsecurity.gov/work/WIPARFA.html*.]

VI. Award Administration Information

A. Award Notices

A cooperative agreement award will be issued within the constraints of available Federal funds and at the discretion of SSA. The official award document is the ''Notice of Cooperative Agreement Award.'' It will provide the amount of the award, the purpose of the award, the term of the agreement, the total project period for which support is contemplated, the amount of financial participation required, and any special terms and conditions of the cooperative agreement. The Notice of Cooperative Agreement Award signed by the Grants Officer is the authorizing document. These awards will be issued via e-mail.

B. Administrative and National Policy Requirements

No administrative or national policy requirements have been identified by SSA for the WIPA Program.

C. Reporting

Entities must provide all collected data and report the results to SSA's Office of Acquisition and Grants, Grants Management Team (OAG, GMT), as described below.

The entities awarded a cooperative agreement under this notice shall submit quarterly progress reports to OAG, GMT. SSA expects that the project will need a period of time to begin providing services and collecting management information. Therefore, the first quarterly program report shall include a description of the project, a status of data collection operations, actions that were taken, planned actions, and a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in work incentives planning and in carrying out outreach activities.

Subsequent quarterly program reports shall provide: A status of the project, any problems or proposed changes in the project (e.g., requests for technical assistance from contractor, interagency agreement change); specific information (baseline data/program statistics) required by SSA, including that listed above; a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in work incentives planning and outreach activities; quality assurance measures, goals achieved, collaboration activities, outcomes achieved by beneficiaries served/success stories involving employment, actions that were taken, and planned actions. The quarterly program reports shall be submitted to SSA, OAG, within 30 days after the end of the quarter. Financial status reports shall be submitted bi-annually, within 30 days after the end of the six month period.

SSA personnel (SSA Project Officer and/or other staff) expect to visit projects at least once in each year of the cooperative agreement. The SSA Project Officer shall review site operations, collect management information, assess the quality assurance plan and goal achievement, and evaluate how projects are finding ways to make work incentives planning and assistance activities more effective in achieving SSA's program goals.

Staff members shall attend an initial orientation meeting that will include an orientation session by SSA and subsequent scheduled conferences at SSA headquarters or alternate sites chosen by SSA. Those meetings will provide the awardee of the cooperative agreement with the opportunity to exchange information with SSA and other awardees.

D. MI Program Data To Be Collected and Reported

Common data elements will be collected through a national on-line database. The awardees and SSA will use the management information (MI) data to manage the project and to determine what additional resources or other approaches may be needed to improve the process. The data will also be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs. SSA is interested in identifying participant outcomes under the WIPA Program to determine the extent to which participants achieve their employment, financial, and health care goals. Therefore, SSA is requiring that cooperative agreement awardees collect data regarding the employment status, benefit status, and income of beneficiaries before and after providing services in order to help ensure that SSA beneficiaries with disabilities are gaining effective supports and follow-up services needed to move towards gainful employment.

Data to be collected will include information about:

Beneficiaries' demographic characteristics, including Social Security Numbers (SSNs); Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);

Beneficiaries' non-income support characteristics (including access to public and private health care);

Beneficiaries' work goals and strategies;

Beneficiaries' use of SSA's work incentives and;

Isolated outreach activities for evaluation purposes;

Employment outcomes.

The projects will collect, analyze, and summarize the specific data elements listed below:

A. Beneficiary information:

1. Beneficiary/recipient name (Last, First, Middle)
2. Date of birth
3. Gender
4. Special language or other consideration
5. Mailing address
6. Telephone number
7. Social Security Number (SSN)
8. Representative payee (RP) name (if applicable)
9. RP address
10. Current level of education
11. Whether pursuing education currently and at what level (e.g., post secondary, continuing adult education, special education, vocational education)

12. Proposed educational goals
13. Primary diagnosis
14. Secondary diagnosis (if applicable)
15. Employer health care coverage at outset (if working)
16. Other health care coverage

B. Employment Information and Outcomes: (current and proposed goals—when applicable.)
1. Self-employed or employee
2. Type of work
3. Beginning date
4. Hours per week
5. Monthly gross earned income
6. Monthly net earned income
7. Work-related expenses

C. Program Manager for Recruitment and Outreach (PMRO) Activities:
1. Dates, times, location and attendance information on work incentives education seminars and other Ticket to Work Marketing sessions conducted in collaboration with the PMRO;
2. Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);
3. Beneficiaries' non-income support characteristics (including access to public and private health care);
4. Beneficiaries' identified work goals and strategies for attaining successful employment outcomes (For example, will a beneficiary need to seek additional training or education in order to attain an identified employment outcome?);
5. Other local outreach activities conducted by the project for further evaluation purposes;

D. Benefits: (current and expected changes if employment goals are reached)
1. SSDI
2. SSI
3. Concurrent (SSDI and SSI)
4. Medicare
5. Medicaid
6. Private Health Insurance
7. Subsidized housing or other rental subsidies
8. Food Stamps
9. General Assistance
10. Workers Compensation benefits
11. Unemployment Insurance benefits
12. Other Federal, State, or local supports, including TANF (specify)

E. Incentives to be used:
1. Trial-work period (TWP)
2. Extended period of eligibility (EPE)
3. Impairment-related work expenses (IRWE)
4. Plan for achieving self-support (PASS)
5. 1619(a)
6. Continuing Medicaid (1619(b))
7. Medicaid buy-in provisions/ Balanced Budget Act
8. Blind Work Expense
9. Student Earned Income Exclusion
10. Subsidy Development
11. Extended Medicare
12. Property Essential to Self-Support
13. Earned Income Exclusion
14. SGA limits (unsuccessful work attempt, subsidy, unincurred business expenses, etc.)

F. Services to be used:
1. Vocational Rehabilitation services
2. Para-transit services
3. Protection and Advocacy services
4. Work-related training/counseling program
5. USDOL/ETA One-Stop Career Center services
6. Transitioning youth services (from school to post-secondary education or to work)
7. Employment Network services
8. Services for beneficiaries with visual impairments (i.e. service animals)
9. Employer Assistance and Referral Network (EARN)
10. Other Advocacy-related Services

G. Monthly Work Incentives Planning and Assistance (WIPA) activities performed:
1. Number of SSDI/SSI beneficiaries (over age 18) requesting assistance (initial and repeat requests)
2. Number of SSDI/SSI beneficiaries (ages 14 to 18) requesting assistance (initial and repeat requests)
3. Number of new work incentives plans prepared
4. Number of updated work incentives plans prepared
5. Number of presentations given at forums, conferences, meetings, etc.
6. Number of work incentives education and Ticket to Work marketing sessions conducted in collaboration with the PMRO.
7. Number of follow-up contacts with beneficiaries
8. Number of times exhibited at forums, conferences, meetings, etc.
9. Number of contacts with Area Work Incentives Coordinators (AWICs)

Additional information such as the time spent per beneficiary/recipient, beneficiary's waiting time for a response, an appointment and for services, the reason for service request, the level of service provided, and any anticipated or verified employment status change of the beneficiary will also be reported by awardee. All data elements are to be collected through an SSA approved national online database, in order to allow for analysis of project efficacy and the comparability of the data across project sites.

The application requirements in Part IV are the minimum amount of required project information. Projects will be responsible for collecting management information (MI), producing regular reports, and producing a final report which analyzes the successes and/or failures of the methodology used to provide work incentives planning and assistance services to SSDI and SSI beneficiaries.

Note: Reporting guidelines are outlined in Section VI (Award Administration Information) Part 2: Reporting; and, Part 3: Management Information Program Data to be Collected and Reported.

All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/ computer records/data, and other issues potentially arising from providing work incentives planning and assistance services to SSDI and SSI beneficiaries with disabilities. Beneficiary data should be accessible only to project personnel via locked file cabinets, computer password protections, etc.

VII. Agency Contacts

Send questions about this announcement to the following Internet e-mail addresses: *Jenny.Deboy@ssa.gov* or *Regina.Bowden@ssa.gov*. When sending in a question, reference program announcement number SSA–OESP–06–1 and the date of this announcement.

For information regarding the application submission process, you may also contact: Phyllis Y. Smith or Gary Stammer, Grants Management Team, Office of Acquisition and Grants, Social Security Administration, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. The telephone numbers are: Phyllis Y. Smith, (410) 965–9518, or Gary Stammer, (410) 965–9501. The fax number is (410) 966–9310.

VIII. Other Information

Process Evaluation

SSA plans to conduct a formal independent process evaluation of the WIPA Program, as well as individual projects, beginning in FY2007 to further assess the overall efficacy of the program in terms of assisting beneficiaries with disabilities return to work. The purpose of a process evaluation is for SSA and the awardees to assess how the WIPA Program functions and how the process (es) might be improved to provide more efficient and effective work incentives services, as required under section 1149 of the Act. The process evaluation will require both data collection and qualitative observational evaluation

through site visits and/or project reporting.

Participant Experience

The goal of these cooperative agreements is the provision of services to enhance beneficiary awareness and understanding of SSA work incentives and thereby enhance a beneficiaries' ability to make informed choices regarding work. The goal is not to provide employment services however, employment is ultimately the key for many beneficiaries with disabilities in terms of gaining greater self-sufficiency.

Projects shall submit periodic reports to SSA, OAG. Data and information that are used in preparing the reports can be used, for example, to improve the efficiency of the project's operations, use of staff, and linkages between the project and the programs for which work incentives planning is needed to better meet the needs of target populations. In addition, the evaluation results will be disseminated to other projects to promote learning, program refinements, and facilitate partnership and achievement of project objectives. Timely comprehensive MI data also allows for cost accounting, which helps improve the efficiency of service approaches and may inform future policy decisions.

Paperwork Reduction Act

This notice contains reporting requirements. The information is collected by the Grants.gov Apply facility. However, in rare circumstances, the information may be collected using form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Dated: May 8, 2006.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 06–4507 Filed 5–15–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Program: Work Incentives Planning and Assistance (WIPA) Program Pre-Application Seminars Program Announcement No. SSA–OESP–06–1

AGENCY: Social Security Administration.

ACTION: Notice of meetings.

DATES: May and June 2006.

Locations: The seminars will be held at locations in the following ten (10) cities: Richmond, Virginia; Sacramento, California; Boise, Idaho; Helena, Montana; Austin, Texas; Mobile, Alabama; Des Moines, Iowa; Lansing, Michigan; Albany, New York; and Hartford, Connecticut.

SUPPLEMENTARY INFORMATION:

Type of meeting: Informational pre-application seminars open to potential applicants for the Work Incentives Planning and Assistance (WIPA) Program (currently the Benefits Planning, Assistance and Outreach (BPAO) Program).

Purpose: SSA will hold informational pre-application seminars throughout the nation to solicit interest and encourage community-based organizations to apply for cooperative agreement awards. All interested applicants are invited to attend.

Section 1149(d) of the Social Security Act (as added by Section 121 of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999, Pub. L. 106–170) required SSA to establish community based benefits planning and assistance in every State, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands. As authorized by TWWIIA, SSA established a program, called the Benefits Planning, Assistance and Outreach (BPAO) program. Under this program, cooperative agreements (monetary awards) were granted to community-based organizations, called BPAO Projects, to provide all of SSA's beneficiaries with disabilities access to work incentives planning and assistance services. Section 407 of the Social Security Protection Act (Pub. L. 108–203) extended the authorization of this program through Fiscal Year 2009.

SSA released a nationwide, competitive Request for Applications in May 2006 to announce funding availability for new cooperative agreements awards and to change the name of the BPAO program to the Work Incentives Planning and Assistance (WIPA) Program, effective September 30, 2006.

The schedule (including date, time and address of each pre-application seminar location as it becomes available) will be posted at the following Internet site: *http://www.socialsecurity.gov/work/WIPARFA.html.*

Agenda: SSA will use the seminars to provide guidance and technical assistance to interested parties as they prepare to submit their applications. The agenda will be posted on the Internet at *http://www.socialsecurity.gov/work* one week before commencement of the seminars. The agenda can also be requested electronically or by fax upon request.

FOR FURTHER INFORMATION CONTACT: Anyone requiring additional information should contact SSA Project Officer, Debbie Morrison by e-mailing *debbie.morrison@ssa.gov* or calling (410) 965–9054. Interested parties requiring reasonable accommodations should also contact Debbie Morrison no later than ten (10) business days before the date of the seminar to be attended.

- Mail addressed to Social Security Administration, 6401 Security Blvd., Room 107 Altmeyer Building, Baltimore, MD 21235.
- Fax at (410) 966–1278.
- E-mail to *debbie.morrison@ssa.gov.*

Dated: May 8, 2006.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Program.

[FR Doc. E6–7320 Filed 5–15–06; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Notice of Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 0602).

TIME AND DATE: 2 p.m. CDT, May 18, 2006, Hopkinsville-Christian County Conference and Convention Center, Hopkinsville, Kentucky.

STATUS: Open.

Agenda

Old Business

Approval of minutes of March 31, 2006, Board Meeting.

New Business

1. Bylaws of the Tennessee Valley Authority.
2. Tennessee Valley Authority Board Committees.
3. Grant of easement to The University of Tennessee at Chattanooga and the Advanced Transportation Technology Institute.
4. Moratorium on further land actions.
5. Delegations of authority to TVA management to handle specified land actions.
6. Report of the Interim Audit Committee.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda

Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 11, 2006.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 06–4596 Filed 5–12–06; 11:38 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2006 24771]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 17, 2006.

FOR FURTHER INFORMATION CONTACT: James Zok, Maritime Administration (MAR–500), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0364, Fax: 202–366–9580, or e-mail: *jim.zok@dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Customer Service Survey.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0528.

Form Numbers: MA–1016, MA–1017, MA–1021 and MA–1038.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of satisfaction with existing services. This collection provides the instruments used to collect the information regarding MARAD programs and services.

Need and Use of the Information: Responses to the Customer Service Questionnaire (Form MA–1016) are needed to obtain prompt customer feedback on the quality of specific services/products provided to the customer by MARAD. Responses to the Program Performance Survey (Form MA–1017) and U.S. Merchant Marine Program Performance Survey (Form MA–1038) are needed to obtain customers' views on MARAD's major programs and activities with which the customers were involved during the preceding year. Responses to the Conference/Exhibit Survey (Form MA–1021) will be used to obtain prompt responses from attendees at MARAD-sponsored conferences, exhibits and other maritime industry events.

Description of Respondents: Individuals receiving goods and services from MARAD.

Annual Responses: 6,650 responses.

Annual Burden: 256 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

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

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: May 9, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–7450 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24795]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Elizabeth Noble.*

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24795 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 15, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 24795.Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents

entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Elizabeth Noble* is:

Intended Use: ''Transport passengers on pleasure cruises.''

Geographic Region: Inland waters of NC.

Dated: May 11, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–7451 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006—24794]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Outlaw.*

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24794 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 15, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 24794. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Outlaw* is:

Intended Use: ''As long term owner operators we have been in the daysail charter industry since 1985 in the USVI and would like to expand our charter operation to Newport, RI in the months of June to Nov. We offer private sails to small groups up to 12 passengers aboard our luxury performance yacht that include gourmet food prepared on board and served at anchor or underway, schedules, destinations and menu are all determined by guest preferences.''

Geographic Region: Newport, RI doing private charters to exclusive groups within Narrangansett Bay, Long Island Sound, and Block Island Areas.

Dated: May 11, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–7452 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–23448; Notice 2]

Pipeline Safety: Request for Waiver; Maritimes & Northeast Pipeline, L.L.C.—Extension of Comment Period

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; extension of public comment period.

SUMMARY: On March 22, 2006, PHMSA sought comment on a request by Maritimes & Northeast Pipeline, L.L.C.'s (M&NE) waiver of the pipeline safety standard on the maximum allowable operating pressure. This document extends the public comment period from April 21, 2006 to June 16, 2006.

DATES: Comments must be received on or before June 16, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–2006–23448 and may be submitted in the following ways:

- DOT Web site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- Fax: 202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT 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.
- E-Gov Web site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA–2006–23448, at the beginning of your comments. If you mail your comments, you should send two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to *http://dms.dot.gov*

including any personal information provided.

FOR FURTHER INFORMATION CONTACT: James Reynolds by telephone at 202–366–2786; by fax at 202–366–4566; or by e-mail at *james.reynolds@dot.gov;* or by mail at DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA), Pipeline Safety Program (PHP), 400 7th Street, SW., Room 2103, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 2006, PHMSA issued a Notice of Intent to consider the waiver requests presented by M&NE (PHMSA–2006–23448; Notice 1; 71 FR 14575). The Notice of Intent allowed anyone interested in filing public comments addressing the request described in the notice to do so by April 21, 2006.

On April 14 & 24, 2006, the Maine Public Utilities Commission (MPUC) requested a 60-day extension of the comment period. MPUC said the extension would allow M&NE to notify more residents within a high consequence area (along the pipeline corridor) of the pending waiver request. MPUC said the extension would allow effective notice to the affected residents, and give them ample opportunity to submit comments on the petition. Therefore, MPUC urged PHMSA to grant the extension so all might have confidence in the fairness of the waiver process to the public.

On May 2, 2006, M&NE wrote PHMSA in support of comments filed by MPUC. M&NE stated they were in the process of sending letters to the additional residents requested by the MPUC. The letters notify residents of the proposed waiver and the opportunity for comment.

In consideration of the above, PHMSA extends the public comment period to June 16, 2006.

II. Regulatory Notice

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Issued in Washington, DC, on May 10, 2006.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. E6–7443 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 9, 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 June 15, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1986.

Type of Review: Extension.

Title: Notice 2006–XX, Elections Created or Effected by the American Jobs Creation Act of 2004.

Description: The collection of information will enable the Internal Revenue Service to ensure that the eligibility requirements for the various elections or revocations have been satisfied and the requisite actions have been complied with.

Respondents: Individuals or households; Business or other for profit; and Farms.

Estimated Total Burden Hours: 3,034,765 hours.

OMB Number: 1545–1970.

Type of Review: Extension.

Title: Election to Participate in Announcement 2005–80 Settlement Initiative.

Form: IRS 13750.

Description: Announcement 2005–80 provides a settlement initiative under which taxpayers and the Service may resolve certain abusive tax transactions. Pursuant to Announcement 2005–80, Form 13750 is the ONLY specified manner in which taxpayers may elect to participate in the settlement initiative.

Respondents: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1545–1977.

Type of Review: Extension.

Title: Notice 2005–89 Temporary Relief for Certain REIT's and Taxable REIT Subsidiaries that Provide Accommodations to Persons Affected by Hurricanes Katrina and Rita.

Description: The Internal Revenue Service will not treat a hotel, motel, or other establishment that otherwise satisfies the definition of a ''lodging facility'' under section 856(d)(9) of the Internal Revenue Code as other than a ''lodging facility'' if it is used to provide temporary housing on a nontransient basis to certain persons affected by Hurricane Katrina or Hurricane Rita, provided the recordkeeping requirements of this Notice are satisfied.

Respondents: Individuals or households; and Business or other for-profit.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–1969.

Type of Review: Extension.

Title: Waiver of Right to Consistent Agreement of Partnership Items and Partnership-Level Determinations as to Penalties, Additions to Tax and Additional Amounts.

Description: The information requested on Form 13751 (as required under Announcement 2005–80) will be used to determine the eligibility for participation in the settlement initiative of taxpayers related through TEFRA partnerships to ineligible applicants. Such determinations will involve partnership items and partnership-level determinations, as well as the calculation of tax liabilities resolved under this initiative, including penalties and interest.

Respondents: Individuals or households; Business or other for-profit and not-for-profit institutions.

Estimated Total Burden Hours: 100 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW, Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–7388 Filed 5–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 9, 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 June 15, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1996.

Type of Review: Extension.

Title: Notice 2006–05, Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest.

Description: This Notice provides information to payees who receive payment of interest on qualified education loans who are unable to comply with the information reporting requirements under section 6050S of the Internal Revenue Code.

Respondents: Business or other for profit; Not-for-profit institutions; and Federal Government.

Estimated Total Burden Hours: 5,000 hours.

OMB Number: 1545–1504.

Type of Review: Extension.

Title: Application for Taxpayer Assistance Order (ATAO).

Form: IRS 911.

Description: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.

Respondents: Individuals or households; Business or other for profit; Not-for-profit institutions; Farms; and State, Local or Tribal Government.

Estimated Total Burden Hours: 46,500 hours.

OMB Number: 1545–1828.

Type of Review: Extension.

Title: REG–131478–02 (Final) Guidance Under Section 1502; Suspension of Losses on Certain Stock Disposition.

Description: The information in § 1.1502–35T(c) is necessary to ensure that a consolidated group does not obtain more than one tax benefit from both the utilization of a loss from the disposition of stock and the utilization of a loss or deduction with respect to another asset that reflects the same economic loss; to allow the taxpayer to make an election under § 1.1502–35T(c)(5) that would benefit the taxpayer, the election in § 1.1502–35T(f) provides taxpayers the choice in the case of a worthless subsidiary to utilize a worthless stock deduction or absorb the subsidiary's losses; and § 1.1502–35T(g)(3) applies to ensure that taxpayers do not circumvent the loss suspension rule of § 1.1502–35T(c) by deconsolidating a subsidiary and then re-importing to the group losses of such subsidiary.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 15,000 hours.

OMB Number: 1545–1982.

Type of Review: Extension.

Title: Distilled Spirits Credit.

Form: IRS 8906.

Description: Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The new form provides a means for the eligible taxpayer to compute the amount of credit.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 588 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–7389 Filed 5–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6781

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6781, Gains and Losses From Section 1256 Contracts and Straddles.

DATES: Written comments should be received on or before July 17, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Gains and Losses From Section 1256 Contracts and Straddles.

OMB Number: 1545–0644.

Form Number: Form 6781.

Abstract: Form 6781 is used by taxpayers in computing their gains and losses on Internal Revenue Code section 1256 contracts under the marked-to-market rules and gains and losses under Code section 1092 from straddle positions. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Current Actions: There are no changes being made to Form 6781 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 9 hours, 2 minutes.

Estimated Total Annual Burden Hours: 903,237.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–7385 Filed 5–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120S, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before July 17, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-in Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

OMB Number: 1545–0130.

Form Number: Form 1120S, Schedule D, and Schedule K–1.

Abstract: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule D is used to report gain or loss from sales or exchanges of capital assets and the computation of tax on certain capital gains imposed by Internal Revenue Code section 1374. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 15,042,000.

Estimated Time Per Respondent: 32 hours, 16 minutes.

Estimated Total Annual Burden Hours: 485,442,640.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–7386 Filed 5–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 23, Application for Enrollment to Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before July 17, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545–0950.

Form Number: Form 23.

Abstract: Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal government.

Estimated Number of Respondents: 2,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–7387 Filed 5–15–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 94

Tuesday, May 16, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of C-6 and C-8 Modified cAMP-Derivatives for the Treatment of Cancer

Correction

In notice document E6–6986 appearing on page 26979 in the issue of Tuesday, May 9, 2006, make the following correction:

In the second column, under the **DATES** heading, in the fourth and fifth lines, ''June 10, 2006'' should read ''July 10, 2006 ''.

[FR Doc. Z6–6986 Filed 5–15–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD; Amendment 39–14515; AD 2006–01–11 R1]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes

Correction

In rule document 06–2546 beginning on page 13538 in the issue of Thursday, March 16, 2006, make the following correction:

§39.13 [Corrected]

On page 13540, in §39.13, in the table, under the heading ''Actions,'' in entry (4), in the third line, ''(600 SHP) or equipped'' should read ''(600 SHP) or equivalent, and equipped''.

[FR Doc. C6–2546 Filed 5–15–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 16, 2006

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, 33, 101, et al.

Federal Power Act—Order on Rehearing and Denial for Rehearing, and Implementation of Federal Public Utility Holding Company Act of 2005 and Repeal of Federal Public Utility Holding Company Act of 1935; Final Rules and Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 33

[Docket No. RM05–34–001; Order No. 669–A]

Transactions Subject to FPA Section 203

Issued April 24, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: In this order on rehearing, the Federal Energy Regulatory Commission (Commission) reaffirms its determinations in part and grants rehearing in part of Order No. 669, which revised 18 CFR 2.26 and 18 CFR part 33 to implement amended section 203 of the Federal Power Act (FPA).

EFFECTIVE DATE: June 15, 2006.

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

I. Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. Section 1289 (Merger Review Reform) of Title XII, Subtitle G (Market Transparency, Enforcement, and Consumer Protection),[2] of EPAct 2005 amends section 203 of the Federal Power Act (FPA).[3] Amended section 203: (1) Increases (from $50,000 to $10 million) the value threshold above which certain transactions are subject to section 203; (2) extends the scope of section 203 to include transactions involving certain transfers of generation facilities and certain public utility holding companies' transactions with a value in excess of $10 million; (3) limits the Federal Energy Regulatory Commission's (Commission) review of a public utility's acquisition of securities of another public utility to transactions greater than $10 million; (4) requires that the Commission, when reviewing proposed section 203 transactions, examine cross-subsidization and pledges or encumbrances of utility assets; and (5) directs the Commission to adopt, by rule, procedures for the expeditious consideration of applications for the approval of transactions under section 203.

2. On October 3, 2005, the Commission issued a notice of proposed rulemaking (NOPR) requesting comment on its proposal to amend its regulations to implement amended section 203.[4] As discussed below, on December 23, 2005, the Commission issued a final rule (Order No. 669) [5] adopting certain modifications to 18 CFR 2.26 and 18 CFR part 33 to implement amended section 203. Generally, Order No. 669:

(1) Implemented the new applicability of amended section 203;

(2) Granted blanket authorizations, in some instances with conditions, for certain types of transactions, including acquisitions of foreign utilities by holding companies, intra-holding company system financing and cash management arrangements, certain internal corporate reorganizations, and certain acquisitions of securities of transmitting utilities and electric utility companies;

(3) Defined terms, including ''electric utility company,'' ''holding company,'' and ''non-utility associate company;''

(4) Defined ''existing generation facility;''

(5) Adopted rules on the determination of ''value'' as it applies to various section 203 transactions;

(6) Set forth a section 203 applicant's obligation to demonstrate that a proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company; and

(7) Provided for expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent.

3. In Order No. 669, the Commission also announced that, at a technical conference on the Public Utility Holding Company Act of 2005 (PUHCA 2005),[6] to be held within the next year,[7] we will

[1] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[2] EPAct 2005 at 1281 *et seq.*

[3] 16 U.S.C. 824b (2000).

[4] *Transactions Subject to FPA Section 203,* 70 FR 58636 (Oct. 7, 2005), FERC Stats. & Regs. ¶ 32,589 (2005).

[5] *Transactions Subject to FPA Section 203,* Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005). On January 10, 2006, the Commission issued an errata notice to Order No. 669 revising parts of the regulatory text to conform to the version of the order that was issued in the **Federal Register.** *Transactions Subject to FPA Section 203,* 114 FERC ¶ 61,018 (2006). As relevant here, in instruction 7, at 18 CFR 33.11(b)(2), a footnote was added after ''(2) transactions that do not require Appendix A analysis,'' reading: ''*Inquiry Concerning the Commission's Merger Policy Under the FederalPower Act: Policy Statement,*'' Order No. 592, 61 FR 68595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied,* Order No. 592–A, 62 FR 33340 (June 19, 1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

[6] EPAct 2005 at 1261 *et seq. Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 55805, FERC Stats. & Regs. ¶ 31,197 (2005) (PUHCA 2005 Final Rule).

[7] PUHCA 2005 Final Rule at P 17. The Commission stated that we intend to hold a technical conference no later than one year after PUHCA 2005 became effective to evaluate whether additional exemptions, different reporting requirements, or other regulatory actions need to be considered. The PUHCA 2005 Final Rule took effect on February 8, 2006.

also address certain issues raised in this proceeding. These include whether the blanket authorizations granted in Order No. 669 should be revised and whether additional protection against cross-subsidization and pledges or encumbrance of utility assets is needed.[8]

4. In this order, the Commission grants rehearing in part, grants clarification in part, and denies rehearing in part of its Order No. 669. Our actions here will necessitate further changes in the regulations. In light of the number of regulatory text changes, the Commission is including the revised regulations in their entirety. In addition, for the convenience of interested persons, we will include a version of the revised regulations in their entirety that highlights the changes from Order No. 669 as a separate attachment. (See Appendix B.) This attachment will not be published in the **Federal Register**.

II. Background

5. The background to Order No. 669 is set forth in detail in that order. We will summarize it here.

A. Pre-EPAct 2005 Standards

6. Prior to EPAct 2005, section 203 provided that

> no public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it do so.

The Commission applied the ''public interest'' standard in approving proposed transactions. The purpose of the Merger Policy Statement was to ensure that mergers are consistent with the public interest and to provide greater certainty and expedition in the Commission's analysis of merger applications. The Merger Policy Statement sets out three factors the Commission generally considers when analyzing whether a proposed section 203 transaction is consistent with the public interest: Effect on competition; effect on rates; and effect on regulation. The Commission later issued the Filing Requirements Rule,[9] a final rule updating the filing requirements under 18 CFR part 33 of the Commission's regulations for section 203 applications. The Filing Requirements Rule implements the Merger Policy Statement and provides detailed guidance to applicants for preparing applications. The revised filing requirements also assist the Commission in determining whether section 203 transactions are consistent with the public interest, provide more certainty, and provide for expedited review of such applications.

B. EPAct Revisions to Section 203 and Order No. 669

7. Amended section 203(a)(1) states that no public utility shall, without first having secured an order of the Commission authorizing it to do so: (A) Sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10 million; (B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; (C) purchase, acquire, or take any security with a value in excess of $10 million of any other public utility; or (D) purchase, lease, or otherwise acquire an existing generation facility: (i) That has a value in excess of $10 million; and (ii) that is used for interstate wholesale sales and over which the Commission has jurisdiction for ratemaking purposes.

8. Section 203(a)(2) adds the entirely new requirement that no holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of $10 million of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10 million without prior Commission authorization.

9. Amended section 203(a)(4) states that, after notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control if it finds that the transaction will be consistent with the public interest. This standard was contained in the pre-EPAct 2005 section 203 as well. Amended section 203(a)(4) also provides a new specific requirement that the Commission must find that the transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

10. Section 203(a)(5) adds the entirely new requirement that the Commission shall adopt procedures for the expeditious consideration of applications for the approval of section 203 transactions. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the section 203 standards for approval. The Commission shall provide expedited review for such transactions. It further provides that the Commission must act on a proposed section 203 transaction within 180 days of filing but may extend the time for not more than an additional 180 days for good cause.

11. Section 203(a)(6), which is also new, provides that for purposes of this section, the terms ''associate company,'' ''holding company,'' and ''holding company system'' have the meaning given those terms in PUHCA 2005.[10]

12. Order No. 669 became effective on February 8, 2006. The aspects of Order No. 669 on which rehearing were filed are described in more detail below.[11]

III. Discussion

A. 18 CFR Part 33

1. Section 33.1(b)(3)—Definition of ''Value''

13. Section 33.1(b)(3)(i) generally uses market value as the appropriate measure of value for transfers of physical facilities (transmission facilities and generation facilities) for purposes of determining whether the $10 million jurisdictional threshold is met.[12] The rule states that when a transaction occurs between non-affiliates, the Commission will rebuttably presume that market value is the transaction price. For transactions between affiliated companies, value means original cost undepreciated, as defined in the Commission's Uniform System of Accounts, or original book cost,[13] as applicable.

14. Section 33.1(b)(3)(ii) provides that value as applied to transfers of wholesale contracts between non-affiliates also means the market value. The Commission will rebuttably presume that market value is the

[8] Order No. 669 at P 4.

[9] *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 FR 70984 (Nov. 28, 2000), FERC Stats. & Regs., July 1996–Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642–A, 66 FR 16121 (Mar. 23, 2001), 94 FERC ¶ 61,289 (2001) (codified at 18 CFR part 33 (2005)) (Filing Requirements Rule).

[10] EPAct 2005 at 1262.

[11] The entities that filed requests for rehearing are listed in an appendix to this order.

[12] Order No. 669 at P 116. Section 33.1(b)(3)(iii) provides that for securities, value means market value, which is rebuttably presumed to be transaction price.

[13] Book cost, as used here, refers to original book cost.

transaction price. For transfers of contracts between affiliates, value means total expected nominal revenues over the remaining life of the contract.[14]

15. The Commission noted that a complicating factor in relying on transaction price as a measure of market value is that transactions will sometimes include assets whose transfer is not subject to amended section 203 (non-jurisdictional assets) and the problem arises as to how to value the jurisdictional assets included in the transaction. In this situation, the Commission instructed applicants to rely on a valuation analysis of the individual jurisdictional parts in deciding whether to file for section 203 authorization.

a. Rehearing Requests

16. APPA/NRECA argue that the Commission should require that valuations of asset transactions between non-affiliates under section 203(a)(1)(A) be consistent with generally accepted accounting principles (GAAP), particularly when the transaction also includes non-jurisdictional assets. They assert that, without such a requirement, parties will be able to value jurisdictional assets or weight the value of non-jurisdictional assets to evade Commission review, while maintaining the same total purchase price for all assets.[15]

17. APPA/NRECA are concerned about a possible unintended ''spillover effect'' of using market value.[16] They request that the Commission confirm that valuation for purposes of determining whether section 203 approval is required will not affect the valuation placed on the assets for purposes of applying cost-based ratemaking standards, in particular, the Commission's policy concerning acquisition adjustments in cost-based jurisdictional rates.[17]

18. APPA/NRECA lastly argue that the Commission should require that valuations of wholesale contracts being transferred between non-affiliates be based on the expected contract revenues rather than on market value. They contend that market value, which is based on expected profits, cannot be reliably determined and will be prone to abuse and manipulation. They suggest that ''expected profit'' has little meaning when the transaction is undertaken as much for risk mitigation purposes as for power supply. Using the same method to value contract transfers between non-affiliates as for affiliates, i.e., expected contract revenues, has the virtue of regulatory simplicity.[18]

19. NARUC argues that the record does not support using ''original cost un-depreciated'' as market value in transactions between affiliates. NARUC says that net book value is a better way to value the assets in affiliate transactions because it represents the remaining monetary value of an asset that is ''used and useful'' at the time of the proposed transaction. Net book value, unlike original cost undepreciated, reflects changes in value caused by wear and tear during use of the asset, obsolescence, the return of capital through annual depreciation expense, and any improvements that have been made since the asset was originally placed in service. These factors, particularly deterioration and improvements, NARUC contends, are typically reflected in the prices negotiated by unaffiliated buyers and sellers.[19]

b. Commission Determination

20. The Commission clarifies that GAAP must be used to value jurisdictional physical assets for purposes of amended section 203 when they are included with non-jurisdictional assets in a transaction between non-affiliates.[20]

21. Order No. 669 states that to place a value on wholesale contracts that are part of a transfer that also includes assets not subject to section 203, the parties should rely on valuation analyses consistent with the value used in audited financial statements and with GAAP requirements.[21] A similar approach is required for the transfer of physical jurisdictional assets included in a transaction with non-jurisdictional facilities.[22] We note that an entity's decision not to seek section 203 approval for a transaction based on its determination of value of the assets, whether physical or paper facilities, can be reviewed based on a complaint or at the Commission's discretion.

22. The Commission also confirms that the use of the market value standard for section 203 purposes does not change the Commission's ratemaking policy, including the Commission's policy concerning acquisition adjustments.[23]

23. The Commission denies APPA/NRECA's request that value as applied to transfers of wholesale contracts between non-affiliates be based on expected contract revenues over the remaining life of the contract, rather than market value. We acknowledge that using expected contract revenues for both non-affiliate transfers and affiliate transfers would have a superficial consistency. However, we continue to believe that market value is the best way to value transactions between non-affiliates generally, and no party has presented a persuasive basis for treating wholesale contracts differently from other kinds of assets.

24. The Commission will also deny NARUC's request that, for transactions between affiliates, value should be net book value rather than original cost undepreciated. We note that almost all generation transactions of any significant size will be jurisdictional under amended section 203, regardless of the measure used. We recognize that marginal cases may occur where the issue of jurisdiction might arise, particularly for older assets. We do not dispute that the deterioration or use which net book value attempts to capture affects the price a buyer is willing to pay for an asset. However, net book value does not reflect any appreciation of value of assets, as evident in the fact that generation facilities have often sold in recent years at prices significantly above net book value. The Commission has long employed the use of original cost undepreciated to measure value for purposes of determining the need for a section 203 application and finds its continued use appropriate in the context of affiliate transactions. Original cost undepreciated is a simpler, less ambiguous measure that will avoid debate as to the life of the facility, method of depreciation and other factors that are reflected in net book value.

2. Section 33.1(b)(4)—Definitions of ''Electric Utility Company'' and ''Holding Company''

25. A number of parties raised arguments about the Commission's

[14] Order No. 669 at P 120–21.

[15] APPA/NRECA Rehearing Request at 24–25.

[16] *Id.* at 26.

[17] *Id.* The Commission disallows acquisition adjustments in rates absent a showing of ratepayer benefit. *See PSEG Power Connecticut, LLC.*, 110 FERC ¶ 61,020 at P 32 (2005), *citing Utilicorp United, Inc.*, 56 FERC ¶ 61,031 at 61,120 and nn. 26–28, *reh'g denied*, 56 FERC ¶ 61,427, 62,528–29 (1991).

[18] APPA/NRECA Rehearing Request at 25.

[19] NARUC Rehearing Request at 8.

[20] As we held in Order No. 669 at P 117, if a valuation analysis is not performed, the standard of original cost undepreciated is to be used in determining whether section 203 applies to the transaction.

[21] Order No. 669 at P 120.

[22] Consistent with our ruling in Order No. 669 (at P 116), if a transaction between non-affiliates involves only jurisdictional assets, the Commission will rebuttably presume that market value is the transaction price.

[23] *See supra* note 17.

interpretation of new FPA section 203(a)(2). Section 203(a)(2) provides:

> No holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

26. In particular, parties focus on the terms ''electric utility company'' and ''holding company'' as used in section 203(a)(2). In Order No. 669, the Commission concluded that the most reasonable interpretation of the terms are the definitions contained in PUHCA 2005. Section 33.1(b)(4) provides that ''associate company,'' ''electric utility company,'' ''foreign utility company,'' ''holding company,'' and ''holding company system'' have the meaning given those terms in PUHCA 2005. It also provides that the term ''holding company'' does not include: A state, any political subdivision of a state, or any agency, authority or instrumentality of a state or political subdivision of a state; or an electric power cooperative.

a. ''Electric Utility Company''

27. Section 33.1(b)(4) provides that the term ''electric utility company'' has the same meaning given that term in PUHCA 2005, which is ''any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.'' [24] The definition thus is broader than the definition of ''public utility'' under the FPA; it is not limited to entities that engage in wholesale or interstate transactions.

28. The Commission explained in Order No. 669 that the precise meaning of the term ''electric utility company'' is not clear because it is not defined *in the FPA.* We pointed out that amended section 203(a)(6) provides that certain other terms used in amended section 203 (''associate company,'' ''holding company,'' and ''holding company system'') are to have the same meanings given those terms in PUHCA 2005. However, section 203(a)(6) does not address ''electric utility company.'' Thus, there is Congressional silence in the FPA as to the meaning of the term. In determining what Congress might have meant by ''electric utility company,'' the Commission stated that the only reference point we have in federal electric utility regulatory terminology is the meaning of the term as used in PUHCA 1935 [25] and in PUHCA 2005. Congress, in its revisions to the FPA, relied on terms defined in the two PUHCA statutes. Therefore, the Commission concluded that the most reasonable interpretation of ''electric utility company,'' as used in section 203(a)(2) of the FPA (particularly in light of the fact that section 203(a)(2) was enacted as part of coordinated, comprehensive legislation with the repeal of PUHCA 1935 and the enactment of PUHCA 2005) is the meaning in PUHCA 2005.

29. The Commission rejected requests that we explicitly exclude qualifying facilities (QFs) [26] and exempt wholesale generators (EWGs) from the definition of ''electric utility company.'' We stated that:

> regardless of their status under PUHCA 2005, the exemptions set forth under PUHCA 2005 are not dispositive as to the scope of the Commission's amended FPA section 203 authority. These PUHCA 2005 exemptions are set forth in the context of federal access to books and records and, more importantly, unlike PUHCA 2005, FPA section 203 does not give us any express authority to exempt persons or classes of transactions.[27]

30. Further, the Commission stated that were we to interpret ''electric utility company'' for purposes of FPA section 203(a)(2) not to include EWGs or QFs, this could preclude review of certain acquisitions of securities of EWGs or QFs by holding companies whose systems contain traditional public utilities with transmission facilities and/or captive customers that could be affected by the acquisitions. The Commission stated that such transactions should not be excluded from review under section 203 and concluded that it was reasonable to interpret the statute not to exclude them.[28] We recognized the arguments of some commenters that we should not apply section 203(a)(2) to holding company acquisitions of securities of EWGs and QFs, or at a minimum should not apply it to such acquisitions by holding companies that are holding companies solely by virtue of owning or controlling one or more EWGs, QFs or foreign utility companies (FUCOs).[29] These commenters said that applying section 203(a)(2) in these circumstances would impede investments in QFs and EWGs or result in unnecessary regulation of upstream owners of QFs and EWGs.[30] In response, we stated that the blanket authorizations granted in Order No. 669 (for certain holding company acquisitions of non-voting securities and up to 9.9 percent of voting securities in electric utility companies) will ensure that investment will not be discouraged. The Commission also noted that we would consider on a case-by-case basis granting additional blanket authorizations for holding company acquisitions of securities of EWGs or QFs.

31. In Order No. 669, the Commission explained that this interpretation of ''electric utility company'' includes FUCOs, but we granted blanket authorizations for certain foreign acquisitions, with conditions to protect U.S. customers.[31] As discussed below, the Commission also provided other blanket authorizations for transactions that do not raise concerns about wholesale markets or protection of wholesale captive customers served by Commission-regulated public utilities.

b. ''Holding Company''

32. As required by amended section 203(a)(6), section 33.1(b)(4) provides that the term ''holding company'' has the meaning given that term in PUHCA 2005.[32]

33. The Commission rejected requests that we state that only companies that own traditional utilities, and not those that own solely FUCOs, EWGs and/or QFs, are ''holding companies'' under amended section 203.[33] The Commission noted that ''holding company'' in PUHCA 2005 means ''any company that directly or indirectly owns, controls, or holds, with the power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company;

[24] EPAct 2005 at 1262(5).

[25] 15 U.S.C. 79a *et seq.* (2000).

[26] Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3 (2000).

[27] Order No. 669 at P 59. The Commission also noted that while QFs themselves currently are exempt from section 203's filing requirements by our regulations promulgated under the Public Utility Regulatory Policies Act of 1978, PURPA does not give us authority to exempt holding companies that own QFs.

[28] Order No. 669 at P 60.

[29] *Id.*

[30] *Id.*

[31] *See* Section 33.1(c)(5). The regulation requires a company official to verify that the proposed transaction will not have an adverse effect on competition, rates or regulation and that, now or in the future, it will not result in the transfer of public utility facilities to an associate company, issuance of public utility securities or pledge or encumbrance of public utility assets for the benefit of an associate company and will not result in certain new affiliate contracts.

[32] Order No. 669 at P 69 (*citing* EPAct 2005 at 1262(8)).

[33] *Id.* at P 70.

* * *''[34] PUHCA 2005 defines ''public-utility company'' to include an ''electric utility company.''[35] We explained that the plain words of this definition simply do not exclude holding companies that own or control only EWGs, FUCOs, or QFs. Additionally, the Commission stated that:

> even under PUHCA 2005, persons that own or control only EWGs, FUCOs, or QFs are considered holding companies but are explicitly exempted from PUHCA 2005 by section 1266. There is no similar exemption in amended section 203 and we conclude that it is reasonable to interpret section 203(a)(2) review to include acquisitions of generation or transmission facilities or companies by holding companies owning only FUCOs, QFs, and/or EWGs.[36]

34. The Commission also pointed out that amended section 203(a)(6) requires that we use the PUHCA 2005 definition of ''holding company,'' which, as explained above, includes the owner of an ''electric utility company'' that is not a public utility under the FPA and that is not otherwise subject to Commission ratemaking jurisdiction under Part II of the FPA. We noted that the definition of ''electric utility company'' is not limited to entities that engage in interstate commerce. Therefore, the Commission also concluded that holding companies that own ''electric utility companies'' whose businesses are solely intrastate technically fall under section 203(a)(2).[37]

c. Rehearing Requests

35. NARUC and Occidental assert that the Commission should not have used the PUHCA 2005 definition of ''electric utility company'' in its regulations under section 203. They say that this is contrary to Congressional intent and fundamental rules of statutory construction. They point out that section 203(a)(6) specifically states that certain terms (''associate company,'' ''holding company,'' and ''holding company system'') have the same meaning in both section 203 and PUHCA 2005; however, section 203(a)(6) does not refer to PUHCA 2005's definition of ''electric utility company.''[38] NARUC and Occidental argue that the Commission's reliance on the simultaneous enactment of section 203 and PUHCA 2005 is invalid in the face of this statutory language.

36. NARUC also asserts that using the PUHCA 2005 definition of ''electric utility company'' improperly extends the Commission's authority under amended section 203 to include facilities used for transmission or sales of electric energy in intrastate commerce, facilities used for local distribution, and facilities used for making retail sales. It asserts that such facilities fall under exclusive state commission jurisdiction and that the Commission's regulations implementing FPA section 203 should apply to Commission-jurisdictional facilities only.[39]

37. Occidental requests that the Commission reconsider its determination to subject parent companies of QFs to the Commission's authority under section 203(a)(2) by importing the definition of ''electric utility company'' from PUHCA 2005. It argues that the Commission's reliance solely on the ''reference point'' of the ''electric utility company'' definition violates the Commission's continuing duty to encourage cogeneration and small power production under section 210(e) of PURPA[40] and without addressing the statutory QF exemption in PUHCA 1935 and PUHCA 2005, is arbitrary and capricious.[41] It argues that nothing in amended section 203 requires that QFs lose the long-standing exemption from section 203 that the Commission adopted in accordance with PURPA section 210(e). Thus, Occidental argues the Commission should adopt a blanket authorization under section 203, instead of using a case-by-case approach, for companies that are holding companies solely by virtue of owning QFs.[42]

38. Similarly, BofA/JPMorgan and Industrial Consumers assert that the Commission erred by requiring pre-acquisition approval under section 203(a)(2) of utility interests by companies that qualify as ''holding companies'' solely by virtue of their ownership interests in QFs and EWGs. They explain that under PUHCA 1935, a company that owned or controlled 10 percent or more of the outstanding voting securities of a QF or EWG did not, by virtue of such ownership, become a ''holding company.''[43] BofA/JPMorgan and Industrial Consumers assert that, while Congress intended to impose section 203(a)(2) pre-approval requirements on entities that are ''holding companies'' in a ''holding company system that includes a transmitting utility or an electric utility,'' by a drafting oversight, it adopted the PUHCA 2005 definition of ''holding company'' (which includes companies that own 10 percent or more of the outstanding voting securities of EWGs and QFs) in section 203(a)(6). However, they state that there is no indication that Congress intended to apply section 203(a)(2) to QF/EWG-only holding companies or expand the scope of the ''holding company'' definition. BofA/JPMorgan and Industrial Consumers argue that the Commission's imposition of new burdens on owners of QFs and EWGs not associated with transmission-owning utilities misinterprets Congressional intent in EPAct 2005. Accordingly, BofA/JPMorgan and Industrial Consumers assert that the Commission should construe section 203(a)(2) as not applying in these circumstances.

39. If the Commission decides to continue with that conclusion, then BofA/JPMorgan propose that the Commission provide blanket authorization subject to appropriate conditions and safeguards, such as a status report to the Commission within 30 days following the acquisition, where companies are only holding companies by virtue of owning QFs or EWGs.[44] At a minimum, existing holdings in EWGs and QFs should be grandfathered. This would enable banks and their affiliates to adjust their future practices respecting EWGs and QFs to keep such acquisitions from affecting the core aspects of their business.

40. Similarly, Morgan Stanley argues that the definitions in PUHCA 2005, PUHCA 1935, and the PUHCA 2005 Final Rule demonstrate that EWGs are not ''electric utility companies'' and that

[34] EPAct 2005 at 1262(8).

[35] *Id.* at 1262(14).

[36] Order No. 669 at P 70.

[37] However, as discussed below, we agreed in Order No. 669 that reviewing transactions involving Hawaii, Alaska, and Electric Reliability Council of Texas (ERCOT) would involve matters outside our expertise and the core focus of Part II of the FPA, and therefore we granted certain blanket authorizations.

[38] NARUC Rehearing Request at 3–4; Occidental Rehearing Request at 8–9. NARUC states the maxim *expressio unius est exlusio alterius* (the expression of one thing is the exclusion of another) supports its argument.

[39] NARUC Rehearing Request at 5–6 (*citing New York* v. *FERC,* 535 U.S. 1 (2002); *Detroit Edison Co.* v. *FERC,* 334 F.3d 48 (D.C. Cir. 2003); 16 U.S.C. 824 (2000)).

[40] 16 U.S.C. 824a–3 (2000). Section 210(e) of PURPA provides that the Commission may grant certain exemptions for cogeneration and small power producers.

[41] Occidental also points to the PUHCA 2005 Final Rule, where the Commission stated that ''[a]s for QFs, QFs previously received an exemption from PUHCA pursuant to the Commission's regulations under [PURPA]. Nothing in PUHCA 2005 changes that.'' Occidental Rehearing Request at 10–11.

[42] Occidental Rehearing Request at 10–11.

[43] BofA/JPMorgan Rehearing Request at 26–27; and Industrial Consumers Rehearing Request at 2. They explain that all qualifying cogeneration facilities and certain small power production facilities were previously exempt from status as ''electric utility companies'' and that EWGs were exempted by section 32(e) from being classified as ''electric utility companies'' or ''public-utility companies'' under PUHCA 1935.

[44] BofA/JPMorgan Rehearing Request at 30; Industrial Consumers Rehearing Request at 8.

EWG owners are not ''holding companies'' under PUHCA 2005. Therefore, it says that the Commission should not have found that EWGs are ''electric utility companies'' and that companies that own only EWGs are ''holding companies'' for purposes of section 203(a)(2).[45] Morgan Stanley explains that, in PUHCA 2005, Congress adopted the meaning of EWG from PUHCA 1935, which it contends does not treat EWGs as ''electric utility companies.''[46] Further, Morgan Stanley states that the PUHCA 2005 Final Rule reflects Congress' intent to continue to define ''holding company'' to exclude EWG owners, as well as companies that own power marketers, FUCOs, and QFs.[47] However, it states, the Commission adopts a meaning of ''electric utility company'' for section 203(a)(2) that includes EWGs, and therefore differs from the meaning given in PUHCA 2005. In doing so, Morgan Stanley asserts, the Commission creates two different definitions and types of holding companies, thereby nullifying section 203(a)(6), which states that the term holding company shall have the same meaning given in PUHCA 2005. Thus, Morgan Stanley argues, the Commission should amend its regulations to state that companies owning only EWGs, or some combinations of EWGs, QFs, FUCOs, and/or power marketers, are not ''holding companies'' bound to obtain prior approval under section 203(a)(2).

d. Commission Determination

41. We do not agree with those who argue that, because of the statutory language and/or policy concerns, the Commission may not assert jurisdiction under new section 203(a)(2) over transactions involving matters that are not under our traditional, pre-EPAct 2005 jurisdiction. The Commission affirms its determination in Order No. 669 that, in light of the ambiguity in section 203(a)(2), the most reasonable interpretation of the term ''electric utility company'' is the definition in PUHCA 2005. Several factors support this determination.

42. First, the focus of new section 203(a)(2) is on acquisitions by public utility holding companies. The Commission did not previously have jurisdiction over holding companies, and this new authority was enacted as part of coordinated, comprehensive legislation along with the repeal of PUHCA 1935 and the enactment of PUHCA 2005.[48] Section 203(a)(6) states that the term ''holding company'' has the same meaning given the term in PUHCA 2005. PUHCA 2005 defines a ''holding company'' in terms of a ''public-utility company,'' which, under PUHCA 2005, includes an ''electric utility company.''

43. Second, the term ''electric utility company'' is defined in both PUHCA 1935 and PUHCA 2005, but is not defined in the FPA or other statutes under which the Commission exercises authority. It is reasonable in the face of Congressional silence to adopt a definition that has been well understood in electric regulatory law for the past 70 years, particularly when we are not aware of any other federal regulatory definition of the term.

44. Third, had Congress intended to restrict section 203(a)(2) to holding company acquisitions involving only facilities that are traditionally jurisdictional under the FPA or to holding company acquisitions of companies that are ''public utilities'' under the FPA, it would have done so, just as it did in each part of section 203(a)(1). The *expressio unius* principle cited by NARUC to support its position can also be cited to support Order No. 669; the fact that Congress specifically limited section 203(a)(1) to actions taken by public utilities, but did not so restrict section 203(a)(2), supports the position that Congress intended the latter provision to have a wider scope. Moreover, NARUC's application of *expressio unius* in this instance leads to a conclusion at odds with common usage. We elaborate further below.

45. NARUC is correct that section 201(b)(1) of the FPA states that Part II applies to transmission in interstate commerce and the sale of electric energy at wholesale in interstate commerce, but (except as provided for in paragraph 2, which involves sections 203(a)(2), 206(e), 210–212, and 215–222) not to other sales of electric energy. However, there is a qualifying phrase as well. Section 201(b)(1) states that the Commission shall not have jurisdiction, ''except as specifically provided in this Part and the Part next following'' over facilities used for the generation of electric energy, or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce or over facilities for the transmission of electric energy consumed wholly by the transmitter.

46. NARUC ignores ''except as specifically provided.'' Congress, in amending section 203, specifically broadened the Commission's previous section 203 jurisdiction.[49] In the new section 203(a)(6), Congress directed the Commission to use the definition of holding company from PUHCA 2005, and that definition includes entities that own ''electric utility companies'' as defined in PUHCA 2005. The new 203(a)(2) requires holding companies that include transmitting utilities (an FPA definition modified in EPAct 2005 to be limited to transmission in interstate commerce used for wholesale sales) or electric utilities (defined in the FPA as persons that sell electric energy—not limited to sales for resale or to sales in interstate commerce) to obtain Commission approval of certain securities transactions, including acquisitions of securities of an ''electric utility company.''

47. It is reasonable to conclude that, in repealing PUHCA 1935 and importing into the FPA these PUHCA terms—a statute and terms not limited to companies engaging in interstate sales, interstate transmission or wholesale transactions—Congress intended to transfer to this Commission certain corporate review authority that might involve intrastate/retail acquisitions that could affect interstate commerce and customers of Commission-regulated interstate utilities. Further, as discussed above, in other provisions of section 203 Congress specifically limited the Commission's review to transactions involving ''facilities subject to the jurisdiction of

[45] Morgan Stanley Rehearing Request at 3–4.

[46] PUHCA 2005 at 1262(6); PUHCA 1935 at 32(e).

[47] Morgan Stanley Rehearing Request at 5 (*citing* PUHCA 2005 Final Rule at 366.1 (to be codified at 18 CFR 366.1)).

[48] There is no legislative history contained in the conference report accompanying the legislation. However, the evolution of the various versions of section 203(a)(2) proposed by members supports our conclusion that Congress purposely did not limit section 203(a)(2) to holding companies that own ''public utilities'' but, rather, consciously used terminology that, for the most part, reflected terms used in PUHCA 2005. *See* Electricity Competition and Reliability Act, H.R. 2944, 106th Cong. section 410 (1998); Comprehensive Electricity Competition Act, H.R. 1828, 106th Cong. section 502 (1998); Comprehensive Electricity Competition Act, S. 1047, 106th Cong. section 502 (1998); Electric Power To Choose Act of 1999, H.R. 2050, 106th Cong. section 110 (1998); Energy Policy Act of 2002, S. 1766 106th Cong. section 202 (2001); Energy Policy Act of 2003, S. 14, 108th Cong. (2003); Senate Amendment No. 1412 to S. 14, 149 Cong. Rec. S. 10163 (July 29, 2003); Senate Amendment No. 1413 to S. 14, 149 Cong. Rec. S. 10116–24 (July 29, 2003), 149 Cong. Rec. S. 10204–14 (July 30, 2003); Senate Amendment No. 1537 § 202, 149 Cong. Rec. S. 10739–40 (July 31, 2003); H.R. Rep. No. 108–375 at 302–03 (Nov. 18, 2003), 149 Cong. Rec. S. 15,220 (Nov. 20, 2003); Energy Policy Act of 2005, H.R. 6; Energy Policy Act of 2005, S. 10; H. Rpt. 109–190 (2005), 149 Cong. Rec. S. 9258 (July 28, 2005), 149 Cong. Rec. S. 9359 (July 29, 2005).

[49] For example, in section 203(a)(1)(D) Congress gave the Commission new jurisdiction over certain acquisitions of generation facilities. The Commission under section 201 has no jurisdiction over generation facilities, except as specifically provided.

the Commission.'' It did not place this limitation in section 203(a)(2).[50]

48. NARUC cites the principle of *expressio unius* and argues that Congress' specific statement in section 203(a)(6) that three other terms have the same meaning as in PUHCA 2005 shows that Congress did not intend ''electric utility company'' to have the same meaning as in PUHCA 2005.[51] One can just as convincingly argue that Congress inadvertently omitted the term from section 203(a)(6) or that if Congress had intended to require us to adopt a particular definition, it would have done so. The fact is that Congress left us with no express definition of the term and that we have exercised reasonable discretion in interpreting it.

49. Several parties argue that the policy behind EPAct 2005 requires us to define ''electric utility company'' to exclude companies that own only EWGs or QFs. We disagree. Congress specifically required, in section 203(a)(6) of the FPA, that the term ''holding company'' be given the same meaning that was given the term in PUHCA 2005. Under PUHCA 2005, as explained above, a company is a holding company if it acquires 10 percent or more of an electric utility company. EWGs, FUCOs[52] and QFs fall within the definition of ''electric utility company'' under section 1262(5) of PUHCA 2005 because they own or operate facilities used for the generation, transmission or distribution of electric energy for sale. Moreover, including EWGs, FUCOs and QFs as electric utility companies is consistent with common usage, which supports defining electric utility companies as companies owning facilities (generation, transmission or distribution) for the sale of electric energy.

50. Further, as discussed in Order No. 669 and Order No. 667–A (the PUHCA 2005 rehearing order), while Congress expressly excluded from the definition of holding company certain banks and other institutions, it did not similarly exclude from the definition of holding company entities that only own QFs, EWGs or FUCOs. Rather, section 1266(a) of PUHCA 2005 specifically directs the Commission to exempt QF/EWG/FUCO holding companies from the federal access to books and records provision; thus, the very language of the provision recognizes that such entities are holding companies. It directs the Commission to issue a final rule to exempt ''any person that is a holding company, solely with respect to one or more [QFs, EWGs, or FUCOs].''

51. Therefore, consistent with our determination in the PUHCA 2005 rehearing order, we are giving full effect to the statutory language when we conclude that companies that acquire 10 percent or more of an EWG, FUCO or QF are holding companies as that term is used in PUHCA 2005 as well as FPA section 203(a)(2).

52. However, we also have provided an exemption from the PUHCA section 1264 books and records requirements, as required by section 1266 of PUHCA 2005. Further, based on consideration of the rehearing comments filed, we will grant a blanket authorization under section 203(a)(2) for holding companies that own or control *only* EWGs, QFs or FUCOs to acquire the securities of additional EWGs, FUCOs or QFs. Thus, our definition allows us to ensure that, for example, cross-subsidization that affects matters under our traditional jurisdiction does not occur, while at the same time ensuring (through blanket authorizations) that investment in the electric industry is not hampered and that encouragement of QFs is not undermined.

53. We recognize, however, parties' claims that there were inconsistencies because of certain statements in Order No. 667 that EWGs would not be considered ''electric utility companies.'' A similar statement was included with respect to QFs in our recent QF final rule.[53] On rehearing of the Order No. 667, we are eliminating these statements with respect to EWGs and clarifying that we intend to eliminate a similar statement in the QF final rule rehearing.[54] Thus, our interpretation under section 203(a)(2) is consistent with our interpretation under PUHCA 2005, and Morgan Stanley's claim that we are creating two different definitions is not correct.

54. We also reject Morgan Stanley's argument as it relates to power marketers, but for a different reason. We decided in the PUHCA 2005 Final Rule to treat power marketers in a manner consistent with SEC precedent for purposes of interpreting PUHCA 2005, and therefore, decided not to treat power marketers as ''electric utility companies.''[55] By extension, therefore, a company owning only a power marketer is not holding an ''electric utility company'' and is not a holding company. However, power marketers remain public utilities under the FPA.

3. Section 33.1(c)(1)—Blanket Authorizations: Intrastate Commerce, Local Distribution, and Internal Corporate Reorganizations

55. Section 33.1(c)(1) provides that any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the FPA to purchase, acquire, or take any security of: (i) A transmitting utility or company that owns, operates, or controls only facilities used solely for transmission in intrastate commerce and/or sales of electric energy in intrastate commerce; (ii) a transmitting utility or company that owns, operates, or controls only facilities used solely for local distribution and/or sales of electric energy at retail regulated by a state commission; or (iii) a transmitting utility or company if the transaction involves an internal corporate reorganization that does not present cross-subsidization issues and does not involve a traditional public utility with captive customers.

a. Section 33.1(c)(1)(i) and (ii)—Blanket Authorizations for Intrastate Commerce and Local Distribution

56. In Order No. 669, the Commission stated that it was not reasonable to interpret section 203(a)(2) as being limited solely to holding company acquisitions and mergers involving wholesale sales or transmission in interstate commerce. However, we concluded that there would be no benefit from the Commission's case-by-

[50] We note that, in PUHCA 1935, which was not limited to facilities or companies operating in interstate commerce, Congress directed the Securities and Exchange Commission (SEC) in section 3 to exempt predominantly intrastate holding companies and holding companies whose operations are confined to one state or contiguous states (because the states could adequately regulate these types of holding companies and their activities) unless the SEC found it detrimental to the public interest or the interests of investors or consumers. Although Congress did not give the Commission authority under section 203(a)(2) to actually exempt companies from the provision, our blanket waivers serve a similar purpose of deferring to the states, as the SEC did under the 1935 Act. If, however, we find harm to wholesale competition or customers, the Commission can take an appropriate action.

[51] The three other terms are: associate company, holding company and holding company system.

[52] The Commission explained in Order No. 669 that it interpreted section 203(a)(2) of the FPA as applying to foreign acquisitions and therefore interpreted ''electric utility company'' to include FUCOs.

[53] *Revised Regulations Governing Cogneration and Small Power Production*, Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006).

[54] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667–A, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 31,213 at P 14 & n. 32 (2006).

[55] Order No. 667 at P 123.

case evaluation of certain transactions under section 203(a)(2).[56]

57. The Commission explained that our core jurisdiction under Part II of the FPA continues to be transmission and sales for resale of electric energy in interstate commerce. A major impetus behind section 203(a)(2) was to clarify the Commission's jurisdiction over mergers of holding companies that own public utilities as defined in the FPA.[57] Accordingly, we concluded that it is consistent with the public interest to grant blanket authorizations for the following: (1) Section 203(a)(2) purchases or acquisitions by holding companies of companies that own, operate, or control facilities used solely for transmission or sales of electric energy in *intrastate* commerce; and (2) section 203(a)(2) purchases or acquisitions by holding companies of facilities used solely for local distribution and/or sales at retail regulated by a state commission.[58]

58. The Commission concluded that these blanket authorizations are consistent with the public interest because: (1) The identified categories do not raise concerns with respect to competitive wholesale markets for sales in interstate commerce or protection of wholesale captive customers served by Commission-regulated public utilities—matters within this Commission's core responsibility and expertise; (2) if these categories raise competitive issues in intrastate commerce, *i.e.*, in ERCOT, Hawaii, and Alaska,[59] those issues are within the expertise of, and more appropriately addressed by, state commissions; and (3) if competition and retail ratepayer protection issues are raised by a holding company's acquisition of local distribution or other retail facilities, these issues also are within the expertise of, and more appropriately addressed by, state commissions.[60]

i. Rehearing Requests

59. APPA/NRECA assert that the Commission erred in granting blanket authorization of acquisitions of ''intrastate'' utilities by holding companies. They state that in order for the Commission's justification to be true, *i.e.*, that these transactions do not affect Commission-regulated wholesale sales in interstate commerce or Commission-regulated public utilities, the blanket authorization would have to be confined to acquisitions of such intrastate utilities by *intrastate* holding companies. However, APPA/NRECA argue that the regulation allows *any* holding company (including a holding company that owns a Commission-jurisdictional public utility operating in interstate commerce) to acquire an intrastate utility.[61] They state that the regulation is overbroad, authorizes transactions that on their face would affect interstate commerce in electricity, and raises the possibility of cross-subsidization and pledge or encumbrance of utility assets for the benefit of the holding company at the expense of captive customers. However, APPA/NRECA assert that if the blanket authorization were limited to wholly intrastate transactions in accordance with the Commission's rationale, then the Commission would lack FPA jurisdiction over these transactions in the first place, so no blanket authorization should be required. Therefore, they state that the Commission should delete the section 33.1(c)(1)(i) blanket authorization from its regulations.

60. APPA/NRECA also assert that the Commission erred in granting blanket authorization of acquisitions of ''local-distribution-only'' or ''retail-only'' utilities. They assert that the blanket authorization is broader than the Commission's rationale (which is that these transactions do not affect Commission-regulated wholesale sales in interstate commerce or Commission-regulated public utilities), authorizes transactions that would affect Commission-jurisdictional interstate commerce in electricity and creates opportunities for cross-subsidization or pledge or encumbrance of utility assets for the benefit of the holding company and at the expense of captive customers.[62] APPA/NRECA assert that, if, on the other hand, the holding company does not own any Commission-jurisdictional public utilities before the transaction, and it is acquiring a retail-only or local-distribution-only utility that also is not Commission-jurisdictional, then the Commission would have no jurisdiction to act on the transaction in the first place. They argue that, if the Commission's rationale for this blanket authorization holds, the Commission's authority to grant the blanket authorization evaporates. Thus, APPA/NRECA state that section 33.1(c)(1)(ii) should be deleted from the regulations.

61. APPA/NRECA further argue that the Commission's own reasoning in Order No. 669 relating to distinctions between the uses of generating facilities for wholesale sales and retail sales undermines the basis for granting blanket authorizations for acquisition of securities of ''retail-only'' utilities. They note that in connection with defining ''existing generation facility,'' the Commission stated that utilities do not ordinarily separate the dispatch of their plants for retail sales and wholesale sales and thus adopted the rebuttable presumption that existing generation facilities are used for both wholesale sales and retail sales.[63] APPA/NRECA assert that this premise also leads to the rebuttable presumption that a holding company that acquires a utility that owns generation is not acquiring a ''retail-only'' utility, thus eliminating the basis for granting a blanket authorization of such a transaction without evidence of that fact. In addition, they note that any ''retail-only'' utility that does not own any generation but meets its power needs through a portfolio of power contracts and ancillary services is likely to be selling excess wholesale power during some periods. As a consequence, they believe that there is no basis to presume that retail-only utilities exist or to provide a blanket authorization for such acquisitions.

ii. Commission Determination

62. We reaffirm our decision to grant blanket authorization under section 203(a)(2) for acquisitions of companies that own, operate or control only facilities used solely for intrastate transmission or intrastate energy sales or for local distribution or retail energy sales regulated by a state commission. The energy sales or transmission transactions by electric utility companies that fall within this blanket authorization are relatively small compared to such transactions by other electric utility companies. These transactions are unlikely to adversely affect wholesale competition. With respect to possible adverse effects on rates of retail captive customers, this

[56] An acquisition or merger involving ''any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale'' is not on its face limited to interstate facilities.

[57] *Illinois Power Co.*, 67 FERC ¶ 61,136 (1994) (noting that the Commission does not have jurisdiction over public holding company mergers or consolidations, but concluding that, ordinarily, when public utility holding companies merge, an indirect merger involving their public utility subsidiaries also takes place, and that Commission approval under section 203 would be required).

[58] Order No. 669 at P 56.

[59] Similarly, although not raised by the parties, the blanket authorization would apply to any organized Territory of the United States.

[60] For these blanket authorizations, the Commission did not impose any type of filing requirement.

[61] APPA/NRECA Rehearing Request at 27.

[62] *Id.* at 28–29.

[63] Order No. 669 at P 86.

can be addressed by the state commissions with jurisdiction over and expertise with these types of transactions. Adverse effects on rates of wholesale captive customers or customers receiving transmission service over jurisdictional transmission facilities are unlikely but, if they occur, we believe we can adequately address any concerns using our rate authority under FPA sections 205 and 206. Thus, while APPA/NRECA are correct that there may be some interstate effects as a result of such transactions, at this time we believe that such effects would not be significant and thus that individual pre-approval by this Commission under section 203 is not necessary. We disagree with APPA/NRECA's argument that the blanket authorization for acquisitions of ''retail-only'' utility securities is inconsistent with the Commission's rebuttable presumption in Order No. 669 that all generating facilities are used for at least some wholesale sales. If a company engages in other than *de minimis* wholesale transactions, the blanket authorization will not apply. However, in response to APPA/NRECA's concern, we will require that if any public utility within the holding company system has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the holding company must report the acquisition to the Commission, including any state actions and conditions related to the transaction, and provide an explanation of why the transaction does not result in cross-subsidization.[64]

63. We clarify that the Commission is not asserting jurisdiction over intrastate facilities, local distribution facilities, or retail-only companies under the blanket authorizations. Rather, we are asserting jurisdiction over holding company acquisitions of such companies or facilities for the purpose of ensuring that interstate interests are not adversely affected and we may consider eliminating these blanket authorizations if necessary to protect customers.[65]

b. Section 33.1(c)(1)(iii)—Blanket Authorizations for Internal Corporate Reorganizations

64. Section 33.1(c)(1)(iii) provides that

> Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take any security of * * * (iii) a transmitting utility or company if the transaction involves an internal corporate reorganization that does not present cross-subsidization issues and does not involve a traditional public utility with captive customers.

65. In Order No. 669's preamble, the Commission explained that internal corporate reorganizations that do not present cross-subsidization issues and do not involve captive customers are unlikely to cause anticompetitive effects.[66]

i. Rehearing Requests

66. EEI, Entergy, and Duke/Cinergy request that the Commission grant blanket authorization for internal corporate reorganizations under section 203(a)(1) (which addresses public utilities) as well as under 203(a)(2) (which addresses holding companies).[67] They note that, in the preamble of Order No. 669, the Commission stated that it ''is granting blanket authorization for internal corporate reorganizations that do not present cross-subsidization issues and that do not involve a traditional public utility with captive customers,''[68] without drawing any distinction between section 203(a)(1) and section 203(a)(2). However, the actual regulatory text grants blanket authorization for internal corporate reorganizations only under section 203(a)(2).

67. National Grid requests that the Commission grant blanket authorization for internal reorganizations involving intermediate holding companies and other non-utility associate companies (*i.e.* the consolidation or dissolution of such companies and the purchase of securities of one such company by another such company).[69]

68. EEI, Entergy, Duke/Cinergy, and National Grid request that the Commission explain what it meant by a reorganization that does not ''involve'' a traditional public utility with captive customers.[70] They state that a broad reading could deny blanket authorizations for a reorganization of an intermediate holding company between the public utility and the ultimate parent holding company even in cases where the transaction does not affect the organization of the public utility itself. These parties suggest that the Commission revise the regulation to grant blanket authorization for internal reorganizations that do not ''result in the reorganization of a traditional public utility with captive customers.''[71]

69. In addition, EEI, Entergy, and Duke/Cinergy recommend that the Commission consider granting blanket authorization for certain internal corporate reorganizations that result in the reorganization of a traditional public utility company with captive customers, as long as an authorized corporate official verifies that the transaction will have no adverse effect on competition, rates, or regulation and makes additional verifications (similar to the verifications required for the blanket authorization in section 33.1(c)(5)(ii) for FUCOs with captive customers in the U.S.).[72] They explain that the verifications would ensure that this automatic approval would apply only when the transaction cannot harm a traditional utility company with captive customers.

70. Similarly, Coral Power requests that the Commission grant a blanket authorization under section 203(a)(1) for internal corporate reorganizations that do not present cross-subsidization concerns and do not involve a traditional public utility with captive customers, provided that the reorganization is for a lawful objective within the company's corporate purposes, compatible with the public interest, and reasonably necessary or appropriate for such purposes.[73]

[64] In response to APPA's concerns regarding the protection of transmission customers, we believe it is appropriate, as discussed infra, at P 147, to apply this reporting requirement to holding companies that include public utilities that own or provide transmission service over jurisdictional transmission facilities. Similarly, where relevant for conditions or requirements applicable to blanket authorizations granted herein or to implementing standards for review of section 203 applications not receiving blanket authorizations, certain conditions and requirements will apply to holding company acquisitions where the holding company includes a public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities.

[65] *See* our response to NARUC, *supra* PP 45–47.

[66] Order No. 669 at P 192.

[67] EEI Rehearing Request at 6–7; Entergy Rehearing Request at 4; and Duke/Cinergy Rehearing Request at 4.

[68] Order No. 669 at P 192.

[69] National Grid Rehearing Request at 7–8 (*citing National Grid Transco, Order Authorizing Various Financing Transactions, Money Pool; Reservation of Jurisdiction,* Holding Company Act Release No. 35–27898; 83 S.E.C. Docket 2653 (Sept. 30, 2004)).

[70] EEI previously provided an example of such an internal corporate reorganization: ''* * * if a holding company that owns one or more traditional public utilities with captive customers also owns several EWGs, FUCOs, or other utilities without captive customers but seeks only to reorganize some of these non-traditional companies (*e.g.*, by moving them under other intermediate holding companies), this transaction would not involve or affect the traditional utilities * * *'' November 7, 2005 rulemaking comment of EEI (at fn. 17) in Docket No. RM05–34–000.

[71] EEI Rehearing Request at 7, and Attachment A at 1; Entergy Rehearing Request at 5; Duke/Cinergy Rehearing Request at 4; and National Grid Rehearing Request at 9.

[72] EEI Rehearing Request at 7–8; Entergy Rehearing Request at 5; and Duke/Cinergy Rehearing Request at 5. *See also* EEI Comments, Docket No. RM05–34–000, at 25.

[73] Coral Power Rehearing Request at 6. Coral Power explains that the Commission does not currently require a competitive analysis under pre-

71. If the Commission will not grant this blanket authority, EEI, Entergy, and Duke/Cinergy alternatively request that the Commission revise section 33.11(b) to provide for expeditious consideration of ''internal corporate reorganizations that result in the reorganization of a traditional public utility with captive customers but do not present cross-subsidization issues.''

72. APPA/NRECA note that Order No. 669 discussed the adoption of safeguards to prevent cross-subsidization involving certain cash-management programs and intra-holding company financing arrangements. However, the Commission erred in granting blanket authorizations of holding company acquisitions involving internal corporate reorganizations without protective conditions similar to those imposed on blanket authorizations in section 33.1(c)(2) for certain securities purchases by holding companies.[74]

ii. Commission Determination

73. The Commission finds no basis for distinguishing between section 203(a)(1) and section 203(a)(2) in determining that ''internal corporate reorganizations that do not present cross-subsidization issues are unlikely to cause anticompetitive effects.'' In contrast to other types of transactions, we see no need to require case-by-case filings under section 203(a)(1) for such transactions since, by their very nature, internal corporate reorganizations that do not affect the organization of the public utility itself cannot involve changes of ownership and ultimate control of the jurisdictional or generation facilities. Such transactions would not ordinarily result in a change in direct ownership or control of jurisdictional facilities. However, we emphasize that any internal reorganization that would result in a change of direct ownership of or control over jurisdictional facilities will require a filing under section 203(a)(1). Accordingly, we will grant blanket authorization under section 203(a)(1) for internal corporate reorganizations that do not present cross-subsidization issues and that do not involve (i.e, do not result in the reorganization of, as explained below) a traditional public utility with captive customers or that owns or provides transmission service over jurisdictional transmission facilities.

74. EEI, Entergy, Duke/Cinergy, and National Grid are correct that the phrase ''does not involve a traditional public utility with captive customers'' could be interpreted to deny blanket authority in situations where the transaction does not affect the organization of the traditional public utility itself. Their suggestion to substitute the phrase ''result in the reorganization of a traditional public utility with captive customers'' is reasonable and we will modify the regulation accordingly. We also will expand the blanket authorization to cover reorganizations of intermediate holding companies, non-utility associate companies, and public utilities that are not traditional public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, so long as the reorganization does not present cross-subsidization issues. As a result, we are revising section 33.1(c)(1)(iii) to address a different issue, as noted below and adding a new section 33.1(c)(6) to incorporate the blanket authorizations for internal corporate reorganizations, as discussed here.[75]

75. We will not grant herein a blanket authorization for internal corporate reorganizations that result in the reorganization of a traditional public utility with captive customers. To ensure that captive customers and customers receiving transmission service over jurisdictional transmission facilities are protected, we will continue to evaluate such internal corporate reorganizations on a case-by-case basis. However, we are revising section 33.11(b) to separately provide in new section 33.11(c)(3) for expeditious consideration of internal corporate reorganizations that result in the reorganization of a traditional public utility with captive customers or customers receiving transmission service over jurisdictional transmission facilities but that do not present cross-subsidization issues.

76. We are not convinced by APPA/NRECA's argument that Order No. 669 granted blanket authorizations involving internal corporate reorganizations without adequate protective conditions. The blanket authorization applies only if no cross-subsidization issues are present and only if there are no affected captive customers or customers receiving transmission service over jurisdictional transmission facilities. APPA/NRECA does not explain why additional conditions or requirements are necessary.

c. Requests for Additional Blanket Authorizations

i. Rehearing Request

77. GS Group recommends that the Commission give blanket authorization under section 203(a)(2) for a holding company in a holding company system that includes a transmitting utility or electric utility to acquire securities of industrial self-generators. An industrial self-generator would be ''any company that owns generating facilities that total 100 MW or less in size and are used fundamentally for its own load or for sales to affiliated end-users.''[76]

78. GS Group explains that its various non-utility subsidiaries engage in proprietary trading and merchant banking activities and, in the ordinary course of these business activities, regularly acquire utility securities. They acquire these securities for the purpose of distribution or resale, as broker/dealers in a fiduciary capacity, or for their own accounts (proprietary holdings). GS Group states it has requested blanket authorization under section 203(a)(2) for acquisitions of securities in excess of the $10 million threshold. Even if such authorizations were granted, GS Group states that its non-utility subsidiaries would not be allowed to acquire in a proprietary capacity 10 percent or more of the voting securities of any electric utility company or holding company that includes an electric utility company without obtaining separate approval from the Commission.[77]

79. Furthermore, GS Group says that the blanket authorizations under section 33.1(c)(1)(i) and section 33.1(c)(1)(ii) do not allow its non-utility subsidiaries to acquire 10 percent or more of the voting securities of an electric utility company. While GS Group acknowledges that this may be reasonable for acquiring securities of a traditional utility with captive customers, it contends that such a limitation is unnecessary as applied to the acquisition of securities of an industrial company or manufacturer that generates power itself and consumes most of the generated power.

EPAct 2005 section 203 for such internal corporate reorganizations because there are no competitive concerns or changes in the control of jurisdictional assets where the ultimate parent company remains the same and all intermediary holding companies remain under the same parent company.

[74] APPA/NRECA Rehearing Request at 30–31. These blanket authorizations pertain to acquisitions of non-voting securities, voting securities of less than 10 percent and securities of a subsidiary company within the holding company system.

[75] Internal corporate reorganizations, as discussed here, are provided blanket authorization whether they are accomplished through the acquisition of securities or through a merger or consolidation.

[76] GS Group Rehearing Request at 4.

[77] The Commission granted blanket authorizations to GS Group that allow its non-utility subsidiaries to hold, in a proprietary capacity, up to 10 percent of the voting securities of electric utility companies, subject to certain reporting requirements. *See The Goldman Sachs Group, Inc.,* 114 FERC ¶ 61,118 at P 22, 27 (2006).

GS Group notes that many industrial self-generators sell only a small amount of surplus power at *wholesale* to the local interconnected utility. The same public policy considerations (the lack of effects on competitive wholesale markets for sale in interstate commerce or on wholesale captive customers) that underlie a blanket authorization covering acquisitions of such companies' securities (in section 33.1(c)(1)(i)) apply to acquisitions of securities of industrial self-generators. GS Group argues that the 100 MW size limit will assure that transactions involving the acquisition of securities of industrial self-generators will not have an effect on competition in wholesale power markets.

80. Furthermore, GS Group argues that this modification would be consistent with the PUHCA 2005 Final Rule, 18 CFR 366.3(c), which waives the accounting, record-retention and filing requirements in Part 366 for holding companies that own 100 MW of generation or less that is used ''fundamentally for their own load or for sales to affiliated end-users.'' GS Group notes that the SEC exempted industrial self-generators and their parent holding companies from regulation as electric utility companies or holding companies. It says that the SEC also exempted acquisitions of voting securities of such companies from the pre-approval requirements of PUHCA 1935.

81. Coral Power requests that the Commission grant a blanket authorization under section 203(a)(1) (which regulates transactions involving public utilities) for transfers of wholesale market-based rate contracts between affiliates that have the same ultimate upstream ownership and that are not affiliated with traditional public utilities with captive ratepayers. It states that this would be consistent with the public interest because such transfers have no adverse effect on competition, rates, or regulation. Such transfers will not harm competition because they will not result in any change in ultimate control over the wholesale contracts, over any other electric generation, transmission, or distribution facilities, or over inputs to generation. Coral Power explains that following such transfers, the Commission will continue to have jurisdiction over the contracts. It states that such transfers have no effect on captive ratepayers (since customers under market-base rate contracts are not captive), and therefore will not raise any cross-subsidization issues.

ii. Commission Determination

82. The Commission will grant a blanket authorization to allow any company in a holding company system that includes a transmitting utility or an electric utility to acquire the securities of an electric utility company that owns generating facilities that total 100 MW or less and are used fundamentally for the acquired company's own individual load or for sales to affiliated end-users (industrial self-generators). Such transactions meet the standards of section 203. They are consistent with the public interest (because they will not harm competition, ratepayers, or regulation) and will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. This blanket authorization will be reflected in section 33.1(c)(1)(iii).

83. The Commission also is persuaded by the rationale provided by Coral Power and will grant a blanket authorization for transfers of wholesale market-based rate contracts between affiliates that have the same ultimate upstream ownership and that are not affiliated with a traditional public utility with captive customers. Such transactions meet the standards of section 203. They will not harm competition because even if a contract confers control over a generating resource, the transfer of the contract does not result in a change in ultimate control. There also will be no effect on cost-based rates to captive customers or to customers that receive transmission service over jurisdictional transmission facilities, or on regulation. Further, since the affiliates are not affiliated with a public utility with captive ratepayers, the transaction will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that the assignment or transfer of wholesale contracts is subject to section 205 filing requirements, which include, among other things, designation of the jurisdictional entity that will be the supplier under the contract.

4. Blanket Authorizations for Cash Management Programs, Money Pools, and Intra-Holding Company Financing Arrangements

84. In Order No. 669, the Commission stated that cash management programs, money pools, and other intra-holding company financing arrangements [78] are a routine and important tool used by many large companies to lower the cost of capital for their regulated subsidiaries and to improve the rate of return the holding company and its subsidiaries can receive on their money.[79] These transactions often involve issuances and acquisitions of securities that are subject to FPA sections 204 and 203.[80] The Commission stated that it did not intend to make it more difficult for companies to take advantage of these types of transactions. Transfers of funds between such companies do not generally present competitive problems. Thus, we found that it was consistent with the public interest to grant blanket authorization under section 203(a)(2)for holding companies and their subsidiaries to take part in intra-system cash management-type programs.

a. Rehearing Requests

85. EEI, Entergy, and Duke/Cinergy request that the Commission modify the regulatory text to also grant blanket authorization under FPA section 203(a)(1) for intra-system financial transactions between public utility affiliates. They point out that, while intra-system financings may be jurisdictional under section 203(a)(1) (which applies to acquisitions of securities by public utilities) and/or section 203(a)(2) (which applies to acquisitions of securities by holding companies), section 33.1(c)(2) grants blanket authorization under section 203(a)(2) only. They explain that intra-system cash management or financing programs typically involve both: (i) ''Horizontal'' transactions between two public utility subsidiaries (*e.g.*, one public utility lending money to an affiliated public utility), which may be jurisdictional under section 203(a)(1); and (ii) transactions between a holding company and its subsidiaries (*e.g.*, a holding company lending money

[78] While there are several different types of cash management programs, a cash management program generally involves pooling the cash resources of several affiliated companies into a ''money pool.'' Affiliates can then borrow against the funds in the pool, often at below market rates. Additionally, the parent company is often able to achieve a higher rate of return on its money pool investments than any single affiliate could on its own. For a more detailed discussion of cash management programs, see *Regulation of Cash Management Practices*, Order No. 634, 68 FR 40500 (July 8, 2003), III FERC Stats. & Regs. ¶ 31,145 (June 26, 2003), Order No. 634–A, 68 FR 61993 (Oct. 31, 2003), FERC Stats. & Regs. ¶ 31,152 (Oct. 23, 2003) (Cash Management Rule).

[79] Order No. 669 at P 142.

[80] The Commission's authority under section 204 governing the issuance of securities by a public utility was often superseded by the authority of the SEC under section 318 of the FPA. Section 318 of the FPA resolved conflicts of jurisdiction between the FPA and PUHCA 1935 regarding, among other things, the issuance of securities in favor of the SEC. Section 318 was repealed under section 1277 of PUHCA 2005.

''downward'' to a subsidiary public utility), which may be jurisdictional under section 203(a)(2).

86. EEI, Entergy, and Duke/Cinergy assert that, based on the preamble discussion, the Commission apparently intended to cover both types of transactions, but the regulatory text did not incorporate them. In the preamble, we stated that ''it is consistent with the public interest to grant a blanket authorization to allow holding companies *and their subsidiaries* to take part in intra-system cash management-type programs.'' [81] EEI, Entergy, and Duke/Cinergy state that because these transactions among public utility affiliates are very frequent, it is impractical for them to file for section 203 approval for such transactions. Thus, blanket authorization for intra-system financings between public utility affiliates is necessary to allow companies to effectively manage their financial needs.[82]

87. Similarly, National Grid asserts that, while the Commission explicitly stated in the preamble of Order No. 669 its intent to grant blanket pre-authorization under FPA section 203 for public utility participation in cash management programs, the Commission provided no regulatory text to allow for utilities and their associate companies (other than holding companies) to participate in cash management programs. It asserts that to ensure that the blanket authority granted by the Commission in paragraph 142 of Order No. 669 enables cash management programs to continue, the Commission should expand the regulatory text to allow all associate companies that participate as borrowers in cash management programs to continue to ''acquire securities'' in all other program participants. Specifically, it states that the Commission should revise section 33.1(c)(2) to cover both holding companies and any transmitting utility, electric utility company, or public utility within the holding company system.[83] National Grid states that the provision should also be revised to incorporate requisite blanket authority under FPA section 203(a)(1) for public utilities to participate in cash management programs.

88. APPA/NRECA assert that the Commission granted blanket authorization for intra-holding company financing transactions without adequate safeguards against cross-subsidization or pledges or encumbrances of utility assets. In discussing the blanket approval of these arrangements, Order No. 669 states that applicants ''must adopt sufficient safeguards, including any necessary cash management controls (such as restrictions on upstream transfers of funds, ring fencing, etc.) to prevent any cross-subsidization between holding companies and their new subsidiaries before receiving section 203 approval.'' [84] However, APPA/NRECA point out that these requirements do not appear in the Commission's accompanying regulations.

b. Commission Determination

89. First, we clarify that the blanket authorization granted for money pool transactions is intended to authorize ''horizontal'' transactions between public utility company subsidiaries as well as ''downward'' loans from the holding company to its public utility company subsidiaries and we will add new regulatory text to reflect this. However, the blanket authorization does not extend to acquisition of securities issued by entities outside the money pool.

90. Rather than modify the regulatory text in the Final Rule, which addressed only ''vertical'' transactions between public utility holding companies and their subsidiaries, in section 33.1(c)(7), we have adopted stand-alone regulatory text addressing ''horizontal'' public utility money pool transactions subject to FPA section 203(a)(1)(C). We note that section 203(a)(1)(C) jurisdiction applies only to public utility acquisitions of securities of other public utilities. Such authorization is not required under section 203(a)(1) for a public utility to acquire securities of a non-public utility. Therefore, there is no need to broaden the regulatory text as requested by National Grid to cover public utility acquisitions of securities of non-public utilities.

91. In response to APPA/NRECA, we note that the blanket authorizations under section 203(a)(2) for holding company acquisitions of non-voting securities, voting securities of less than 10 percent of a company, and securities of subsidiaries are all subject to the requirement that the holding company provide the Commission with copies of certain information required to be filed with the SEC. Further, the new blanket authorization in section 33.1(c)(7), which applies to public utility participation in intra-system cash management programs, is subject to safeguards to prevent cross-subsidization or encumbrances of utility assets. We also note that public utilities have filing requirements under the Commission's Cash Management Rule. With respect to whether the Commission should codify specific safeguards that must be adopted for money pool transactions, we will consider this issue at the technical conference to be held later this year regarding PUHCA and certain FPA section 203 issues.

5. Section 33.1(c)(2)–(c)(4)—Blanket Authorizations: Purchases of Voting and Non-Voting Securities Under Section 203

92. Section 33.1(c)(2) provides that any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the FPA to purchase, acquire, or take: (i) Any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company; or (ii) any voting security in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company if, after the acquisition, the holding company will own less than 10 percent of the outstanding voting securities; or (iii) any security of a subsidiary company within the holding company system.

93. Section 33.1(c)(3) provides that the blanket authorizations granted under section (c)(2) are subject to the conditions that the holding company shall not: (i) Borrow from any electric utility company subsidiary in connection with such acquisition; or (ii) pledge or encumber the assets of any electric utility company subsidiary in connection with such acquisition.

94. Section 33.1(c)(4) provides that a holding company granted blanket authorizations in section (c)(2) shall provide the Commission with the same information, on the same basis, that the holding company provides to the SEC in connection with any securities purchased, acquired or taken pursuant to this section.

[81] EEI Rehearing Request at 4 (*citing* Order No. 669 at P 142 (emphasis added); Entergy Rehearing Request at 2; and Duke/Cinergy Rehearing Request at 2.

[82] *See* EEI Rehearing Request at Attachment A at 1–2, section 33.1(c)(3). Attachment A contains a black-lined version of regulation 33.1(c), revised to include a blanket authorization for intra-system financial transactions between public utility affiliates under section 203(a)(1).

[83] National Grid Rehearing Request at 5.

[84] APPA/NRECA Rehearing Request at 30 (*citing* Order No. 669 at P 143).

a. Section 33.1(c)(2)(i)—Purchases of Non-Voting Securities by a Holding Company

95. In Order No. 669, the Commission found that there is no need for case-by-case examination of a holding company's purchase of non-voting securities. Such securities generally do not convey control and hence do not give the holding company additional market power, harm competitive markets, or otherwise harm captive customers.[85] We did not impose any type of filing requirement with respect to such transactions.[86]

i. Rehearing Request

96. APPA/NRECA assert that the Commission should not have granted this blanket authorization. They state that the Commission cites no basis in the record for its finding that such transactions generally do not harm competition or otherwise disadvantage captive customers.[87] According to APPA/NRECA, non-voting securities may take many different forms, limited only by the imagination of creative deal-makers and lawyers. APPA/NRECA assert, for instance, that securities that are non-voting can be important in the overall financial structure of many corporations or may, in the future, accrue voting rights, such as in the case of convertible debt. Therefore, they argue, the Commission should review such transactions on a case-by-case basis. If a party is uncertain whether a particular acquisition is a transfer of control that warrants a section 203 application, it can seek a declaratory order.

ii. Commission Determination

97. APPA/NRECA has not persuaded us that customers will be harmed by the blanket authority to acquire non-voting securities. An acquisition of non-voting securities generally does not result in a change of control because such securities generally lack mechanisms like voting or veto rights necessary to influence or control management of the company. Moreover, section 33.1(c)(3) specifically prohibits holding companies that use the blanket authorization from borrowing from any electric utility company subsidiary in connection with the transaction or from pledging or encumbering assets of an electric utility company subsidiary. In those instances where the security is non-voting when issued or acquired but can be converted to voting at a later date, we will treat the security as a voting security when it is converted. This blanket authorization for acquisition of non-voting securities by a holding company only relieves the holding company of the requirement to file an application under section 203(a)(2) to obtain prior authorization from the Commission in a specific situation and with certain conditions.

b. Section 33.1(c)(2)—Holding Company Purchases of Less than 10 Percent of Outstanding Voting Securities

98. The Commission granted blanket authorization for a holding company in a holding company system to purchase less than 10 percent of the outstanding voting securities of a public utility or a holding company covered by section 203(a)(2). We conditioned the blanket authorization ''by requiring the purchaser of such securities to provide the Commission, not more than 45 days after the purchase, with the same information on the same basis that the holding company now provides to the SEC.'' [88] The Commission stated that it would issue notices of these filings for informational purposes only.

i. Rehearing Requests

99. APPA/NRECA assert that the Commission should not have granted this blanket authorization. They assert that the Commission should set the ownership threshold at less than 5 percent, as with the safe harbor provisions of the RTO Rule [89] governing active ownership interests by market participants in regional transmission organizations (RTOs). APPA/NRECA assert that the Commission provides no justification for using a higher percentage threshold for blanket authorization here than it did in its RTO rule.

100. Coral Power asserts that the Commission should grant a blanket authorization under FPA section 203(a)(1) for dispositions of less than 10 percent of the outstanding voting securities by a public utility to match the blanket authorization granted to holding companies to acquire such securities. It states that the Commission has long interpreted section 203 to apply to changes in control over jurisdictional facilities.[90] New FPA section 203(a)(4) codifies this precedent and gives the Commission express authority to review changes in control under section 203. Coral Power asserts that the disposition of up to 10 percent of the outstanding voting securities of a public utility or any of its upstream owners is not a change in control for purposes of FPA section 203(a)(1), as long as the acquiring entity does not hold a direct or indirect managing interest in the public utility. It states that, where there is no change in control, there can be no harm to competition or captive ratepayers as a result of such a transaction.

ii. Commission Determination

101. APPA/NRECA advocate a reduction, from 10 percent to 5 percent, in the level of outstanding voting securities in a public utility or a public utility holding company that another holding company may acquire under the blanket authorization the Commission granted in Order No. 669. They cite to the Commission's conclusion in the RTO Rule that limited market participants to no more than a 5 percent active ownership interest in an RTO. We will deny APPA/NRECA's request for rehearing. In the RTO Rule, we reviewed various thresholds for presuming a lack of independence, including those found in the decisions of other agencies. We concluded that, because of particular concerns with the independence of RTOs, a limitation of 5 percent was appropriate. However, we noted that, in other contexts, we had determined that holding 10 percent of a company's voting stock was the level at which a rebuttable presumption of control applied for purposes of determining whether a company was an affiliate.[91]

102. The fact that the Commission adopted a 5 percent ownership interest as a measure of control for purposes of determining an RTO's independence from market participants does not dictate the maximum threshold for a blanket authorization under section 203(a)(2). The two situations are quite different. For Order No. 2000, the Commission was faced with the task of building confidence that the RTOs would not be subject even to influences or the appearance of influences that would favor one market participant over another. As a result, the Commission set the threshold relatively low, prohibiting an ownership interest of no more than 5 percent. Our decision here reflects a

[85] *See* Cash Management Rule at 29 (discussing exception for non-voting interests that convey significant veto rights).

[86] Order No. 669 at P 144.

[87] APPA/NRECA Rehearing Request at 31 (*citing* Order No. 669 at P 144).

[88] Order No. 669 at P 145. This could include Schedules 13D or 13G and Forms 8–K or 10–Q.

[89] *Regional Transmission Organizations*, Order No. 2000, 65 FR 809, 855 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089, at 31,108 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington* v. *FERC*, 272 F.3d 607 (D.C. Cir. 2001) (RTO Rule).

[90] Coral Power Rehearing Request at 7.

[91] RTO Rule, FERC Stats. & Regs ¶ 31,089 at 31,070.

reasonable balance in determining what is consistent with the public interest under section 203, taking into account Congress' intent in EPAct 2005 to remove obstacles to much-needed investment in the electric utility industry and to protect ratepayers. Nothing in the request for rehearing has convinced us that allowing blanket approval for a holding company to acquire less than 10 percent of the securities in a public utility or another holding company will harm customers. Setting the level at the higher end of the rather short spectrum (the low considered by the Commission of 5 percent and the high of 10 percent) described by the Commission in the RTO Rule will encourage increased investment because it lifts the burden of obtaining pre-authorization under FPA section 203(2).

103. Coral Power suggests that the Commission give essentially the same blanket authorization to public utilities under section 203(a)(1) that we gave to public utility holding companies under section 203(a)(2). The Commission declines to do so and will continue to review dispositions of jurisdictional facilities by public utilities under FPA section 203(a)(1) on a case-by-case basis. Concerns with control, markets and protection of captive customers or customers receiving transmission service over jurisdictional transmission facilities are closely linked with assets directly controlled by the public utilities.

c. Section 33.1(c)(4)—SEC Information Provided to the Commission

104. As noted above, the Commission conditioned the blanket authorization for holding companies under section 33.1(c)(2) ''by requiring the purchaser of such securities to provide the Commission, not more than 45 days after the purchase, with the same information on the same basis that the holding company now provides to the SEC.'' [92] The Commission stated that it would issue notices of these filings for informational purposes only.

i. Rehearing Requests

105. EEI, Entergy, Duke/Cinergy, and GS Group request that the Commission revise section 33.1(c)(4) to list the specific SEC schedules and forms that the Commission directed companies to file with the Commission, rather than just making the more general reference to the ''same information'' provided to the SEC.[93] They state that this change would make the text of the rule consistent with the Commission's discussion in the preamble and in footnote 107, which refers specifically to SEC Schedules 13D and 13G and Form 13F. GS Group is concerned that the general directive to provide the ''same information'' is overly broad, creates uncertainty regarding the type of information that must be filed with the Commission, and could be construed to include oral communications with the SEC, correspondence, documents produced in response to a data request, and other investor disclosure documents that are only tangentially related to an acquisition of securities pursuant to section 33.1(c)(4).

106. Further, GS Group and MidAmerican explain that, while the preamble indicates that the SEC filings must be provided to the Commission not later than 45 days after the purchase of securities being reported, the text of the rule merely indicates that copies of SEC filings must be provided to the Commission ''on the same basis'' provided to the SEC.[94] They state that the 45-day deadline is inconsistent with the filing deadlines for Schedule 13D, Schedule 13G and Form 13F.

107. MidAmerican states that should the SEC eliminate such reporting requirements, the acquirer of any securities under the blanket authorization should continue to provide the information that had been required under the rescinded SEC rule to the Commission no later than the time that would have been required under the rescinded SEC rule.

108. MidAmerican seeks clarification of the rule as it pertains to Schedule 13G only to the extent a Schedule 13G is to be filed with respect to the reporting of beneficial ownership interests of less than 10 percent of voting equity securities.

109. MidAmerican and GS Group also request that the Commission clarify that, if the submission to the SEC qualifies for confidential treatment, the Commission also should give it confidential treatment. MidAmerican explains that the investment strategies of banks, brokers, investment managers, pension funds, and other investors often involve proprietary and confidential information and that release of this information could harm these entities.

ii. Commission Determination

110. In response to the many industry requests on rehearing, we will specify that it is SEC Schedule 13D, Schedule 13G and Form 13F that the companies are directed to file. To ensure that this filing requirement imposes only a *de minimis* burden, copies of these SEC Schedules 13D and 13G and Form 13F must be filed with the Commission under the same filing deadlines provided in the SEC rules. We are revising section 33.1(c)(4) accordingly.

111. We clarify that, if the SEC eliminates such reporting requirements, the acquirer of securities under the blanket authorization must continue to provide the information required under the rescinded SEC rule to the Commission no later than it would have been required under the rescinded SEC rule. MidAmerican's request for clarification of the reporting requirement as it pertains to Schedule 13G is unclear, as is the specific change, if any, that it proposes. As noted above, however, the Commission is revising the reporting requirement as it relates to the SEC schedules and form to make filing deadlines and content commensurate with SEC requirements.

112. Further, we clarify that requests for confidential treatment of copies of the schedules must follow the established procedures for requests for special treatment of documents submitted to the Commission.[95] Under those procedures, any person submitting a document may request privileged treatment by claiming that some or all of the information is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA),[96] and should be withheld from public disclosure. The Commission places documents for

[92] Accordingly, the Commission directed that the purchaser of such securities file with the Commission copies of SEC Schedules 13D, 13G, and Form 13F. The Commission explained that SEC Schedule 13D is required to be filed by any entity acquiring beneficial ownership of more than 5 percent of a class of a company's securities. The Schedule 13D filing requires, among other things, a statement of the purpose(s) of the acquisition of the securities of the issuer and a description of any plans or proposals the reporting person may have that relate to or would result in the acquisition of additional securities of the issuer; any extraordinary corporate transactions, such as a merger, reorganization or liquidation of the issuer or its affiliates; and any changes in the board of directors or management of the issuer. Schedule 13G is the same form, but is used when the person or entity is making the purchase for investment only. Institutional investment managers who exercise investment discretion over $100 million or more must report their holdings on SEC Form 13F. We noted that requiring this information should impose only a *de minimis* burden on the holding company, since we are merely requiring the same information that was filed with the SEC. Further, the Commission stated that, should the SEC change its reporting requirements, this information must continue to be filed with the Commission.

[93] *See, e.g.*, EEI Rehearing Request at 6, and Attachment A at 2–3, section 33.1(c)(5); Entergy Rehearing Request at 3; Duke/Cinergy Rehearing Request at 3–4; and GS Group Rehearing Request at 7.

[94] *Id.* at 8; MidAmerican Rehearing Request at 5.

[95] 18 CFR 388.112 (2005).

[96] 5 U.S.C. 552 (2000).

which privileged treatment is requested in a non-public file. When a FOIA requester seeks a document for which privileged treatment has been claimed or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information will notify the person who submitted the document and give that person at least five calendar days in which to comment. Notice of a decision to deny a claim of privilege will be given to any person claiming that the information is privileged no less than five calendar days before disclosure. In addition, when a FOIA requester brings suit in Federal court to compel disclosure of information for which a person has claimed privileged treatment, the Commission will notify the person who submitted the document.

6. Other Requested Blanket Authorizations—Holding Company Purchasing Its Own Securities, Fiduciary Investments and Bank Underwriting/Hedging

a. Holding Company Purchasing Its Own Securities

i. Rehearing Requests

113. EEI, Entergy, and Duke/Cinergy request that the Commission clarify that a holding company may buy its own securities under blanket authority and need not make a filing under section 203. They state that, while it may seem obvious that a holding company can acquire its own securities without section 203 authorization, there is some confusion created by the differing statutory language of 203(a)(1)(C) and 203(a)(2). Before EPAct 2005, section 203(a) required prior approval for a public utility to acquire the security ''of *any other* public utility.'' In contrast, new section 203(a)(2), requires prior approval for a holding company to acquire ''any security with a value in excess of $10,000,000 of * * * a holding company in a holding company system that includes a transmitting utility or an electric utility company.''

114. National Grid raises similar arguments and adds that repurchase transactions are routine and serve a variety of business needs, including facilitating stock issuances under legitimate stock plans and managing capital structure.

ii. Commission Determination

115. In an order issued after the final rule, the Commission ruled that the most reasonable interpretation of section 203(a)(2) is that a holding company is not required to obtain Commission authorization to repurchase its own stock.[97]

b. Fiduciary Investments and Bank Underwriting and Hedging Activities

i. Rehearing Requests

116. BofA/JPMorgan ask that the Commission clarify that section 203(a)(2) does not apply to fiduciary investments by non-bank financial institutions in a Regulated Banking Group.[98] They explain that it would not be feasible for non-bank fiduciaries to obtain section 203(a)(2) approval before making such investments because many Regulated Banking Groups have non-bank subsidiaries that routinely acquire and dispose of equity and debt positions in utility securities in fiduciary capacities. These fiduciary relationships include the function of trustee, agent, executor, administrator, guardian, asset manager, and discretionary investment adviser.[99] BofA/JPMorgan assert that these passive investments are not made to permit the Regulated Banking Group to exercise control over the operations of the issuer. Further, they state that such investments are already comprehensively regulated under federal and state regimes applicable to financial institutions. These regulatory regimes are designed to assure that the holdings by a Regulated Banking Group in a fiduciary capacity are not used to impermissibly support investments in a public utility as principal, and do not provide a basis to exercise impermissible control over a public utility issuer. For these reasons, BofA/JPMorgan seek a determination that fiduciary investments by their non-bank financial institutions do not require approval under section 203(a)(2). In the alternative, they request blanket authorization for such fiduciary investments.

117. BofA/JPMorgan request that the Commission confirm that relief from the ''acquisition of securities'' clause under section 203(a)(1) applies under section 203(a)(2). Specifically, they assert that the Commission has granted banks that function as power marketers relief from the ''acquisition of securities'' clause in section 203(a)(1).[100] Such banks need not seek prior approval from the Commission when they acquire utility securities in debt, fiduciary, trading, or hedging capacities. However, BofA/JPMorgan explain that a number of banks have recently become power marketers and when that happens, the bank becomes a public utility for purposes of FPA section 203. They assert that, under EPAct 2005, many banks that are public utilities are now also ''holding companies.'' Congress provided that certain holdings of banks, bank operating subsidiaries, and broker-dealers do not make them ''holding companies'' in section 1262(8) of EPAct 2005. BofA/JP Morgan state that the statutory exemption also specifically covers loan collateral, loan liquidation, and fiduciary holdings.

118. However, BofA/JPMorgan explain that when banks act as underwriters, they will not know at the outset whether they will be successful in disposing of a sufficient number of shares to assure that their holdings do not exceed 5 percent of the issuer after 45 days.[101] To comply with section 203, however, they would have to seek the Commission's approval immediately to retain the shares or risk noncompliance. Thus, BofA/JPMorgan ask that the Commission issue blanket authorization under section 203(a)(2) for failed underwritings and hedging holdings on the same terms and conditions imposed in the Commission's orders granting blanket authorization to bank power marketers under section 203(a)(1).[102] Further, they request that Order No. 669 be clarified to authorize: (i) Underwriting holdings to exceed 45 days and (ii) equity derivative hedging holdings, to the extent permitted under the Commission's orders applicable to bank power marketers.

119. Similarly, Morgan Stanley requests that the Commission revise the

[97] *National Grid plc and National Grid USA*, 114 FERC ¶ 61,115 at P 11 (2006).

[98] By use of the term ''Regulated Banking Group,''BofA/JPMorgan means: (i) banks chartered and regulated under the laws of the United States or a U.S. state, and (ii) bank holding companies registered as such with (and subject to supervision and regulation by) the Federal Reserve Board under the Bank Holding Company Act of 1956 (as amended by the Gramm-Leach-Bliley Act of 1999, in each case together with their subsidiaries. BofA/JPMorgan also explain that the Commission's blanket authorization of the acquisition of up to 10 percent of voting equity of utilities does not provide adequate relief, since on an aggregate basis all holdings in a fiduciary and/or proprietary capacity under a large banking group may in the ordinary course of business exceed the 10 percent threshold. BofA/JPMorgan Rehearing Request at 13–14.

[99] *Id.* at 13.

[100] *See UBS AG and Bank of America, N.A.*, 101 FERC ¶ 61,312 (2002), *reh'g granted in part and denied in part*, 103 FERC ¶ 61,284 (2003), *reh'g granted*, 105 FERC ¶ 61,078 (2003) (*UBS/Bank of America*); *JPMorgan Chase Bank, N.A.*, Docket No. ER05–283 (unpublished letter order dated March 18, 2005).

[101] BofA/JPMorgan Rehearing Request at 19. They explain that in a successful underwriting, the underwriter purchases shares from the issuer and immediately resells those shares in the market. In a failed underwriting, the underwriter is not able to resell those shares immediately and will attempt to sell the unsold shares in an orderly manner over a period of time following the closing of the initial purchase.

[102] BofA/JPMorgan Rehearing Request at 20 (*citing UBS/Bank of America*, 103 FERC ¶ 61,284).

blanket authorizations adopted in Order No. 669 to permit certain additional securities acquisitions and to differentiate between the acquisition of securities by a public utility and by non-utility affiliates. It requests that the Commission grant blanket authorizations to allow holding companies and their affiliates to hold: (1) Voting and non-voting securities, without limitation, on behalf of customers as fiduciaries; (2) voting and non-voting securities, without limitation, in the ordinary course of their business as underwriters or dealers;[103] (3) up to the less than 10 percent limit in section 33.1(c)(2)(ii) of voting securities as principal of each class of voting securities issued by a utility or holding company, provided that such ownership interest does not include a right to control the jurisdictional activities of the issuer; (4) utility securities in connection with underwriting activities so that underwriting activities are not subject to the 10 percent limit in section 33.1(c)(2), provided that the holding company or its affiliates file an application for section 203(a) approval within 45 days of any failed underwriting to retain the securities and commits while the applications remains pending not to vote the utility securities held as a result of the failed underwriting; (5) utility securities in connection with their trading activities so that the dealer/trader activities are not subject to the 10 percent limit in section 203(c)(2); (6) utility securities as lenders so that the acquisitions of debt securities are not subject to the 10 percent limit in section 33.1(c)(2), except that application under section 203 would be required before the holding company or its affiliate could take control by foreclosure, bankruptcy, or otherwise; (7) utility securities of any entity formed to acquire, finance, and lease utility assets to any public utility, electric utility company, or transmitting utility under a long-term net lease; and (8) utility securities in the course of routine dealing and trading as principals for their own account so that utility securities acquired as principal for hedging purposes are excluded from the 10 percent limit in section 33.1(c)(2), if the holding company or its affiliate commits not to vote such securities.[104]

120. Morgan Stanley explains that fiduciary holdings by holding companies or their affiliates will not result in control over a public utility because the fiduciary has an obligation to manage those holdings in the interest of the persons on whose behalf such securities are held.[105] It also explains that any utility securities held as part of underwriting or dealer/trader activities are transitory, so the underwriter or dealer/trader does not have the ability or incentive to exercise control over the issuer.[106] With respect to hedging activities, Morgan Stanley asserts that, if the acquiring entity agrees not to vote an interest held as principal beyond the authorized 10 percent limit, it will not exercise control over the public utility. Finally, if the acquiring entity engages in passive lease financing for public utilities, the Commission has held that it does not need to regulate such activity.[107]

121. Morgan Stanley argues that its requested blanket authorizations do not give the acquiring entity additional market power or enable it to undermine competition or disadvantage captive customers. Instead, the blanket authority would promote the public interest by bringing more capital investment to the utility industry. If the Commission finds that blanket authorizations should not apply to all holding companies, Morgan Stanley requests that they apply to the activities of non-utility affiliates of financial institutions.

ii. Commission Determination

122. Section 1262(8)(B) of PUHCA 2005 excludes from classification as ''holding companies'' certain entities that hold the securities of public utilities or public utility holding companies under certain conditions. Among these entities are banks, savings associations and trust companies, or the operating subsidiaries of these institutions, holding, as fiduciaries, these securities in the ordinary course of their respective businesses, and broker-dealers holding these securities under certain conditions. The Commission recognizes that Order No. 669 does not apply in these situations.

123. BofA/JPMorgan request clarification that entities that are not banks or operating subsidiaries of banks, but are subject to regulation as banks,[108] either qualify for the statutory exclusions in section 1262(8)(B) or have a blanket authorization to acquire and hold covered securities in any amount as fiduciaries in the normal course of their business. We cannot find that these entities qualify for the statutory exclusion. The statutory exclusion is specific only to certain entities under certain conditions.

124. However, we agree that entities holding covered securities in any amount as fiduciaries in the normal course of their business or as collateral for loans or in connection with loan liquidation and that are, in the course of that business, subject to the regulatory oversight of the Board of Governors of the Federal Reserve Bank, or the Office of Comptroller of the Currency are likely to be significantly constrained in their use of those securities so as to not affect regulation, rates or competition under the FPA. Therefore, subject to certain conditions and reporting requirements, the Commission will grant to entities that are subject to the regulatory oversight of the Federal Reserve Bank or the Comptroller of the Currency because they are affiliated with banks or bank holding companies regulated by the Federal Reserve Bank under the Bank Holding Company Act of 1956, as amended by the Gramm-Leach-Bliley Act of 1999, a blanket authorization under section 203(a)(2) to acquire and hold as fiduciaries in the normal course of their business or as collateral for loans or in connection with loan liquidation an unlimited amount of covered securities of public utilities or public utility holding companies. The conditions and reporting requirements are: (1) The holding does not confer a right to control, positively or negatively, the operations through debt covenants or any other means, the operation or management of the public utility or public utility holding company, except as to customary creditor's rights or as provided under the United States Bankruptcy Code; and (2) the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held.

125. Morgan Stanley requests a blanket authorization under section

[103] Morgan Stanley explains that any utility securities held as part of underwriting or dealer/trader activities are transitory, so the underwriter or dealer/trader does not have the ability or incentive to exercise control over the issuer. *Id.* at 13.

[104] Morgan Stanley Rehearing Request at 7–9.

[105] *Id.* at 9 (*citing UBS/Bank of America*, 103 FERC ¶ 61,284, at P 11).

[106] *Id.* (*citing UBS/Bank of America*, 103 FERC ¶ 61,284, at P 13).

[107] *Id.* (*citing Alliant Energy Corp.,* 111 FERC ¶ 61,458 (2005)).

[108] Such regulation applies to: (i) Banks, and their subsidiaries, chartered and regulated under the laws of the United States or a U.S. state, and (ii) bank holding companies registered as such with the Federal Reserve Board, together with the subsidiaries of those holding companies, and subject to the supervision and regulation of the Federal Reserve Board under the Bank Holding Company Act of 1956 (as amended by the Gramm-Leach-Bliley Act of 1999). 12 U.S.C 1843 (2000).

203(a)(2) of the FPA and section 33.1(c)(2) of the Commission's regulations to acquire and hold up to the percentage limit under section 33.1(c)(2)(ii) on holdings of voting securities. There is no need to grant the requested authorization. Section 33.1(c)(2)(ii) grants blanket authorization to acquire voting securities under the condition stated in the regulation notwithstanding that the acquisition may exceed $10 million.

126. Morgan Stanley requests blanket authorization under section 203(a)(2) of the FPA and section 33.1(c)(2) of the Commission's regulations to acquire and hold securities in connection with passive lease financing of public utilities. Such authority is already granted under section 33.1(c)(2)(i). Similarly, Morgan Stanley requests blanket authorization to acquire and hold as a lender without regard to the percentage limitation under section 33.1(c)(2)(ii). Authority to hold debt instruments, which normally do not convey a right to control the public utility and which Morgan Stanley implies is the case in its request, is already provided under section 33.1(c)(2)(i).

127. Morgan Stanley requests reconsideration of Order No. 669 or, in the alternative, blanket authorization under section 203(a)(2) of the FPA so that it may, without the 10 percent or more limitation on outstanding securities, acquire and hold as a fiduciary any amount of covered securities. Morgan Stanley does not claim exemption under section 1262(8)(B) of PUHCA 2005, nor does it claim that its holdings as a fiduciary would be subject to regulatory oversight, such as that provided by the Federal Reserve Bank. Finally, while Morgan Stanley cites to *UBS AG* and *Bank of America, N.A,*[109] it does not explain how the safeguards of banking regulation relied upon by the Commission in those cases regarding holdings as a fiduciary apply to Morgan Stanley's situation. Therefore the Commission will not grant Morgan Stanley's request to provide a blanket authorization in our regulations. However, we will not preclude companies from seeking a blanket authorization on a case-by-case basis.

128. BofA/JPMorgan request confirmation that banks that are power marketers and that have blanket authorizations under section 203(a)(1) of the FPA also have blanket authorizations under section 203(a)(2) of the FPA as holding companies acquiring and holding public utility securities for the acquisition and holding of an unlimited amount of covered securities as a result of failed underwritings, if they are classified as holding companies because they own EWGs or QFs. The Commission in individual cases has granted conditional blanket authorizations to certain banks and their subsidiaries to acquire and hold an unlimited amount of covered securities in connection with failed underwritings. These authorizations contained two conditions. First, the authorization ends 45 days after acquisition unless the entity has, within that period, filed an application for approval under section 203 to keep the securities. Second, the bank or subsidiary must commit, during the pendency of that application, not to vote the securities. The Commission's regulatory interests under section 203(a)(2) in holdings as a result of failed underwritings are similar to its interests in such holdings under section 203(a)(1). Therefore, with the two conditions above, we will grant blanket authorization under section 203(a)(2) to banks and their subsidiaries to acquire and hold an unlimited amount of covered securities in connection with failed underwritings.

129. Morgan Stanley also requests blanket authorization to acquire and hold an unlimited amount of covered securities in connection with underwriting activities. It is unclear whether Morgan Stanley is requesting authority only for failed underwritings. Of course, if Morgan Stanley or other entities are excluded entities under PUHCA section 1262(8)(B), then they are not holding companies; in that case, blanket authorizations to hold covered securities in connection with a failed underwriting is not necessary.

130. The blanket authorization that the Commission has granted in connection with failed underwritings relies more heavily on the two conditions described above than it does on the oversight of an alternative regulatory body, such as the Comptroller of Currency or the Federal Reserve System in the *Bank of America/UBS AG* series of decisions, to ensure that holdings resulting from failed underwritings are not used to exert control.[110] Therefore, the Commission will grant a blanket authorization under section 203(a)(2) for a holding company to acquire and hold an unlimited amount of covered securities in connection with a failed underwriting subject to the same conditions imposed in the Bank of America/UBS AG cases. We will add regulatory text to reflect this.

131. BofA/JPMorgan request clarification that the same blanket authorization previously granted for banks to hold equity securities of public utilities and public utility holding companies as principal for derivatives hedging purposes continues to apply under section 203(a)(2). The Commission has, for several years, granted blanket authority to certain banks to hold covered securities for hedging purposes incidental to the business of banking.[111] This has been based in part on the fact that the banks are subject to a supervisory standard that generally limits such holdings so that they typically do not exceed 5 percent of the outstanding shares. The Commission, however, has specifically conditioned the blanket authorizations on a limitation of the banks' authorization to vote the equity shares to 5 percent of the outstanding shares. Under PUHCA 2005, a company is a holding company if it owns 10 percent or more of the securities of a public-utility company or of a holding company of any public-utility company. The Commission agrees that the holding by banks of covered securities for hedging purposes that are incidental to the business of banking are an important part of the transactions necessary to the financing of the utility business. Therefore, the Commission will grant blanket authorization under section 203(a)(2), subject to the condition that the bank not vote more than 10 percent of the outstanding shares. We will add regulatory text to reflect this.

132. Morgan Stanley requests clarification that holding covered securities in connection with hedging transactions is not subject to the limitation of up to 10 percent of outstanding securities provided under Order No. 669. It proposes that the Commission condition the grant on the commitment of the entity holding the securities, as well as its affiliates, not to vote securities held in connection with hedging transactions, to the extent that its holdings are 10 percent or more of the outstanding securities in that class. A condition removing the holder's power to vote the securities held for hedging purposes to the extent they are 10 percent or more of the securities in the class outstanding, even though the amount held for hedging is not limited, will address the Commission's concerns with control. Therefore, the Commission will grant the blanket authorization under section 203(a)(2) for companies to

[109] Morgan Stanley Rehearing Request at 9 (*citing UBS/Bank of America*, 103 FERC ¶ 61,284 at P11).

[110] UBA AG and Bank of Amercia, N.A., 101 FERC ¶ 61,312 (2002); 103 FERC ¶ 61,284 (2003); 105 FERC ¶ 61,078 (2003).

[111] *See supra* note 110.

hold an unlimited amount of covered securities for hedging purposes on the condition that they do not vote the securities held to the extent they are 10 percent or more of the outstanding securities in the class. We will add regulatory text to reflect this.

133. We have granted above certain blanket authorizations for holding public utility securities as a fiduciary, for hedging purposes or for purposes of loan collateralization or liquidation. All these blanket authorizations require that such holdings occur in the normal course of business of the company holding the securities. In response to BofA/JP Morgan, we clarify that holdings that are exempt by virtue of section 1262(8)(B) of PUHCA 2005 will not be counted for purposes of determining whether the company holding such securities is a holding company under section 1262(8) of PUHCA 2005; in other words, holdings exempt by statute will not be aggregated with securities held in other capacities. Holdings by companies as principal for derivatives hedging purposes are not exempt under section 1262(8)(B) and, therefore, will be counted for purposes of determining whether the company is a holding company.

7. Section 33.2(j)—General Information Requirements Regarding Cross-Subsidization

134. Section 33.2(j) provides that a section 203 applicant must provide an explanation, with appropriate evidentiary support (Exhibit M to the application): (1) Of how it is providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company; or (2) if no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

135. In Order No. 669, the Commission also stated that certain protections may be necessary, on a case-by-case basis, in order to protect against cross-subsidization, pledge or encumbrance of utility assets, and affiliate abuse. The Commission stated that applicants should proffer ratepayer protection mechanisms to assure that captive customers are protected from the effects of cross-subsidization.[112] Among the types of protection mechanisms that can be proposed by are: A general hold harmless provision, which must be enforceable and administratively manageable, where the applicant commits that it will protect wholesale customers from any adverse rate effects resulting from the transaction for a significant period of time following the transaction; a moratorium on increases in base rates (rate freeze), where the applicant commits to freezing its rates for wholesale customers under a certain tariff for a significant period of time.[113] The Commission stated that it will address the adequacy of the proposed mechanisms on a case-by-case basis.

136. Order No. 669 also stated that certain verifications provided in an application could streamline the approval process by avoiding a detailed examination of cross-subsidization and encumbrance concerns.[114] We stated that we may accept, along with any protection mechanisms (discussed above), on a case-by-case basis, in lieu of or in addition to any other explanation, the following four verifications that the proposed transaction does not result in, at the time of the transaction or in the future: (1) Transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; and (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

a. Rehearing Requests

137. APPA/NRECA argue that the Commission should have required substantive structural protections to ensure that section 203 transactions do not result in cross-subsidization or pledges or encumbrances of utility assets. They request that the Commission describe the specific issues a section 203 application must address and the specific assurances and protective conditions that must be included to demonstrate that the proposed transaction meet the standards of amended FPA section 203(a)(4).[115]

138. More fundamentally, however, APPA/NRECA argue that the Commission improperly narrowed the scope of statutory concerns to be addressed under amended section 203. They say that ratepayer protection conditions such as temporary hold harmless commitments are not sufficient because Congress was concerned about more than simply ratepayer protection. APPA/NRECA assert that the ratepayer protection conditions discussed in Order No. 669 would be relevant, at most, to how cross-subsidization might affect rates; the conditions do not address the more structural financial problems of asset pledges or encumbrances.[116] APPA/NRECA contend that the statute focuses not just on rate issues, but more broadly on preventing the erosion of the financial viability of regulated utilities by draining off their resources into non-utility businesses. They assert that Order No. 669 elsewhere acknowledges this broader focus when it permits applicants seeking to avoid a hearing to make the four verifications described above, which concern the financial viability of the regulated utility and cross-subsidization, asset pledges and encumbrance issues.[117] APPA/NRECA also note that the Commission conditioned its grant of blanket authorization for intra-holding company financing arrangements, including cash management programs, by requiring applicants to adopt safeguards to prevent any cross-subsidization between holding companies and their new subsidiaries. They urge the Commission to impose a similar requirement on all section 203 applicants, not just those seeking blanket approval of intra-

[112] The Commission also stated that the applicant bears the burden of proof to demonstrate that customers will be protected. *See Central Vermont Pub. Serv. Corp.,* 39 FERC ¶ 61,295, at 61,960 (1987) (finding of a potential for abuse, the Commission may disapprove the transaction or place conditions on it).

[113] Order No. 669 at P 167. These protection mechanisms are offered only as examples. Whether these types of protection mechanisms are sufficient in a particular case will depend on the circumstances. *See, e.g.,* Merger Policy Statement at 30,121–24.

[114] Order No. 669 at P 169. The Commission stated that such verifications, considered on a case-by-case basis in light of the given transaction, and explanations relating to those verifications, as well as other explanations of how the transaction will not result in cross-subsidization, pledge, or encumbrance of utility assets for the benefit of an associate company—or if it does result in such, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest—is to be included as Exhibit M to the application.

[115] APPA/NRECA Rehearing Request at 13.

[116] *Id.* at 17.

[117] *Id.* at 18 (*citing* Order No. 669 at P 169).

holding company financing arrangements.[118]

139. Rather than allowing applicants to avoid a hearing by using the four verifications, APPA/NRECA assert that the Commission should require all section 203 applicants to demonstrate that cross-subsidization and encumbrance of utility assets cannot occur or to adopt safeguards against such cross-subsidization or asset encumbrance. All section 203 applicants should be required to make a detailed showing that the four conditions discussed in paragraph 169 of Order No. 669 are satisfied or that a transaction that fails any of these tests is nonetheless ''consistent with the public interest.'' [119] This would add substance to 18 CFR § 33.2(j).

140. APPA/NRECA also argue that the Commission erred by not requiring section 203 applications to demonstrate compliance with the *Westar Energy* [120] conditions on public utility debt or to explain why such requirement is unnecessary. They explain that, in *Westar Energy,* the Commission announced restrictions on all future issuances of secured and unsecured debt by public utilities under section 204 of the FPA. These conditions ''were designed to prevent investor-owned utilities'' shareholders and management, whose interests may be different than the interests of utility customers, from taking actions which might jeopardize the utility's ability to perform its utility function and adversely affect its customers.'' [121] APPA/NRECA contend that the same cross-subsidization concerns underlie the express finding that the Commission is now required to make under amended section 203(a)(4) before approving any section 203 application.

141. In addition, APPA/NRECA assert that the Commission should have required section 203 applicants to disclose all existing pledges and encumbrances of utility assets. In the same vein, TAPSG contends that the Commission should have imposed an ongoing requirement that applicants disclose future pledges, encumbrances, or cross-subsidization involving the assets or businesses that are the subject of a section 203 application.

142. APPA/NRECA further request that the Commission clarify the meaning of the term ''traditional utility with captive customers'' in paragraphs 169, 192, and 193 of Order No. 669. They believe that, at a minimum, this term should include any public utility: (1) Selling electricity at wholesale under cost-based rates; (2) selling electricity at retail under cost-based rates; or (3) owning or providing transmission service over jurisdictional transmission facilities (which, at least today, also implies cost-based rates).[122] APPA/NRECA also would include transmission customers, as well as retail customers and wholesale customers, as ''captive customers.'' Furthermore, APPA/NRECA say that even a utility with market-based rates can have captive customers and, therefore, can be a traditional utility. The Commission should not assume that a utility with market-based rates does not have captive customers, in light of impediments to wholesale competition generally in the industry and the Commission's own actions in revising the tests for market power and then withdrawing market-based rate authority in some cases.

143. Finally, TAPSG requests that the Commission clarify that it will consider adverse competitive effects associated with cross-subsidization.[123] TAPS argues that cross-subsidization not only harms the ratepayers who bear its expense, but also can injure competition in the market where the cross-subsidized company sells. TAPSG contends that a commitment by a utility to hold captive customers harmless from increased costs associated with a section 203 transaction will not address this concern.[124]

b. Commission Determination

144. On further consideration, the Commission will grant APPA/NRECA's request for rehearing and will require all section 203 applicants (which do not include those who have blanket authorization) to include, as part of Exhibit M of the application, a detailed showing that either: (1) All four tests of the four-part framework set forth in Order No. 669 (at P 169), as modified herein, are met, thus demonstrating that the transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company; or (2) if cross-subsidization or pledges or encumbrances of utility assets were to occur, how such cross-subsidization, pledges or encumbrances would nonetheless be consistent with the public interest.[125] We believe this will assure better customer protection and we will amend the regulatory text to require this demonstration. We do not believe that requiring a detailed showing that all four conditions are met imposes an unreasonable burden on section 203 applicants.

145. However, not withstanding APPA/NRECA's request, we do not find it necessary to generally require, except as noted below, section 203 applicants to demonstrate that the transaction satisfies the *Westar Energy* conditions relating to the future issuance of secured and unsecured debt or to certify that they will comply with such conditions in the future. However, if a public utility were to issue secured or unsecured debt pursuant to a Commission section 204 authorization to finance a section 203 transaction undertaken either by itself or its parent or affiliate, the public utility would have to comply with the *Westar Energy* conditions as a consequence of receiving section 204 authorization for the issuance of debt.

146. The Commission also will require that applicants disclose all existing pledges or encumbrances of utility assets as part of the application. However, contrary to TAPSG' request, we will not generally require the continuing disclosure of future pledges or encumbrances of utility assets as a condition of authorization. On a case-by-case basis, the Commission may determine that such a condition is necessary to ensure that the transaction is consistent with the public interest. Moreover, section 203(b) authority will allow the Commission to revisit its authorization to determine if a further condition requiring continuing disclosure is necessary.

147. In response to APPA/NRECA's request for clarification regarding the meaning of ''traditional utility with captive customers,'' although we will retain and clarify our original definition of the term ''captive customer,'' as discussed below, we will also separately include APPA's language to cover public utilities that own or provide

[118] *Id.* (*citing* Order No. 669 at P 143).

[119] *Id.* at 20.

[120] *Westar Energy,* 102 FERC ¶ 61,186, *clarified,* 104 FERC ¶ 61,018 (2003).

[121] APPA/NRECA Rehearing Request at 23.

[122] *Id.* at 20–21.

[123] TAPSG Request for Rehearing at 3.

[124] APPA/NRECA, in response to footnote 118 in Order No. 669, appear to share the same concern. They argue that a utility charging market-based rates can subsidize those rates by inflating its retail and transmission rates, thereby unfairly eliminating wholesale competitors and, in the long run, lessening wholesale competition and raising wholesale rates. APPA/NRECA Rehearing Request at 21, n. 25.

[125] We will continue to require verifications, rather than a showing or demonstration, as a condition of the blanket authorization for holding company acquisitions of FUCOs, if the holding company or its affiliates, subsidiaries, or associate companies within the holding company have captive customers or own or provide transmission service over jurisdictional transmission facilities in the United States, as provided in section 33.1(c)(5). The Commission's verification requirements are set forth in 18 CFR 385.2005(b).

transmission service over Commission-jurisdictional transmission facilities. Thus, various conditions or restrictions will apply where a traditional public utility has captive customers (defined as wholesale or retail electric energy customers served under cost-based regulation) and also where the public utility owns or provides transmission service over Commission-jurisdictional transmission facilities. However, contrary to APPA/NRECA's proposed interpretation, a public utility selling power only pursuant to market-based regulation will not be regarded as a ''traditional public utility with captive customers'' and, hence, customers served at market-based rates will not be regarded as ''captive customers.'' The fact that the Commission is revisiting its tests for granting market-based rate authority or that the authority of some utilities to sell at market-based rates has been withdrawn does not undermine a conclusion that customers of utilities with legitimate market-based rate authority are not ''captive customers.'' We do not approve market-based rates unless we find that the utility does not have market power.

148. TAPSG requests that the Commission clarify that we will consider the effect of cross-subsidization on competition. Intervenors can always argue that a particular transaction may result in cross-subsidization and that this may affect competition. We will address such arguments based on the facts in a particular case.

8. Section 33.11(b)—Commission Procedures for Consideration of Applications under Section 203 of the FPA

149. Section 33.11(b) states that the Commission will expeditiously consider completed section 203 applications that are not contested, do not involve mergers, and are consistent with Commission precedent.[126] It provides that dispositions of only transmission facilities, ''particularly'' those that both before and after the transaction are under the functional control of a Commission-approved RTO or ISO, will generally receive expedited treatment.[127] In Order No. 669, the Commission explained that ISOs and RTOs are pro-competitive and are effective at preventing market power abuse because they have market monitoring and mitigation measures.

a. Rehearing Requests

150. APPA/NRECA assert that the Commission provides no plausible justification for providing expedited review for dispositions of only transmission facilities. They argue that because owning transmission facilities is one of the major means of exercising market power, consolidations of control over transmission facilities should be carefully evaluated. They also argue that the Commission's regulation of transmission service does not mean that transactions involving only transmission should be accomplished with minimal Commission scrutiny.

151. Alternatively, APPA/NRECA state that if the Commission retains section 33.11(b)(1), it should be clarified and revised. They state that the word ''particularly'' in section 33.11(b)(1) either makes the regulation superfluous or makes its meaning unclear. If the Commission intended for this clause to be restrictive (in other words, a disposition of only transmission facilities does not generally warrant expedited review unless the condition in the clause is met), then it should omit the word ''particularly.''[128]

152. Further, they say that the regulation should provide for expedited review only if the transmission facilities will remain in the *same* RTO or ISO. They state that such transactions should receive special scrutiny, not expedited review.

b. Commission Determination

153. We will delete the word ''particularly,'' as it is confusing, from section 33.11(b)(1), newly restated as section 33.11(c)(1). However, we will not require that to warrant expedited review, the transaction must maintain the transmission facilities in the same RTO or ISO. As we stated in Order No. 669:

> the standards set forth in Order No. 2000 require extensive information from RTO applicants that we believe will demonstrate whether the proposal is in the public interest. It also has been our experience that anticompetitive effects are unlikely to arise with regard to internal corporate reorganizations or transactions that only involve the disposition of transmission facilities[129]

154. Participation in *any* Commission-approved RTO or ISO is pro-competitive. We note that the regulation does not provide that such transactions will *always* qualify for expedited review. Intervenors may inform us in a particular case if switching RTOs may cause problems, and the Commission will perform its review on an unexpedited basis if justified.

155. The Commission will also take this opportunity to generally address requests for expedited review. We often receive section 203 filings in which an applicant requests that the Commission expedite its review process and act on the filing within a specified time period, occasionally thirty days or less. In some of these instances, applicants also ask us to give a notice period of less than 21 days. Sometimes, applicants offer no reason for seeking expedited action, or when they do, the reason is simply that they wish to close the transaction as soon as possible. The Commission notes that applicants themselves are in the best position to influence the timing of Commission action. In order to have the authorization they require at the time they seek to close the transaction, they should file an application at the earliest possible time. The Commission (and its staff, for transactions that are acted on under delegated authority) will try to act as quickly as possible on all applications, but particularly on those that warrant expedited review.[130] However, the Commission and its staff take seriously the regulation that provides for a 21-day notice period for applications that we deem qualify for expedited review. We believe that, in most circumstances, 21 days is the minimum period necessary for interested persons to conduct an adequate review of the application. Applicants that seek a lesser notice period or that request action within a specified time period must clearly identify a significant harm to the public interest, as opposed to a private commercial interest, that justifies action within that time period. We remind applicants that they must also provide a fully completed application, responsive to all of the regulations, to avoid the need for a deficiency letter, which creates delay.[131]

B. Amendments to 18 CFR 2.26—The Merger Policy Statement

156. In response to the NOPR, APPA/NRECA and TAPSG recommended that

[126] Order No. 669 at P 188.

[127] *Id.* at P 190–91.

[128] APPA/NRECA Rehearing Request at 34.

[129] Order No. 669 at 190 (*citing* Filing Requirements Rule at 31,902).

[130] By law, the Commission is required to take initial action on application no later than 180 days after filing.

[131] On occasion, applicants hae no identified all of the entities that must have approval for the transaction, have not adequately identified or described the facilities, the ownership, control or operation of which may be affected directly or indirectly by the transaction, or have not provided the underlying transaction agreement and offered little, if any, reason, for failing to do so. As a consequence, unnecessary additional time is consumed in obtaining the information from applicants and in providing an opportunity for others to comment on the information.

the Commission rethink our current merger policy and what ''consistent with the public interest'' means in light of amended section 203 and the repeal of PUHCA 1935. In particular, they suggested that the Commission's Appendix A analysis, which focuses on the effect on competition in ''common'' markets in which applicants operate, will not be well suited to address the effects on competition from the ''cross-country'' mergers that the repeal of PUHCA 1935 will likely encourage.

157. In response, in Order No. 669, the Commission stated that we are not persuaded to change our current policies now. We said that our standard of review is sufficiently flexible to consider changes in market structure that might result from EPAct 2005 and the repeal of PUHCA 1935. However, we also stated that, as we gain experience in evaluating mergers under the new statute, we may reevaluate our merger policy.[132]

1. Rehearing Requests

158. APPA/NRECA continue to assert that the Commission should reevaluate its criteria for analyzing mergers in order to address the likely market response to the changed regulatory environment. They expect significant merger activity, consolidation and restructuring of the industry in the wake of the repeal of PUHCA 1935. The Commission should reconsider whether its existing merger policy, crafted when PUHCA 1935's ownership restrictions were in place, addresses the dangers to competition and consumers presented by new section 203 transactions. The Commission should consider new approaches to analyzing the effect on competition beyond those in the current Appendix A approach. APPA/NRECA state that they do not expect the Commission to develop a new policy for evaluating mergers on rehearing of Order No. 669. However, they urge the Commission to set out the procedures and timetable for a reexamination of its merger policy.[133]

159. TAPSG concurs with APPA/NRECA's thoughts on the need to revise merger policy and also asserts that the Commission should not wait to revise its merger policy.[134] TAPSG notes that the Commission adopted its current merger policy almost ten years ago and that much has changed since then, including the development of RTOs with their complicated markets and locational marginal pricing, repeal of PUHCA 1935, and new time constraints on Commission merger review. At a minimum, TAPSG asserts that the Commission should commit to review its current merger policy as part of the technical conference that the Commission will hold within a year to address issues raised in this proceeding and the PUHCA 2005 Final Rule proceeding.[135]

2. Commission Determination

160. We will not reevaluate our criteria for analyzing the competitive effects of mergers as part of this rulemaking. In Order No. 669, we explained that, after the Commission has gained more experience in evaluating section 203 applications under the new statute, we may reevaluate our merger policy.[136] We continue to believe that more experience with the new section 203 will provide us with better guidance as to whether to reevaluate our merger policy.

161. We also note that, consistent with amended section 203(a)(4), we added new section 2.26(f) to our regulations. It provides that the Commission will not approve a transaction that will result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest. Thus, in Order No. 669, the Commission properly updated its merger policy to address Congress' specific concerns with respect to new section 203.

162. However, the Commission commits to consider whether our current merger policy should be revised as part of the technical conference to be held within one year.[137] That technical conference will address issues raised both in this proceeding and the PUHCA 2005 Final Rule proceeding implementing PUHCA 2005.

IV. Information Collection Statement

163. The regulations of the Office of Management and Budget (OMB)[138] require that OMB approve certain information requirements imposed by an agency. OMB has approved the information requirements contained in Order No. 669. Specifically, OMB approved the following information collection and assigned the corresponding OMB control numbers: ''Application under Federal Power Act Section 203'' (FERC–519).

164. This order on rehearing adopts a number of changes in response to the requests for rehearing of Order No. 669. Four of these are important with respect to information collection. First, as noted above, we will require that for holding company acquisitions of securities of intrastate utilities or utilities that own or control facilities used solely for local distribution or retail sales of electric energy regulated by a state commission, if any public utility within the holding company system has captive customers, the holding company must report the acquisition to the Commission, including any state actions and conditions related to the acquisition and provide an explanation why the transaction does not result in cross-subsidization. Second, we will require that for certain holding company acquisitions of securities of electric utility companies or transmitting utilities, or of holding companies that include such entities, the parent company file with the Commission, on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal of the securities, each by class, unless the holdings within a class are less than one percent of outstanding shares. Third, with regard to the submission of Exhibit M of the application, all section 203 applicants (excluding those whose transactions fall under blanket authorizations) must demonstrate that they have met all four tests of a four-part framework, as elaborated herein and in Order No.669, showing that the transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrances of utility assets for the benefit of an associate company, or if cross-subsidization or pledges or encumbrances of utility assets were to occur, that such results are nonetheless consistent with the public interest. Fourth, also as part of Exhibit M to the application, applicants are required to disclose all existing pledges or encumbrances as part of utility assets. We do not believe that this information requirement will impose an unreasonable burden on section 203 applicants.

165. Any increases in burden will be offset by the additional blanket authorizations that the Commission is granting in this proceeding. Specifically, the Commission will grant a blanket authorization under section 203(a)(1) of the Federal Power Act for certain internal corporate reorganizations, provided that the public utility does not have captive customers and the

[132] Order No. 669 at P 202.

[133] APPA/NRECA Rehearing Request at 38.

[134] TAPSG Rehearing Request at 2–3 and 18–30.

[135] Order No. 669 at P 4.

[136] *Id.* at P 202.

[137] PUHCA 2005 Final Rule at P 17.

[138] 5 CFR 1320.12.

transaction does not present cross-subsidization issues. The Commission will also grant a blanket authorization for holding companies that own or control only EWGs, QFs or FUCOs to acquire the securities of additional EWGs, FUCOs or QFs. In addition, the Commission will grant a blanket authorization allowing any company in the holding company system to acquire the securities of an electric company that owns generating facilities that total 100 MW or less and are primarily used for the acquired company's own load or for sales to affiliated end-users. The Commission will also grant a blanket authorization for transfers of wholesale market-based rate contracts between public utility affiliates that have the same upstream ownership and are not affiliated with a traditional public utility with captive ratepayers. For those entities that are subject to regulatory oversight of the Federal Reserve Bank or the Comptroller of the Currency because of their affiliation with banks or bank holding companies that are regulated by the agencies identified above, the Commission will grant a blanket authorization to acquire and hold an unlimited amount of covered securities for fiduciaries, collateral for loans or for loan liquidation, subject to certain reporting requirements. Further, the Commission will grant a blanket authorization to the banks and their subsidiaries to acquire and hold an unlimited amount of covered securities in connection with failed underwritings, subject to certain conditions. The Commission will also grant a blanket authorization for certain non-banking financial institutions to acquire covered securities in a fiduciary capacity or for hedging purposes, subject to certain conditions and reporting requirements. In sum, taking into account both the additional requirements and the additional blanket authorizations, we believe that one offsets the other and will allow the original projected burden estimates expressed in Order No. 669 to stand. We will, however, adjust these burden estimates accordingly as we receive filings and we will notify OMB of any changes that may be necessary. The Commission did not receive any comments on burden estimates in response to Order No. 669.

166. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–34, Phone: (202) 502–8415, Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*

167. To submit comments concerning the collection(s) of information and provide estimates on the associated burden of these requirements, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4650. Comments should be e-mailed to *oira_submission@omb.eop.gov* and reference the OMB Control number listed above.

V. Document Availability

168. 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 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.

169. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM05–34'' in the docket number field.

170. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

VI. Effective Date

171. Changes to Order No. 669 made in this order on rehearing will become effective on June 15, 2006.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, under the authority of EPAct 2005, the Commission is amending parts 2 and 33 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below:

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352; Pub. L. No. 109–58, 119 Stat. 594.2.

■ 2. Section 2.26 is amended by revising paragraphs (e) and (f) to read as follows:

§ 2.26 Policies concerning review of applications under section 203.

* * * * *

(e) *Effect on regulation.* (1) Where the affected state commissions have authority to act on the transaction, the Commission will not set for hearing whether the transaction would impair effective regulation by the state commissions. The application should state whether the state commissions have this authority.

(2) Where the affected state commissions do not have authority to act on the transaction, the Commission may set for hearing the issue of whether the transaction would impair effective state regulation.

(f) Under section 203(a)(4) of the Federal Power Act (16 U.S.C. 824b), in reviewing a proposed transaction subject to section 203, the Commission will also consider whether the proposed transaction will result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

■ 3. The authority citation for part 33 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 7101–7352; Pub. L. No. 109–58, 119 Stat. 594.

■ 4. The heading of part 33 is revised to read as set forth above.

■ 5. Section 33.1 is revised to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

(a) *Applicability*. (1) The requirements of this part will apply to any public utility seeking authorization under section 203 of the Federal Power Act to:

(i) Sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10 million;

(ii) Merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever;

(iii) Purchase, acquire, or take any security with a value in excess of $10 million of any other public utility; or

(iv) Purchase, lease, or otherwise acquire an existing generation facility:

(A) That has a value in excess of $10 million; and

(B) That is used in whole or in part for wholesale sales in interstate commerce by a public utility.

(2) The requirements of this part shall also apply to any holding company in a holding company system that includes a transmitting utility or an electric utility if such holding company seeks to purchase, acquire, or take any security with a value in excess of $10 million of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10 million.

(b) *Definitions.* For the purposes of this part, as used in section 203 of the Federal Power Act (16 U.S.C. 824b).

(1) *Existing generation facility* means a generation facility that is operational at or before the time the section 203 transaction is consummated. ''The time the transaction is consummated'' means the point in time when the transaction actually closes and control of the facility changes hands. ''Operational'' means a generation facility for which construction is complete (*i.e.*, it is capable of producing power). The Commission will rebuttably presume that section 203(a) applies to the transfer of any existing generation facility unless the utility can demonstrate with substantial evidence that the generator is used exclusively for retail sales.

(2) *Non-utility associate company* means any associate company in a holding company system other than a public utility or electric utility company that has wholesale or retail customers served under cost-based regulation.

(3) *Value* when applied to:

(i) Transmission facilities, generation facilities, transmitting utilities, electric utility companies, and holding companies, means the market value of the facilities or companies for transactions between non-affiliated companies; the Commission will rebuttably presume that the market value is the transaction price. For transactions between affiliated companies, value means original cost undepreciated, as defined in the Commission's Uniform System of Accounts prescribed for public utilities and licensees in part 101 of this chapter, or original book cost, as applicable;

(ii) Wholesale contracts, means the market value for transactions between non-affiliated companies; the Commission will rebuttably presume that the market value is the transaction price. For transactions between affiliated companies, value means total expected nominal contract revenues over the remaining life of the contract; and

(iii) Securities, means market value for transactions between non-affiliated companies; the Commission will rebuttably presume that the market value is the agreed-upon transaction price. For transactions between affiliated companies, value means market value if the securities are widely traded, in which case the Commission will rebuttably presume that market value is the market price at which the securities are being traded at the time the transaction occurs; if the securities are not widely traded, market value is determined by:

(A) Determining the value of the company that is the issuer of the equity securities based on the total undepreciated book value of the company's assets;

(B) Determining the fraction of the securities at issue by dividing the number of equity securities involved in the transaction by the total number of outstanding equity securities for the company; and

(C) Multiplying the value determined in paragraph (b)(3)(iii)(A) of this section by the value determined in paragraph (b)(3)(iii)(B) of this section (*i.e.*, the value of the company multiplied by the fraction of the equity securities at issue).

(4) The terms *associate company, electric utility company, foreign utility company, holding company,* and *holding company system* have the meaning given those terms in the Public Utility Holding Company Act of 2005. The term holding company does not include: A State, any political subdivision of a State, or any agency, authority or instrumentality of a State or political subdivision of a State; or an electric power cooperative.

(5) For purposes of this part, the term captive customers means any wholesale or retail electric energy customers served under cost-based regulation.

(c) *Blanket Authorizations.* (1) Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take any security of:

(i) A transmitting utility or company that owns, operates, or controls only facilities used solely for transmission in intrastate commerce and/or sales of electric energy in intrastate commerce, provided that if any public utility within the holding company system has captive customers, or owns or provides transmission service over jurisdictional transmission facilities, the holding company must report the acquisition to the Commission, including any state actions or conditions related to the transaction, and shall provide an explanation of why the transaction does not result in cross-subsidization;

(ii) A transmitting utility or company that owns, operates, or controls only facilities used solely for local distribution and/or sales of electric energy at retail regulated by a state commission, provided that if any public utility within the holding company system has captive customers, or owns or provides transmission service over jurisdictional transmission facilities, the holding company must report the acquisition to the Commission, including any state actions or conditions related to the transaction, and shall provide an explanation of why the transaction does not result in cross-subsidization; or

(iii) An electric utility company that owns generating facilities that total 100 MW or less and are fundamentally used for its own individual load or for sales to affiliated end-users.

(2) Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take:

(i) Any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company; or

(ii) Any voting security in a transmitting utility, an electric utility company, or a holding company in a

holding company system that includes a transmitting utility or an electric utility company if, after the acquisition, the holding company will own less than 10 percent of the outstanding voting securities; or

(iii) Any security of a subsidiary company within the holding company system.

(3) The blanket authorizations granted under paragraph (c)(2) of this section are subject to the conditions that the holding company shall not:

(i) Borrow from any electric utility company subsidiary in connection with such acquisition; or

(ii) Pledge or encumber the assets of any electric utility company subsidiary in connection with such acquisition.

(4) A holding company granted blanket authorizations in paragraph (c)(2) of this section shall provide the Commission copies of any Schedule 13D, Schedule 13G and Form 13F, at the same time and on the same basis, as filed with the Securities and Exchange Commission in connection with any securities purchased, acquired or taken pursuant to this section.

(5) Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire a foreign utility company. However, if such holding company or any of its affiliates, its subsidiaries, or associate companies within the holding company system has captive customers in the United States, or owns or provides transmission service over jurisdictional transmission facilities in the United States, the authorization is conditioned on the holding company, consistent with 18 CFR 385.2005(b), verifying by a duly authorized corporate official of the holding company that the proposed transaction:

(i) Will not have any adverse effect on competition, rates, or regulation; and

(ii) Will not result in, at the time of the transaction or in the future:

(A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(D) Any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

(iii) A transaction by a holding company subject to the conditions in paragraphs (c)(5)(i) and (ii) of this section will be deemed approved only upon filing the information required in paragraphs (c)(5)(i) and (ii) of this section.

(6) Any public utility or any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under sections 203(a)(1) or 203(a)(2) of the Federal Power Act, as relevant, for internal corporate reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues.

(7) Any public utility in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to purchase, acquire, or take any security of a public utility in connection with an intra-system cash management program, subject to safeguards to prevent cross-subsidization or pledges or encumbrances of utility assets.

(8) A person that is a holding company solely with respect to one or more exempt wholesale generators (EWGs), foreign utility companies (FUCOs), or qualifying facilities (QFs) is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire the securities of additional EWGs, FUCOs, or QFs.

(9) A holding company, or a subsidiary of that company, that is regulated by the Board of Governors of the Federal Reserve Bank or by the Office of the Comptroller of the Currency, under the Bank Holding Company Act of 1956 as amended by the Gramm-Leach-Bliley Act of 1999, is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire and hold an unlimited amount of the securities of holding companies that include a transmitting utility or an electric utility company if such acquisitions and holdings are in the normal course of its business and the securities are held:

(i) As a fiduciary;

(ii) As principal for derivatives hedging purposes incidental to the business of banking and it commits not to vote such securities to the extent they exceed 10 percent of the outstanding shares;

(iii) As collateral for a loan; or

(iv) Solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years, with the following conditions and reporting requirement: The holding does not confer a right to control, positively or negatively, through debt covenants or any other means, the operation or management of the public utility or public utility holding company, except as to customary creditors' rights or as provided under the United States Bankruptcy Code; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held.

(10) Any holding company, or a subsidiary of that company, is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire any security of a public utility or a holding company that includes a public utility:

(i) For purposes of conducting underwriting activities, subject to the condition that holdings that the holding company or its subsidiary are unable to sell or otherwise dispose of within 45 days are to be treated as holdings as principal and thus subject to a limitation of 10 percent of the stock of any class unless the holding company or its subsidiary has within that period filed an application under section 203 of the Federal Power Act to retain the securities and has undertaken not to vote the securities during the pendency of such application; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held;

(ii) For purposes of engaging in hedging transactions, subject to the condition that if such holdings are 10 percent or more of the voting securities

of a given class, the holding company or its subsidiary shall not vote such holdings to the extent that they are 10 percent or more.

(11) Any public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer a wholesale market-based rate contract to any other public utility affiliate that has the same ultimate upstream ownership, provided that neither affiliate is affiliated with a traditional public utility with captive customers.

■ 6. Section 33.2 is amended by revising paragraph (j) to read as follows:

§ 33.2 Contents of application—general information requirements.

* * * * *

(j) An explanation, with appropriate evidentiary support for such explanation (to be identified as Exhibit M to this application):

(1) Of how applicants are providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

(i) Disclosure of existing pledges and/or encumbrances of utility assets; and

(ii) A detailed showing that the transaction will not result in:

(A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act; or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

■ 7. Section 33.11 is revised to read as follows:

§ 33.11 Commission procedures for the consideration of applications under section 203 of the FPA.

(a) The Commission will act on a completed application for approval of a transaction (*i.e.,* one that is consistent with the requirements of this part) not later than 180 days after the completed application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of section 203(a)(4) of the FPA and issues, by the 180th day, an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(b) The Commission will provide for the expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent.

(c) Transactions, provided that they are not contested, do not involve mergers and are consistent with Commission precedent, that will generally be subject to expedited review include:

(1) A disposition of only transmission facilities, including, but not limited to, those that both before and after the transaction remain under the functional control of a Commission-approved regional transmission organization or independent system operator; and

(2) Transactions that do not require an Appendix A analysis; [1] and

(3) Internal corporate reorganizations that result in the reorganization of a traditional public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities, but do not present cross-subsidization issues.

[FR Doc. 06–4041 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement,* Order No. 592, 61 FR 68,595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied,* Order No. 592–A, 62 FR 33,340 (June 19, 1977), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05–32–001, Order No. 667–A]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued April 24, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Order on rehearing.

SUMMARY: In this order on rehearing, the Federal Energy Regulatory Commission (Commission) reaffirms its determinations in part and grants rehearing in part of Order No. 667, which amended the Commission's regulations to implement the repeal of the Public Utility Holding Company Act of 1935 and the enactment of the Public Utility Holding Company Act of 2005.

DATES: *Effective Date:* The final rule and order on rehearing are effective June 15, 2006.

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SUPPLEMENTARY INFORMATION:

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

1. On December 8, 2005, the Federal Energy Regulatory Commission (Commission) issued Order No. 667,[1] in which the Commission amended its regulations to implement the repeal of the Public Utility Holding Company Act of 1935 and the enactment of the Public Utility Holding Company Act of 2005, by adding Subchapter U and Part 366 to its regulations and removing its exempt wholesale generator rules previously

[1] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005).

found in Subchapter T and Part 365. In this order, we deny in part and grant in part the various requests for rehearing received by the Commission, and amend Subchapter U and Part 366 of our regulations accordingly.[2]

Introduction

2. Order No. 667 was issued in response to the Energy Policy Act of 2005 (EPAct 2005),[3] which in relevant part repeals the Public Utility Holding Company Act of 1935 (PUHCA 1935)[4] and enacts the Public Utility Holding Company Act of 2005 (PUHCA 2005).[5] Order No. 667 was issued to comply with various sections of EPAct 2005, which directed the Commission to issue certain rules on or before December 8, 2005.[6]

Background

3. On September 16, 2005, the Commission issued a notice of proposed rulemaking (NOPR)[7] in which it proposed to add a new Subchapter U and Part 366 to Title 18 of the Code of Federal Regulations to implement Title XII, Subtitle F of EPAct 2005 and to remove Subchapter T and Part 365 of Title 18 of the Code of Federal Regulations.

4. Section 1264 of PUHCA 2005 concerns Commission access to the books and records of holding companies and other companies in holding company systems, and section 1275 of PUHCA 2005 addresses the Commission's review and authorization of the allocation of costs for non-power goods or administrative or management services when requested by a holding company system or state commission. The Federal books and records access provision, section 1264, and the non-power goods and services provision, section 1275, of PUHCA 2005 supplement the Commission's existing authorities under the Federal Power Act (FPA)[8] and the Natural Gas Act (NGA)[9] to protect customers against improper cross-subsidization or encumbrances of jurisdictional company assets, including the Commission's broad authority under FPA section 301 and NGA section 8 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities.[10]

5. In implementing Order No. 667, the Commission recognized ''the clear intent of Congress to repeal the regulatory regime established by PUHCA 1935 and to rely on state regulatory authorities and the Commission to protect energy customers, by supplementing the Commission's books and records authority under PUHCA 2005 and by enhancing our already significant authority over public utility mergers, acquisitions and dispositions of jurisdictional facilities.''[11]

6. Subsequent to our issuance of Order No. 667, on February 8, 2006, the repeal of PUHCA 1935 and the new PUHCA 2005 became effective. As we emphasized in Order No. 667, however, the changes in law do not affect our primary means of protecting customers served by jurisdictional companies that are members of holding company systems: the FPA and NGA. In particular, the Commission's rate authorities and information access authorities under the FPA and NGA enable the Commission to detect and disallow from jurisdictional rates any imprudently-incurred, unjust or unreasonable, or unduly discriminatory or preferential costs resulting from affiliate transactions between companies in the same holding company system.[12] Additionally, the Commission's authority under section 203 of the FPA,[13] as amended by EPAct 2005, over mergers and other corporate transactions involving public utilities and certain public utility holding companies provides the ability to ensure that proposed transactions are consistent with the public interest and do not result in inappropriate cross-subsidization or encumbrances of utility assets. We also emphasize that nothing in new Subchapter U and Part 366 of the Commission's regulations affects the Commission's independent ability to obtain access to books and records under the FPA and NGA.

7. Finally, we note that we have committed in Order No. 667 to hold a technical conference no later than one year from the effective date of PUHCA 2005 to assess whether additional actions are needed in order to effectively safeguard ratepayers.

Discussion

1. Definitions

8. A number of commenters sought rehearing and/or clarification of the definitions provided in § 366.1 of the Commission's regulations. However, these requests are more appropriately addressed in the ''Exemption Authority'' section below, and will be discussed there.

2. Books and Records Requirements

9. American Public Power Association and the National Rural Electric Cooperative Association (APPA/NRECA) argue that Order No. 667 should be amended to require that service companies submit as part of their annual report (Form No. 60) detailed supporting schedules for Outside Services Employed and Employee Pensions and Benefits.[14] According to APPA/NRECA, excluding supporting details of the costs incurred for outside services employed and employee pensions and benefits provides an opportunity for non-utility related costs incurred by service companies to be inappropriately passed on to jurisdictional public utilities and the schedule of expense by department or service function in Form No. 60 does not appear to provide sufficient

[2] We note that contemporaneously with this order, we are issuing in Docket No. RM06–11–000, a Notice of Proposed Rulemaking proposing a new Uniform System of Accounts and new record retention requirements, along with conforming changes to 18 CFR 366.21–366.23. *See Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005,* Notice of Proposed Rulemaking, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 32,600 (2006).

[3] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[4] 15 U.S.C. 79a *et seq.*

[5] EPAct 2005 at 1261 *et seq.*

[6] *Id.* at 1266, 1272, 1275. Concurrently with the issuance of Order No. 667, the Commission submitted a report to Congress on proposed technical and conforming amendments to PUHCA 2005. One such proposed amendment was a revision to section 1275(b) to provide for Commission review of cost allocations not only to public utilities but also to natural gas companies within a holding company system. The Interstate Natural Gas Association of America subsequently asked the Commission to clarify that it intended to recommend an amendment to provide for Commission review of cost allocations to gas utility companies and not natural gas companies. We agree. We misspoke and intended to recommend to Congress an amendment to provide for Commission review of cost allocations to gas utility companies and not natural gas companies; there is little or no likelihood of conflicting regulation that would necessitate amendment of section 1275(b) to address cost allocations to natural gas companies. Separately, we also note that our authority with respect to natural gas companies is already substantial and no further authority is needed.

[7] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Notice of Proposed Rulemaking, 70 FR 55,805 (2005), FERC Stats. & Regs. ¶ 32,588 (2005).

[8] 16 U.S.C. 824d–e.

[9] 15 U.S.C. 717c–d.

[10] 16 U.S.C. 825; 15 U.S.C. 717g.

[11] Order No. 667 at P 4.

[12] Since the vast majority of registered public utility holding companies under PUHCA 1935 were electric public utility holding companies, our description here focuses primarily on the FPA. However, except for merger and corporate authority under the FPA, our authorities and processes under the NGA are similar.

[13] 16 U.S.C. 824b; Pub. L. 109–58, 1289, 119 Stat. 594, 982–83 (2005).

[14] APPA/NRECA Rehearing Request at 4.

transparency to enable detection of cross-subsidies.[15]

10. APPA/NRECA further argue that Order No. 667 should be amended to require holding companies to continue to file Securities and Exchange Commission (SEC) Form U–5S for the time being.[16] APPA/NRECA notes that Order No. 667 states the filing of SEC Form U–5S will not be required because ''the information in this form is available in other Commission or SEC filings and/or is not relevant to costs incurred by jurisdictional entities and is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.'' [17] According to APPA/NRECA, by using ''and'' and ''or'' conjunctions, this sentence provides no clear rationale for the Commission's conclusion. Moreover, it does not identify the Commission or SEC filings in which the information in SEC Form U–5S is available or explain why information that is not available in other Commission or SEC filings is not relevant to jurisdictional rates. APPA/NRECA thus urges the Commission to retain Form U–5S and determine at a later date whether to continue requiring holding companies to file it.

11. We will not at this time adopt APPA/NRECA's request and require that service companies submit as part of their annual Form No. 60 detailed supporting schedules for outside services employed and employee pensions and benefits. We are not persuaded that such additional detail is needed in the annual Form No. 60. If necessary, such information is accessible in the context of a rate case when a public utility files to change its rates under section 205,[18] or the Commission, on its own motion, may obtain access to such information as necessary in the context of an audit or the institution of a section 206 rate investigation.[19] Moreover, we note that, in Order No. 667, we committed to hold a technical conference to address, among other things, what changes to the Commission's accounting, record-retention, reporting or related rules may be necessary.[20] APPA/NRECA's concerns would be more appropriately addressed in that technical conference after the Commission has received the first Form No. 60's, which are required to be filed on or before May 1, 2006.[21]

12. We will not require holding companies to continue to file SEC Form U–5S. Section 1264 of EPAct 2005 supplements our broad authority under section 301 of the FPA and section 8 of the NGA to obtain the books and records of public utilities and natural gas companies, and any person that controls, directly or indirectly, a public utility or natural gas company, and any other company controlled by such person, insofar as the books and records relate to transactions with or the business of the jurisdictional company.[22] In Order No. 667, we determined that these FPA and NGA authorities, along with the other accounting, record-retention, and reporting requirements adopted under PUHCA 2005, are sufficient to ensure that the Commission may obtain any books and records relevant to costs incurred by jurisdictional entities. Moreover, we saw no need for the wholesale adoption of SEC Form U–5S because we determined, on balance, that the information contained therein was either duplicative or unnecessary. For example, Item 2 in the U–5S calls for the reporting of acquisitions or sales of utility assets. However, the same or similar information is required to be reported by public utilities within a holding company system on page 108 of their Form No. 1. Similarly, Item 3 in the U–5S calls for reporting the issuance or sale of system securities. The same or similar information is required to be reported by public utilities within a holding company system on pages 256 and 257 of their Form No. 1. Also, the notes to the consolidated financial statements required by Item 10 in the U–5S contain the same information required to be reported in the SEC Form 10–K.

3. Exemption Authority

Section 1266(a) Exemptions

13. A number of the requests for rehearing argue that the Commission should clarify that holding companies that are exempt under section 1266(a) of PUHCA 2005 are not ''holding companies'' and thus should not be required to file either FERC–65 (notification of holding company status) or to seek exemption or waiver by means of FERC–65A (exemption notification) or FERC–65B (waiver notification).[23] Coral Power, L.L.C. and Shell WindEnergy, Inc. (Independent Power Producers) request that the Commission amend Order No. 667 such that the requirement to file FERC–65A is not imposed on entities that they claim, by definition, are not ''holding companies.'' [24] Independent Power Producers further argue that Order No. 667 does not completely implement the Commission's stated intent to deem EWGs, FUCOs, and qualifying facilities (QFs), and power and gas marketers not to be ''public-utility companies'' under PUHCA 2005, and Independent Power Producers thus seek rehearing or clarification insofar as Order No. 667 refers to owners of certain entities that are excluded from the definition of ''public-utility company'' as ''holding companies.'' [25] Similarly, Morgan Stanley Capital Group (Morgan Stanley) urges the Commission to state explicitly that any ''person or company'' qualified to file Form FERC–65A (exemption notification) is merely filing notice that it is not a ''holding company'' under PUHCA 2005, and that such party is not filing as a ''holding company'' applying for exemption from PUHCA 2005's books and records obligations.[26] In the alternative, if the Commission does not provide the clarification requested above, then Morgan Stanley requests rehearing of Order No. 667 to the extent it purports to construe owners of EWGs, FUCOs, and QFs, as well as passive investors, mutual funds, broker/dealers, underwriters or trusts as ''holding companies.'' [27] Finally, NRG requests that the Commission should amend the definition of ''electric utility company'' to provide that a QF is not an ''electric utility company,'' consistent with section 1266(a) of PUHCA 2005 and section 210(e) of PURPA.[28]

14. The Commission will deny the requests to clarify that companies that are exempt under section 1266(a) (*i.e.*, entities that own or control only EWGs, FUCOs, or QFs) are not holding companies under PUHCA 2005. In

[15] *Id.* at 15.

[16] Prior to the repeal of PUHCA 1935, the SEC required registered public utility holding companies to file an annual Form U–5S, providing information on the company's corporate structure, board of directors, acquisitions or sales of utility assets, securities transactions, investments in companies outside the holding company family, political contributions, contracts between the service company and utility affiliates, relations between the holding company and any exempt wholesale generator (EWG) or foreign utility company (FUCO), and a copy of the company's yearly financial reports.

[17] Order No. 667 at P 95.

[18] 16 U.S.C. 824d; 18 CFR 35.13; 18 CFR 385.401–11, 385.504(b)(5).

[19] 16 U.S.C. 824d, 825; 18 CFR 385.401–11, 385.504(b)(5).

[20] Order No. 667 at P 17.

[21] *See* 18 CFR 366.23.

[22] *See* 16 U.S.C. 825(c); 15 U.S.C. 717g(c).

[23] We note that, unlike Form No. 60, the FERC–65, FERC–65A and FERC–65B are not forms *per se*, and we left to the discretion of the person or company filing them how to best provide the information and showing that needs to be submitted.

[24] Independent Power Producers Rehearing Request at 2–3.

[25] *Id.*

[26] Morgan Stanley Rehearing Request at 1.

[27] *Id.* at 4.

[28] NRG Rehearing Request at 3.

defining the term ''holding company'' in PUHCA 2005, Congress expressly excluded from the definition certain financial and securities firms, but did *not* exclude from the definition companies that own, control or hold the power to vote securities of only QFs, EWGs, or FUCOs. Rather, Congress specifically stated in section 1266 of PUHCA 2005 that the Commission was to ''exempt'' from section 1264 of PUHCA 2005 ''any person that is a holding company, solely with respect to one or more [QFs, EWGs, or FUCOs].'' Thus, the wording of the exemption itself recognizes that such persons are holding companies, but mandates that an exemption be provided for such persons.[29] Accordingly, it would be inconsistent with the statute to find that such persons are not holding companies. We recognize, however, that there is an internal inconsistency in our finding that the statute considers such persons to be holding companies and in the regulatory text of Order No. 667 which excludes EWGs from the definition of ''electric utility company.'' As commenters point out, if an EWG is not considered an ''electric utility company,'' then a person that owns only EWGs arguably would not even be a holding company because it does not control an electric utility company.[30] Accordingly, to be consistent with the statutory construction of PUHCA 2005, we are amending § 366.1 of our regulations to remove from the definitions of ''electric utility company'' and ''exempt wholesale generator'' the statement that an EWG is not an electric utility company.[31] Moreover, including EWGs, FUCOs and QFs as electric utility companies is consistent with common usage, which supports defining electric utility companies as companies owning electric facilities (generation, transmission or distribution) for the sale of electric energy. However, as discussed *infra*, persons that are holding companies solely with respect to EWGs, QFs, or FUCOs will receive an automatic exemption and will not be required to file FERC–65 or FERC–65A.

15. For the same reasons, we will deny Morgan Stanley's request that we should treat all passive investors, mutual funds, broker/dealers, underwriters or trusts not as ''holding companies.'' If such entities fall within the exclusion from the definition of holding company contained in § 366.1 of our regulations, which tracks the statutory definition of holding company, they would not be holding companies (and thus would not be subject to Commission regulation under PUHCA 2005), but if they instead fall within the definition of holding company, then they would be holding companies (and, absent exemption or waiver, would be subject to Commission regulation under PUHCA 2005). Section 366.3(b) of our regulations as revised herein, consistent with section 1266(b) of PUHCA 2005, permits the Commission to exempt other persons or classes of transactions based on a determination that their books and records are not relevant to jurisdictional rates. Persons who believe that they are entitled to exemption may seek such exemption if they are not covered by one of the blanket exemptions contained in the rule.

Section 1266(b) Exemptions: Non-Traditional Utilities

16. A number of entities sought clarification with respect to the additional exemptions that the Commission adopted in Order No. 667 pursuant to its discretion under section 1266(b) of PUHCA 2005. With respect to the exemption for ''non-traditional utilities,'' APPA/NRECA request that the Commission clarify that § 366.3(b)(2)'s exemption for ''non-traditional'' utilities without ''captive customers'' will be narrowly construed and that, in particular, the fact that a public utility has been granted market-based rate authority should not be sufficient to qualify it for this exemption.[32] NRG argues that the Commission should clarify the distinction, if any, between the exemption granted to holding companies that own only EWGs, and the exemption granted to holding companies that own non-traditional utilities, and that there is no federal regulatory need to obtain or maintain EWG status if the electric utility company that is owned by a holding company is also a non-traditional utility. NRG reports that banks and other lenders are uncertain about the new exemption, and are insisting that NRG seek traditional EWG status for its projects. To counteract this trend, NRG asks that the Commission clarify that NRG (and other similarly situated entities) need not take any action if NRG wants to create a new non-traditional utility that owns generation (other than filing for and obtaining market-based rates) or if NRG desires to become a holding company of a non-traditional utility that does not also qualify as an EWG, QF or power marketer.[33]

17. With respect to APPA/NRECA's request for clarification of what is now the § 366.3(b)(2)[34] exemption for ''non-traditional utilities,'' we clarify that the mere fact that a public utility has been granted market-based rate authority is not sufficient by itself to allow it, or a holding company owning it, to qualify for this exemption. We clarify that this exemption requires that the person claiming the exemption not have captive customers[35] and not be affiliated with any jurisdictional utility that has captive customers. Further, in response to APPA/NRECA's concerns expressed here as well as on rehearing of Order No. 669[36] with respect to potential cross-subsidization issues involving jurisdictional transmission services, we clarify here consistent with our response on rehearing of Order No. 669[37] that the ''non-traditional utility'' exemption does not apply to persons that own Commission-jurisdictional transmission facilities or that provide

[29] The Commission notes that under sections 32 and 33 of PUHCA 1935, EWGs and FUCOs were not included in the term ''electric utility company.'' However Congress did not include such a statement in PUHCA 2005. Instead, PUHCA 2005 says only that EWGs and FUCOs should have the same ''meanings'' as in PUHCA 1935. The exemptions in PUHCA 1935 were not in the definitional subsections on EWGs or FUCOs. If EWGs, FUCOs and QFs are not electric utility companies, then section 1266(a) would be superfluous. Thus, we reject any arguments that EWGs or FUCOs do not fall under the definition of ''electric utility company.''

[30] As noted previously, to accept this line of argument by commenters would also render the section 1266 exemption superfluous and thus would be inconsistent with the principle that a statute should be construed to give effect to all of its provisions. *See, e.g.*, 2A N. Singer, Statutes and Statutory Construction 46.06 at 181–186 (Rev. 6th Ed. 2000).

[31] We note that there is a similar regulatory text problem in Order No. 671, which excludes QFs from the definition of ''electric utility company.'' *See Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 at P 92, 102 (2006). For the same reasons as discussed above, upon further consideration, we have concluded that the position taken in Order No. 671 would similarly render superfluous the exemption granted in section 1266(a)(1) to a person that is a holding company solely with respect to QFs. Therefore, we clarify here that QFs will not be excluded from the definition of ''electric utility company'' but nevertheless we intend to exempt QFs from PUHCA 2005 and most FPA requirements pursuant to our PURPA authority to grant such exemptions. We intend to revise 18 CFR 292.602 of the Commission's regulations to remove the statement that a QF is not an ''electric utility company'' within the meaning of PUHCA 2005.

[32] APPA/NRECA Rehearing Request at 5, 21.

[33] NRG Rehearing Request at 2.

[34] We note that we have restructured 18 CFR 366.3 to promote readability by more clearly tying former 18 CFR 366.3(d) to former 18 CFR 366.3(b), making them both part of revised 18 CFR 366.3(b).

[35] We note that, in Order No. 669–A, issued concurrently with this order, we have clarified that a utility is considered to have captive customers if it sells electric energy at wholesale or retail under cost-based regulation. *See Transactions Subject to FPA Section 203*, Order No. 669–A, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 31,213 (2006).

[36] *See id.*

[37] *See id.*

Commission-jurisdictional transmission services or to persons that are affiliated with persons that own Commission-jurisdictional transmission facilities or that provide Commission-jurisdictional transmission services.

18. In response to NRG's request for clarification of the ''non-traditional utilities'' exemption, we note that there is some overlap between the mandatory exemption under section 1266(a) (for EWG, QF and FUCO holding companies) and the discretionary exemptions the Commission adopted in Order No. 667 pursuant to its authority under section 1266(b). The statutory exemption is for any person who is a holding company solely with respect to EWGs, FUCOs, or QFs, all of which are ''non-traditional'' utilities. The discretionary exemption for non-traditional utilities that do not have captive customers, adopted pursuant to section 1266(b), additionally covers other non-traditional utilities, such as power exchanges, that do not have captive customers.[38] While there may be an overlap in the two exemptions, and it is possible that a holding company could qualify for both exemptions, we here clarify that the discretionary exemption for non-traditional utilities that do not have captive customers, adopted pursuant to our authority under section 1266(b), is broader in coverage than the statutory exemption under section 1266(a).

Section 1266(b) Exemptions: Local Distribution Companies

19. AOG requests that the Commission clarify that holding companies, which are holding companies only because they own or control exempt local distribution companies (LDCs), are also exempt from § 366 of the Commission's regulations.[39] According to AOG, the Commission has already determined that ''the books and records of local distribution companies that are not regulated by the Commission are not relevant to jurisdictional rates.''[40] Therefore, if a holding company owns only LDCs whose books and records ''are not relevant to jurisdictional rates,'' the holding company itself should have no books and records that would be ''relevant to jurisdictional rates'' and, accordingly, should similarly be exempt from § 366 of the Commission's regulations.

20. In response to AOG, we note that revised § 366.3(b)(2)(vi) of the Commission's regulations provides that any person that is a holding company solely with respect to LDCs that are not regulated as natural gas companies under the NGA would qualify for this exemption. A holding company that owned only such LDCs would be exempted upon compliance with the procedures in § 366.4(b) and there is no need to amend our regulations.[41]

Section 1266(b) Exemptions: Exempt Financing Transactions and Transactions Independent of Public Utilities

21. APPA/NRECA request that the Commission clarify and narrow the scope of §§ 366.3(b)(3) and (4), *i.e.*, exempt ''financing transactions'' and transactions ''independent'' of public utilities. APPA/NRECA notes that § 366.3(b)(3) (now revised § 366.3(b)(2)(iii)) exempts transactions where a:

> Holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company in its holding company system any costs or expenses in connection with goods and services transactions, and will not engage in financing transactions with any such public utility or natural gas company, except as authorized by a state commission or the Commission.

According to APPA/NRECA, a too broad construction of the undefined term ''financing transactions'' might permit a holding company to engage in cross-subsidization of unregulated affiliates by the use of guarantees, swaps, hedges, derivatives, or various financial arrangements other than conventional loans. Moreover, APPA/NRECA contends that access to the books and records is still needed to monitor compliance with regulatory approvals and to guard against other, non-approved transactions. With respect to § 366.3(b)(4)'s (now revised § 366.3(b)(2)(iv)) exemption for ''transactions between or among affiliates that are independent of and do not include a public utility or natural gas company,'' APPA/NRECA asserts that the meaning of ''independent'' and ''include'' is unclear. According to APPA/NRECA, this could be interpreted to mean that books and records are exempt even if there are other intra-company transactions that ''include'' jurisdictional public utilities and which should be subject to the Commission's books and records regulations. Under this interpretation, a service company could engage in ''independent'' transactions with other affiliates that inflate the service company's costs, and then that service company could engage in other transactions that allocate these inflated costs to a jurisdictional public utility or natural gas company. APPA/NRECA thus urges the Commission to clarify that the intended exemption is narrow and ''walls off'' or ''ring fences'' the jurisdictional public utilities and natural gas companies from bearing any costs from, or providing any financial support for, the holding company's non-utility operations.

22. In light of APPA/NRECA's concerns, we will remove the phrase ''except as authorized by a state commission or the Commission.'' This should help address APPA/NRECA's concerns that the provision could be interpreted to allow a holding company to engage in transactions subject to Commission or state approval but without the Commission being permitted to obtain books and records under PUHCA 2005.[42]

23. However, at this time, we will reject APPA/NRECA's request that the Commission clarify and narrow the scope of ''financing transactions'' and transactions ''independent'' of public utilities. APPA/NRECA here appears to be concerned about the potential for a holding company or for unregulated affiliates within a holding company system to engage in inappropriate cross-subsidization or affiliate abuse. We do not believe that we can clarify or narrow these terms in the abstract, but rather we believe that this is an issue best addressed on particular facts as they arise. In addition, though, we note that

[38] Power marketers would also be a type of non-traditional utility. However, because we have determined that power marketers should not be considered ''electric utility companies'' under PUHCA 2005 (consistent with SEC interpretation under PUHCA 1935), there would be no need for an exemption because of ownership of power marketers.

[39] AOG Rehearing Request at 4.

[40] *Id.* (citing Order No. 667 at P 132).

[41] While not raised on rehearing, we are aware that there may be confusion regarding holding companies that have subsidiary holding companies. In response, we note that the exemptions or waivers from the Commission's regulations under PUHCA 2005 that would be granted pursuant to revised 18 CFR 366.3(b) and (c) and revised 18 CFR 366.4(b) and (c) would apply to the holding company and its subsidiaries. Hence, where one holding company holds another, the exemption or waiver that would apply to the parent holding company also would apply to the subsidiary holding company. Where the parent holding company qualifies for an exemption or waiver, the subsidiary holding company would necessarily equally qualify; phrased differently, if the subsidiary did not qualify for a particular exemption or waiver, then the parent would not qualify for that same exemption or waiver either.

[42] A holding company may seek exemption for the class of transactions for which it can make the affirmative certification required by the regulations. To the extent that a holding company or its subsidiaries engage in goods and services or financing transactions affecting jurisdictional companies and subject to Commission review for purposes of assuring just and reasonable rates, the Commission may obtain access to relevant books and records.

we will evaluate this issue further in the technical conference. We also emphasize that the Commission has substantial, existing authority to address such transactions,[43] and section 1275 supplements that authority specifically with respect to the ability of certain holding companies and states to obtain review and authorization of the allocation of costs for non-power goods and services provided by service companies. In addition, APPA/NRECA has not convinced us that this exemption would prevent the Commission from guarding against inappropriate transactions, because the Commission has broad authority under FPA section 301 and NGA section 8 to obtain the books and records of public utility and natural gas companies, of any person that controls such companies, and of any other company controlled by such person, to the extent relevant to jurisdictional rates or activities. Finally, with respect to APPA/NRECA's argument that the exemption for transactions independent of public utilities should be interpreted to ''ring fence'' jurisdictional utilities from the holding company's non-utility operations, we note that in Order No. 667 we rejected the requests of commenters such as APPA/NRECA who urged the Commission to adopt new rules on cross-subsidization, encumbrances of utility assets, diversification into non-utility businesses. We did so because we found that PUHCA 2005 does not give the Commission the authority to issue additional rules on these matters and because at this time we believe the existing rules under the FPA and the NGA are sufficient to prevent inappropriate cross-subsidization.[44] We believe that allowing a holding company to certify that any goods and services costs and financing transactions will be conducted independent of its public utility and natural gas company affiliates represents a further voluntary safeguard holding companies may adopt in exchange for this exemption.

Waivers: Independent Transmission-Only Companies

24. APPA/NRECA further contends that § 366.3(c)(3)'s waiver for investors in independent transmission-only companies should be eliminated.[45] APPA/NRECA notes that the Commission's rationale for this waiver is that ''the rate issues that may arise in connection with entities that serve retail customers or that generate or sell electricity at wholesale are not present with respect to an independent transmission company.'' APPA/NRECA argues that this finding is unexplained and that independent transmission companies within holding companies may still present rate issues that justify compliance with § 366 of the Commission's regulations, *e.g.*, by engaging in cross-subsidization or affiliate abuse.

25. We will reject APPA/NRECA's request that we eliminate the waiver for investors in independent transmission companies. APPA/NRECA misinterprets the scope of this waiver. APPA/NRECA appears to be arguing that a holding company that owned other, non-exempt public-utility companies, but also had an interest in a jurisdictional independent transmission company, would be able to obtain this waiver and thereby shield the entire holding company system from PUHCA 2005. However, this waiver is, by its terms, only available to a person who is a holding company ''solely'' with respect to its interest in an independent transmission company; an investor that is also a holding company within the meaning of PUHCA 2005 due to its ownership of a public-utility company other than the independent transmission company would thus not qualify for this waiver. In addition, we reiterate that the Commission has authority under sections 205 and 206 of the FPA, as well as authority under section 301 of the FPA, to obtain the relevant books and records of the independent transmission company, any company that controls the independent transmission company, and any other company that is controlled by the company that controls the independent transmission company.

Waivers: Single-State Holding Company Systems

26. Section 366.1 of Order No. 667's regulatory text defines the term ''single-state holding company system'' as ''a holding company system whose public utility operations are confined substantially to a single state.'' The term is used in § 366.3(c)(1) to allow single-state holding company systems to request waiver of the books and records requirements of §§ 366.21, 366.22, and 366.23. Additionally, § 366.5(b), relating to a holding company or state commission obtaining a cost allocation determination from the Commission pursuant to section 1275(b) of PUHCA 2005 (which involves cost allocation of non-power goods and services costs), also makes reference to holding company systems ''whose public utility operations are confined substantially to a single state;'' but, it does not use the defined term ''single-state holding company system.''

27. Consolidated Edison and Orange and Rockland Utilities (ConEd) argue that the operations of generation and marketing affiliates should not be considered in evaluating requests for waiver under § 366.3(c)(1) because the operations of such affiliates are not relevant to that waiver and would frustrate the objective of Order No. 667. ConEd thus urges the Commission to clarify that only public-utility company revenues count for purposes of the single-state holding company system waiver.[46] Edison International (Edison) separately argues that, in § 366.5(b) of the Commission's regulations, the Commission erred by using the phrase ''public utility operations'' rather than ''public-utility company operations.'' According to Edison, this error potentially eliminates the ability of numerous holding companies that had obtained a single-state exemption under PUHCA 1935 from obtaining exemption under § 366.5(b) of the Commission's regulations—which the narrative text of Order No. 667 plainly indicates should remain available to them.[47]

28. In light of the comments of ConEd and Edison, we realize that there is confusion in Order No. 667's regulatory text with respect to the Commission's regulatory ''single state holding company system'' waiver pursuant to § 366.3(c)(1) from the accounting, reporting and records retention requirements, and the separate statutory exemption under PUHCA 2005 section 1275(d) for ''holding company systems whose public utility operations are confined substantially to a single state.''[48] The confusion is compounded by the fact that we defined the term ''single state holding company system,'' which is relevant to the regulatory waiver pursuant to § 366.3(c)(1), by reference to the language used in connection with the separate statutory exemption of PUHCA 2005 section

[43] The Commission's existing ratemaking authorities under sections 205 and 206 of the FPA and section 4 and 5 of the NGA enable it to protect customers against improper cross-subsidization or encumbrances of assets and to disallow from jurisdictional rates any imprudently-incurred, unjust or unreasonable, or unduly discriminatory or preferential costs resulting from affiliate transactions between companies in the same holding company system.

[44] Order No. 667 at P 241.

[45] APPA/NRECA Rehearing Request at 4.

[46] ConEd Rehearing Request at 1.

[47] Edison Rehearing Request at 2.

[48] As we discuss further below, the regulatory waiver of 18 CFR 366.3(c)(1) considers ''public-utility company'' revenues, while the statutory exemption of PUHCA 2005 section 1275(d) considers ''public utility'' operations and revenues—and PUHCA 2005 and consequently our regulations define the two terms differently.

1275(d). In retrospect, this definition is unnecessary in light of other clarifications being made to the regulatory text, and we will therefore delete it from the regulations. Our intent in adopting the ''single state holding company'' regulatory waiver of § 366.3(c)(1) from the accounting, reporting and records retention requirements was to provide a waiver similar to the exemption provided by the SEC under section 3(a)(1) of PUHCA 1935 for ''a holding company and every subsidiary thereof which is a 'public-utility company' '' if they were predominantly intrastate in character and carried on their business substantially in a single state in which the holding company and its subsidiaries were organized. Further, our intent was to adopt for this waiver the 13 percent test previously used by the SEC, *i.e.*, we would consider an entity to be a single state holding company system if the holding company system derives no more than 13 percent of its ''public-utility company'' revenues from outside a single state. However, we did not include this 13 percent test in the regulatory text. Accordingly, we will add to the ''single state holding company system'' regulatory waiver of § 366.3(c)(1) specific regulatory text to reflect that a holding company system will be deemed to be single state holding company system for purposes of the waiver if it derives no more than 13 percent of its ''public-utility company'' revenues from outside a single state.[49]

29. With respect to the separate PUHCA 2005 section 1275(d) statutory exemption, our intent was to use the 13 percent test but adapt it to reflect the specific language of section 1275. Section 1275 clearly states that the exemption is to be for ''any company in a holding company system whose *public utility* operations are confined substantially to a single State * * *''[50] Thus, under section 1275(d), if a holding company system has ''public utility'' operations (as opposed to ''public-utility company'' operations) confined substantially to a single state, then that holding company system or a state having jurisdiction over a ''public utility'' in that holding company system, may not obtain a Commission determination of service cost allocations pursuant to section 1275. Although the SEC's 13 percent test was used by the SEC in the context of an exemption focusing on ''public-utility company'' operations rather than a narrower focus on ''public utility'' operations, we believe it is reasonable to use such a test for purposes of section 1275(d). Further, we believe we are constrained by the specific language of section 1275(d) to confine the test to ''public-utility'' operations.

30. Accordingly, we grant in part and deny in part the request to apply the 13 percent test to ''public-utility company'' operations.

31. Additionally, as noted above, section 1275(d) of PUHCA 2005 uses ''public utility'' as defined in section 201(e) of the FPA, which is ''any person who owns or operates facilities subject to the jurisdiction of the Commission under [Part II of the FPA]''[51] *i.e.*, facilities used for the transmission of electric energy in interstate commerce or for sales of electric energy at wholesale in interstate commerce. For purposes of section 1275(d) of PUHCA 2005, this would include owners of ''paper facilities'' such as power marketers, as well as owners of actual physical facilities, such as owners of generation facilities.[52] Because we realize there could be ambiguity in pinning down in which State a power marketer derives its revenues, we clarify that the Commission will rebuttably presume that a power marketer's sales (and thus its revenues) take place outside a single State. Should a company wish to rebut this presumption, it may request a declaratory order that the power marketer's sales take place within a single State. Barring such a declaratory order, the revenues of affiliated power marketers will be counted in determining whether the 13 percent threshold for out-of-state revenue is satisfied and thus whether an entity qualifies for the section 1275(d) statutory exemption.[53]

32. Finally, we take this opportunity to clarify that a holding company system seeking single-state holding company system waiver under § 366.3(c)(1) of our regulations must sufficiently justify in its FERC–65B filing its claim that the holding company system meets the 13 percent threshold for out-of-state revenues necessary to qualify as a single-state holding company system.

Exemptions and Waivers: Procedural Matters

33. Finally, APPA/NRECA requests that Order No. 667 be amended to provide that no exemption or waiver of a holding company is effective except upon the issuance of an affirmative Commission order to that effect, rather than allowing a ''notification'' of exemption or waiver to become effective in 60 days upon Commission inaction.[54] APPA/NRECA notes that there is no pre-existing body of Commission interpretation or precedent under PUHCA 2005 to guide interested parties and that timely development of Commission precedent under PUHCA 2005 may not occur with this procedure. Moreover, APPA/NRECA emphasizes that this procedure invites abuse by holding companies seeking unjustified exemptions or waivers, and Order No. 667 provides no remedies when an exemption or waiver is erroneously allowed to take effect. Finally, APPA/NRECA contends that this procedure threatens to frustrate PUHCA 2005's central purpose, which is to prevent harm before it occurs, and signals a lax rather than vigorous approach to enforcement.[55]

34. We reject APPA/NRECA's request that Order No. 667 be amended to provide that no exemption or waiver is effective except upon the issuance of an affirmative Commission order to that effect. Section 1266 of PUHCA 2005 does not require the Commission to adopt any specific procedures to implement the exemptions or waivers. Instead, section 1272(1) of PUHCA 2005 authorizes the Commission to issue

[49] If a holding company system has already filed for the regulatory waiver of 18 CFR 366.3(c)(1) using the 13 percent of ''public utility'' revenues standard, it does not need to re-file, since it would automatically meet the broader ''public-utility company'' revenues standard.

[50] Emphasis added. Section 1275(a) provides that the term ''public utility'' as used in section 1275 has the same meaning as in section 201(e) of the FPA. Thus, this section is narrowly focused on a subset of public-utility companies (*i.e.*, focused on public utilities) and the ability of holding companies and states to obtain cost allocation determinations affecting public utilities and their customers under this provision. Where public utility operations are substantially confined to a single state, presumably a state commission would have sufficient ability to make such determinations and such determinations would not involve multi-state allocation issues among public utilities.

[51] This definition would not include facilities that would be subject to Commission jurisdiction solely by reason of sections 206(e) and (f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, or 222 of the FPA.

[52] *See* Order No. 667 at P 28 (holding that power marketers are not ''public-utility companies'' under PUHCA 2005, but are ''public utilities'' under the FPA).

[53] While, consistent with SEC precedent, we do not treat power marketers as ''electric utility companies'' and thus as ''public-utility companies'' under PUHCA 2005, power marketers *are* considered to be ''public utilities'' and thus their revenues would be taken into account with respect to the section 1275(d) statutory exemption because that exemption focuses on ''public utility'' operations and revenues. Their revenues would not be taken into account with respect to the 18 CFR 366.3(c)(1) waiver, however, because that waiver focuses on ''public-utility company'' revenues.

[54] APPA/NRECA Rehearing Request at 4.

[55] *Id.* at 19.

such regulations as it finds necessary or appropriate to implement PUHCA 2005. The Commission has had extensive experience in processing self-certifications and Commission certifications for QFs under PURPA as well as extensive experience processing EWGs within a statutory timeframe under the former section 32 of PUHCA 1935, and we believe an effective program of exemptions and waivers can be achieved with adequate protection of customers—through the process and deadlines we have established and the substantive provisions of the FPA and NGA.

35. We further note that section 1266(a) of PUHCA 2005, in particular, is a mandatory exemption and that the Commission has no discretion to deny exemption to a person that is a holding company solely with respect to QFs, EWGs, or FUCOs.[56] In fact, as discussed further below, the statute appears to contemplate an automatic exemption for such holding companies. Thus, any objections regarding status of the QFs, EWGs or FUCOs themselves are more appropriately addressed in, and can be addressed in, the underlying proceedings in which they seek to qualify for such status.[57]

36. We clarify that persons that are holding companies with respect to QFs, EWGs, or FUCOs are automatically exempt from section 1266(b) and do not need to file a notification of holding company status or a FERC–65A. Other entities seeking exemption pursuant to section 1266(b) of PUHCA 2005 and §§ 366.3(b) and 366.4(b) of the Commission's regulations, or waiver pursuant to §§ 366.3(c) and 366.4(c) of the Commission's regulations, however, must file both a FERC–65 (notification of holding company status) as well as a FERC–65A (exemption notification) or FERC–65B (waiver notification). These latter filings will be noticed in the **Federal Register** for public comment to allow interested persons the opportunity to raise objections with the Commission as to whether the holding company in fact qualifies for the claimed exemption or waiver.[58] In addition, the Commission may toll the 60-day period if it concludes that further information is necessary to determine whether a person qualifies for the requested exemption or waiver.

37. And what will now be § 366.4(e) (formerly § 366.4(d))[59] provides for revocation of an exemption or waiver should the person or company no longer qualify for such exemption or waiver. Indeed, if circumstances change such that a person or company no longer qualifies for exemption or waiver, or no longer conforms to the material facts or representations in its submittals to the Commission, it can no longer rely on such exemption or waiver.

4. Allocation of Costs of Non-Power Goods or Services

38. In Order No. 667, the Commission allowed centralized service companies to sell non-power goods and services to affiliated utilities using an ''at cost'' standard. There is a rebuttable presumption that such ''at cost'' sales for such non-power goods and services between a centralized service company and its affiliates are reasonable. Non-power goods and services transactions between holding company affiliates other than centralized service companies, *i.e.*, service companies that are special-purpose affiliates such as a fuel supply company or a construction company, continue to be subject to the Commission's lower of cost or market standard. Finally, rather than require the filing of individual cost allocation agreements, the Commission allowed service companies to provide such information in their annual Form No. 60 filings.

Allocation of Costs of Non-Power Goods or Services: Filing of Agreements

39. APPA/NRECA requests rehearing of the Commission's decision not to require the filing of every individual cost allocation agreement between affiliated companies for the purchase of non-power goods and services. APPA/NRECA argues that there are two problems with relying on information submitted on Form No. 60. First, only traditional, centralized service companies are required to file a Form No. 60; special purpose service companies would not have to file a Form No. 60 and could avoid scrutiny of their non-power goods and services transactions. Second, the information on a Form No. 60 is not sufficient to determine whether costs are just and reasonable. Without the filing of cost allocation agreements, APPA/NRECA assert that costs may be inappropriately shifted to consumers. Additionally, APPA/NRECA note that the filing burden associated with filing cost allocation agreements is minimal since the agreements already exist, and would merely have to be filed. Alternatively, even if the Commission does not require the filing of cost allocation agreements, it should clarify that Order No. 667 does not prejudge whether particular cost allocation agreements must be filed in a particular ratemaking proceeding.

40. We disagree with APPA/NRECA that the Commission should require the filing of all non-power goods and services cost allocation agreements with the Commission. At this time, we believe the burden of formal filing for Commission review of every non-power goods and service cost allocation agreement far outweighs any benefit that would be gained from such filing and review. Importantly, though, the Commission retains the authority to require in particular instances the filing of such cost allocation agreement should it determine that doing so is necessary to protect ratepayers.[60] In this regard, we retain our full authority under sections 4 and 5 of the NGA and sections 205 and 206 of the FPA to protect customers. As we stated in Order No. 667:

> Furthermore, where appropriate, we will rely on our ratemaking authority to examine these agreements or require them to be filed on an as-needed basis to determine whether the regulated utility's purchases of non-power goods and services were prudently incurred and just and reasonable.[61]

41. We also disagree that the information provided on Form No. 60, in conjunction with information that would be available from exercise of other statutory authority, including audits, would be insufficient to ensure just and reasonable rates.[62] Form No. 60 provides extensive information with comparatively little regulatory burden. And we agree with APPA/NRECA that the filing of Form No. 60 would not limit the Commission's ability to require additional information in a particular proceeding.

42. Finally, as we noted in Order No. 667, we will revisit the issue of whether Form No. 60 is sufficient to carry out our statutory duties at a future technical conference. While ''[i]t is neither

[56] Section 1266(a) of PUHCA 2005 directed the Commission to adopt a final rule, within 90 days of the effective date of PUHCA 2005, exempting from section 1264 of PUHCA 2005 any person that is a holding company solely with respect to QFs, EWGs, or FUCOs.

[57] We take this opportunity to clarify that, with the elimination of Part 365, the filing fee provided for in 18 CFR 381.801 for applications under Part 365 is no longer applicable. We will address revisions to our filing fee regulations in a separate proceeding.

[58] Alternatively, we note that they may instead file a petition for declaratory order. That filing, too, would be noticed in the **Federal Register** for public comment.

[59] The renumbering reflects the addition of a provision intended to address material changes in fact subsequent to a grant of exemption or waiver. As originally promulgated, the regulations did not address such changes.

[60] Even if not required to be filed, such agreements also may be the subject of discovery in particular proceedings. *See* 18 CFR 385.401–11, 385.504(b)(5).

[61] Order No. 667 at P 151.

[62] *Id.* at P 152.

necessary nor appropriate to require the submission of additional forms at this time,'' we did ''not foreclose the possibility that additional filing requirements will later be found necessary.'' [63]

Allocation of Costs of Non-Power Goods or Services: Newly Created Service Companies

43. Cinergy requests clarification that both existing and newly created centralized service companies will be permitted to use the at-cost standard for sales of non-power goods and services. Specifically, paragraph 169 of Order No. 667 states that ''we will not require traditional, centralized service companies *currently using* the SEC's at-cost standard to comply with the Commission's market standard'' (emphasis added). If this is not what the Commission intended, Cinergy requests rehearing and asserts that no distinction should be made between an existing centralized service company and a newly-formed centralized service company. Cinergy adds that it expects to create such a new centralized service company, once its merger with Duke Energy is completed, that will offer centralized services to both companies.

44. In response to Cinergy, it is the type of service company—not the date of its creation—that will govern whether the particular service company will be subject to an ''at cost'' or a ''lower of cost or market'' standard. Hence, we will not treat newly-formed centralized service companies differently merely because they are newly-formed; all centralized service companies will be subject to an ''at cost'' standard.

Allocation of Costs of Non-Power Goods or Services: Definition of ''Service Company''

45. ConEd requests clarification that only service companies that provide services to traditional utilities having cost-based rates should fall within the centralized service company category. ConEd notes that service companies may also provide services exclusively to generation or marketing affiliates that do not have cost-based rates. Since such generation and marketing affiliates typically sell power and energy at market-based rates, there is no need for the Commission to review the books and records of such a company. ConEd proposes modifying the definition of ''service company'' by substituting ''public-utility company'' for ''public utility,'' so that the definition would read:

The term ''service company'' means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public-utility company in the same holding company system.

46. With respect to the definition of ''service company,'' since PUHCA 2005 is primarily a books and records access statute that assists us in assuring that jurisdictional rates are just and reasonable, we generally agree with ConEd that it should not be necessary for ''service companies'' providing goods and services solely to generation or marketing affiliates that sell at market-based rates to follow the Uniform System of Accounts, as required of service companies that provide services to traditional utilities. Granting these entities a waiver would reduce the regulatory burden on service companies within a holding company system that are providing goods and services solely to entities selling at market-based rates. However, we believe that a blanket waiver for such service companies could be overly broad and potentially invite abuses.[64] Instead, we will permit service companies providing goods and services solely to member companies that do not sell at cost-based rates to come to the Commission with case-specific requests for waiver of our accounting requirements found in § 366.22 and the requirement to file Form No. 60 in § 366.23. Both §§ 366.22 and 366.23 already state that service companies ''otherwise exempted or granted a waiver by Commission rule or order'' are not required to comply with those portions of our regulations. A service company seeking such waiver should file a petition for declaratory order pursuant to § 385.207(a) of our regulations justifying the request for waiver.[65] Any service company seeking such waiver shall bear the burden of demonstrating that such an exemption is warranted.

Allocation of Costs of Non-Power Goods or Services: Special Purpose Service Companies

47. APPA/NRECA argues that any bright-line distinction between special purpose service companies and traditional, centralized service companies may become blurred, and that the Commission should not create an incentive for companies to use one type of service company over another. Instead, the Commission should adopt one cost standard applicable to all service companies and that standard should be the market standard, and the Commission should set a date-certain when all service companies will use the market standard for all non-power goods and services transactions. Alternatively, the Commission should require all holding companies to file a notice and description of functions when creating any new service company and to file an annual report listing and describing all special-purpose service companies not required to file a Form No. 60.

48. In response to APPA/NRECA's concerns that the Commission should adopt one standard for all service companies, a market standard, we found in Order No. 667 that centralized service companies and service companies that are special-purpose service companies should not be subject to the same standard. Rather, only the latter should be subject to a market standard.[66] We are not persuaded that we should adopt a different approach on rehearing. The two types of service companies are different types of service companies, as we noted in Order No. 667, and it is appropriate to adopt a different standard for each. Special purpose service companies are different from centralized service companies in that they provide a discrete good or service, typically one for which a market price can be determined. This is in contrast to centralized service companies that provide a wide array of services (such as legal, accounting, human resources, and other administrative resources) for which establishing a market price may be difficult or even impossible.[67] Sales of non-power goods and services from special-purpose service companies to public utility affiliates thus will continue to be governed by the Commission's existing market standard, while sales of non-power services from centralized service companies should be subject to an ''at cost'' standard.[68]

49. We share APPA/NRECA's concern that the distinction between different types of service companies may become blurred over time, however. We will thus monitor the evolution of service companies and will reevaluate the application of the ''at cost'' standard as appropriate. We will require service companies that do not file Form No. 60 instead to file annually a narrative

[63] *Id.* at P 98.

[64] We adopt this approach rather than ConEd's suggested modification to the definition of service company, since our regulatory concerns are with respect to allocation of costs to entities whose rates are regulated by the Commission under the FPA and NGA, *i.e.*, public utilities and natural gas companies.

[65] *See* 18 CFR 385.207(a).

[66] Order No. 667 at P 167–71.

[67] *Id.* at P 169.

[68] *Id.* at P 171; *see also id.* at P 171 n.178 (discussing the differences between service companies).

description of their functions, to be identified as FERC–61. This will aid us in our monitoring of the evolution of service companies. Additionally, if a person has concerns that a particular service company is not following the appropriate rules, that person may file a complaint with the Commission. In complying with this new requirement, a holding company may make a single filing on behalf of all such service company subsidiaries.

5. Previously Authorized Activities

50. MGTC contends that Order No. 667 is vague and ambiguous with respect to the continuing validity of prior determinations made by the SEC. MGTC notes that, in paragraph 200 of Order No. 667, the Commission acknowledged but does not resolve MGTC's request for clarification that a person found by the SEC not to be a gas utility company under PUHCA 1935 would not be a natural gas company under PUHCA 2005. MGTC requests that the Commission grant clarification or rehearing, and confirm that prior status determinations by the SEC, such as that currently applicable to MGTC, remain valid.

51. MGTC adds that, to the extent the Commission intended Order No. 667 to establish a termination date of December 31, 2007 for prior SEC status determinations, without regard to whether the underlying facts are unchanged, the Commission should grant clarification or rehearing by amending § 366.6 of its regulations to provide that the December 31, 2007 sunset date with respect to the continuing validity of prior determinations and orders issued by the SEC is inapplicable to orders issued without expiration dates to individual entities finding that such entities are not subject to PUHCA 1935.

52. We agree with MCTC that SEC determinations of status are not ''sunsetted'' under this regulation and are distinct from the ''authorizations'' addressed by the regulations. Moreover, while we are not necessarily bound by such SEC determinations, we expect to follow them generally but that changed facts or circumstances may warrant the Commission ultimately reconsidering and reaching a different conclusion.

6. Exempt Wholesale Generators and Foreign Utility Companies

53. APPA/NRECA asserts that Order No. 667 should be amended to provide that no certification of EWGs or FUCOs becomes effective except upon the issuance of an affirmative Commission order to that effect, rather than allowing a notice of self-certification to become effective in 60 days upon Commission inaction.[69] APPA/NRECA notes that the Order No. 667 reverses field from the NOPR and concludes that it can continue to certify EWGs and FUCOs despite the repeal of PUHCA 1935. APPA/NRECA contends that, given the past problems with QF self-certifications, the Commission's adoption of that same procedure without any explanation is unjustified. APPA/NRECA further asserts that, if the Commission is uncertain whether it even still has the authority to continue certifying additional EWGs and FUCOs (an uncertainty evidenced by the NOPR), it makes no sense for the Commission to now adopt a procedure for their self-certification without Commission action.[70]

54. NRG requests that the Commission clarify whether EWGs can simply report activities that are incidental to the sale of electric energy at wholesale and that generate revenue through the self-certification process in § 366.7(a) of the Commission's regulations (without having to file a petition for declaratory order).[71]

55. We reject APPA/NRECA's request that we revise Order No. 667 to provide that EWG and FUCO certification will be effective only upon Commission order. In Order No. 667, balancing the facts that Congress repealed sections 32 and 33 of PUHCA 1935 in their entirety, yet PUHCA 2005 still referred to sections 32 and 33 with respect to the meaning of EWGs and FUCOs, we concluded that it is reasonable to interpret PUHCA 2005 to allow entities to continue to obtain EWG and FUCO status under PUHCA 2005.[72] APPA/NRECA has not demonstrated that the Commission's construction of the statute is impermissible. There is nothing in PUHCA 2005, however, that prescribes, or even addresses the procedures for obtaining EWG and FUCO status.[73] And the procedure the Commission has adopted for EWGs and FUCOs is really no different than the procedures long used for QFs and even similar to the procedures employed for rate filings under section 205 of FPA and section 4 of the NGA[74] and adopted for exemptions and waivers under PUHCA 2005.

56. Moreover, while APPA/NRECA is concerned with the notion of self-certification generally, APPA/NRECA does not identity for us the particular problems with the Commission's self-certification procedure for QFs that concern it and that carry over to self-certification of EWG and FUCO status, and, in fact, the process for QFs has recently been reaffirmed.[75] Unlike in the past with respect self-certification of QFs,[76] the self-certifications of EWG and FUCO status will be noticed in the **Federal Register**, allowing interested persons an opportunity to object in particular cases should they find it appropriate to do so.[77] This opportunity to object in particular cases should vitiate any remaining concerns that APPA/NRECA may have.

57. With respect to NRG's request for clarification, we note that Order No. 667 does not set forth a particular set of circumstances in which applicants must file a petition for declaratory order to obtain EWG or FUCO status. Accordingly, we clarify that persons seeking EWG status, in particular, may report activities that are incidental to the sale of electric energy at wholesale and that generate revenue through the self-certification process. However, we emphasize that, in all situations, it is incumbent upon persons seeking such status to determine, in light of existing Commission precedent, whether such incidental activities would cause the person to fail to satisfy the statutory criteria for EWG status. Furthermore, the Commission may, for example, toll the 60-day period to request additional information, or to allow for further consideration of the request (in which case the EWG status will not be deemed to have been granted after 60 days from the date of filing).

7. Cross-Subsidization and Encumbrances of Utility Assets

58. APPA/NRECA argue that the Commission should adopt regulations to prohibit public utilities from providing financial support to the nonutility businesses of their parent holding companies and nonutility affiliates; the Commission's decision not to adopt such regulations, APPA/NRECA states, was unexplained and unjustified.[78]

[69] APPA/NRECA Rehearing Request at 4.

[70] *Id.* at 20.

[71] NRG Rehearing Request at 2.

[72] Order No. 667 at P 225.

[73] *Id.* at P 229.

[74] Section 205 of the FPA and section 4 of the NGA allow for proposed rates to go into effect by operation of law if the Commission does not act within a particular timeframe: Typically 60 days for filings pursuant to section 205 of the FPA; and typically 30 days for filings pursuant to section 4 of the NGA.

[75] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 78.

[76] We now issue, and publish in the **Federal Register**, notices of the filing of self-certifications for qualifying facility status by new cogeneration facilities. *Id.* at P 80.

[77] Order No. 667 at P 225.

[78] APPA/NRECA Rehearing Request at 3.

59. In Order No. 667, we noted that PUHCA 2005 is primarily a books and records access statute and does not give the Commission any new substantive authorities, other than the requirement in section 1275 of PUHCA 2005 that the Commission review and authorize certain non-power goods and services cost allocations among holding company members upon request. Nor does it give the Commission authority to pre-approve holding company activities. APPA/NRECA has presented no reason that persuades us that we have erred in this respect.[79] Accordingly, we will deny its request for rehearing in this regard. If in the future we find that additional safeguards such as those suggested by APPA/NRECA are needed, we will take appropriate actions under our FPA and NGA authorities.

8. Miscellaneous

60. The Commission, in addition to the changes to the regulatory text to reflect the above discussion, takes this opportunity to make certain minor corrections as well as to provide further clarification and filing guidance: (1) The Commission will revise the regulations to provide, both as to exemptions and waivers, and as to EWG and FUCO status determinations, a process to deal with subsequent material changes in facts. (2) We clarify that the FERC–65, FERC–65A, and FERC–65B filings and the notices of self-certification for EWG and QF status addressed in § 366 must be subscribed, pursuant to Rule 2005(a) of the Rules of Practice and Procedure,[80] but need not be verified.[81] (3) The Commission has also included, in the regulations addressing EWG and FUCO determinations, references to provisions and obligations that applications might otherwise have mistakenly ignored, thus potentially delaying action on, and the effectiveness of, their filings for EWG and FUCO status. (4) If there are multiple holding companies within a single holding company system, the parent holding company may file on behalf of all the holding companies within the system the notification of holding company status so long as all relevant information is included. (5) All holding companies claiming an exemption or waiver must make a filing pursuant to §§ 366.4(b) or (c), respectively,[82] except persons that are holding companies with respect to EWGs, QFs, or FUCOs. The latter receive an automatic, self-effectuating exemption and do not need to file a notification of status or a notice of exemption. (6) The Commission clarifies the difference between exemptions and waivers. If an entity receives an *exemption*, unless otherwise specified, it will be exempt from the entire subchapter—both the accounting and record retention requirements as well as the Commission's access on a case-specific basis under § 366.2 to whatever books and records the company maintains. If an entity receives a *waiver*, on the other hand, only the accounting and record retention requirements will be waived. Such company remains subject to the Commission's ability to obtain access to its books and records under § 366.2 on a case-specific basis, however. (7) Any person that obtained EWG or FUCO status prior to February 8, 2006, does not need to re-apply under this subpart unless facts have changed which might affect its status.

61. Finally, for the convenience of interested persons given the number and scope of the changes, so that the revised § 366 regulations are available in convenient form, the Commission has attached the revised § 366 regulations in their entirety, rather than attaching just the changes.

9. Information Collection Statement

62. The regulations of the Office of Management and Budget (OMB)[83] require that OMB approve certain information requirements imposed by an agency. OMB has approved the information requirements contained in Order No. 667. Specifically, OMB approved the following information collections and assigned the corresponding OMB control numbers: Notification of Holding Company Status (FERC–65) (1902–0218); Exemption Notification (FERC–65A) (1902–0216); Waiver Notification (FERC–65B) (1902–0217) and Annual Report by Service Companies (Form No. 60) (1902–0215).

63. This order on rehearing adopts a number of changes. Two of these are important with respect to information collection. First, as noted above, we will now exempt from information collection, *i.e.*, from the need to file FERC–65 and FERC–65A, holding companies that hold only qualifying facilities, exempt wholesale generators, and foreign utility companies; such holding companies will not need to file FERC–65 and FERC–65A. Second, in response to the comments of APPA/NRECA, we will require service companies that do not file Form No. 60 instead to file annually a narrative description of their functions (which will be identified as FERC–61). We do not anticipate that this new requirement to file a narrative description will impose a significant burden on service companies, although the narrative description will necessarily vary in length for each company depending on the range of functions each company performs. Until the Commission has some experience with the administration of this latter requirement, it will be difficult to project how many companies need to respond to this requirement or the effort required to respond. Therefore, taking into account both changes, we will allow the original projected burden estimates expressed in Order No. 667 to stand. We will, however, adjust these burden estimates accordingly as we receive filings and we will notify OMB of any changes that may be necessary.

64. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–34], Phone: (202) 502–8415, Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*

65. To submit comments concerning the collection(s) of information and provide estimates on the associated burden, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], Phone: (202) 395–4650. Comments should be e-mailed to *oira_submission@omb.eop.gov* and reference the OMB Control numbers listed above.

The Commission orders:

Rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

List of Subjects in 18 CFR Part 366

Electric power, Natural gas, Public utility holding companies and service companies, Reporting and recordkeeping requirements, and Cost allocations.

■ In consideration of the foregoing, under the authority of EPAct 2005, the

[79] We further note that section 1289 of EPAct 2005 amended section 203 of the FPA to explicitly direct the Commission to consider the cross-subsidization issues raised by APPA/NRECA.

[80] 18 CFR 385.2005(a).

[81] *See* 18 CFR 385.2005(b).

[82] Holding companies that seek an exemption or waiver pursuant to 18 CFR 366.4(b) or (c) must also file a FERC–65, notification of holding company status. Particularly if the filings are to be e-filed, however, the filings should be submitted to the Commission as separate filings rather than as a single filing.

[83] 5 CFR 1320.12.

Commission is amending part 366 in Chapter I of Title 18 of the *Code of Federal Regulations*, as set forth below:

■ 1. Subchapter U, consisting of part 366, is revised to read as follows:

Subchapter U—Regulations Under the Public Utility Holding Company Act of 2005

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

Subpart A—PUHCA 2005 Definitions and Provisions

Sec.
366.1 Definitions.
366.2 Commission access to books and records.
366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.
366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.
366.5 Allocation of costs for non-power goods and services.
366.6 Previously authorized activities.
366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

366.21 Accounts and records of holding companies.
366.22 Accounts and records of service companies.
366.23 FERC Form No. 60, annual report of service companies, and FERC–61, narrative description of service company functions.

Authority: Pub. L. 109–58, 1261 *et seq.*, 119 Stat. 594, 972 *et seq.*

Subpart A—PUHCA 2005 Definitions and Provisions

§ 366.1 Definitions.

For purposes of this part:

Affiliate. The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

Associate company. The term ''associate company'' of a company means any company in the same holding company system with such company.

Commission. The term ''Commission'' means the Federal Energy Regulatory Commission.

Company. The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

Construction. The term ''construction'' means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

Electric utility company. The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. For the purposes of this subchapter, ''electric utility company'' shall not include persons that engage only in marketing of electric energy.

Exempt wholesale generator. (1) The term ''exempt wholesale generator'' means any person engaged directly, or indirectly through one or more affiliates as defined in this subchapter, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. For purposes of establishing or determining whether an entity qualifies for exempt wholesale generator status, sections 32(a)(2) through (4), and sections 32(b) through (d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(a)(2)–(4), 79z–5a(b)–(d)) shall apply.

(2) An exempt wholesale generator shall not be subject to any requirements of this part other than § 366.7, *i.e.*, procedures for obtaining exempt wholesale generator status.

Foreign utility company. (1) The term ''foreign utility company'' means any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company:

(i) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

(ii) Neither the company nor any of its subsidiary companies is a public-utility company operating in the United States.

(2) A foreign utility company shall not be subject to any requirements of this part other than § 366.7, *i.e.*, procedures for obtaining foreign utility company status.

Gas utility company. The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. For the purposes of this subchapter, ''gas utility company'' shall not include entities that engage only in marketing of natural and manufactured gas.

Goods. The term ''goods'' means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

Holding company. (1) *In general.* The term ''holding company'' means—

(i) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(ii) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(2) *Exclusions.* The term ''holding company'' shall not include—

(i) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(A) Held as collateral for a loan;

(B) Held in the ordinary course of business as a fiduciary; or

(C) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(A) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(B) Acquired in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution within 12 months of the specific securities so acquired.

Holding company system. The term ''holding company system'' means a holding company, together with its subsidiary companies.

Jurisdictional rates. The term ''jurisdictional rates'' means rates accepted, established or permitted by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

Natural gas company. The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

Person. The term ''person'' means an individual or company.

Public utility. The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

Public-utility company. The term ''public-utility company'' means an electric utility company or a gas utility company. For the purposes of this subchapter, the owner-lessors and owner participants in lease financing transactions involving utility assets shall not be treated as ''public-utility companies.''

Service. The term ''service'' means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

Service company. The term ''service company'' means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.

State commission. The term ''state commission'' means any commission, board, agency, or officer, by whatever name designated, of a state, municipality, or other political subdivision of a state that, under the laws of such state, has jurisdiction to regulate public-utility companies.

Subsidiary company. The term ''subsidiary company'' of a holding company means—

(1) Any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(2) Any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

Voting security. The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company. For the purposes of this subchapter, the term ''voting security'' shall not include member interests in electric power cooperatives.

§ 366.2 Commission access to books and records.

(a) *In general.* Unless otherwise exempted by Commission rule or order, each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. However, for purposes of this subchapter, no provision in the subchapter shall apply to or be deemed to include:

(1) The United States;

(2) A state or political subdivision of a state;

(3) Any foreign governmental authority not operating in the United States;

(4) Any agency, authority, or instrumentality of any entity referred to in paragraphs (a)(1), (2), or (3) of this section; or

(5) Any officer, agent, or employee of any entity referred to in paragraphs (a)(1), (2), (3), or (4) of this section as such in the course of his or her official duty.

(b) *Affiliate companies.* Unless otherwise exempted by Commission rule or order, each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) *Holding company systems.* The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) *Confidentiality.* No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

§ 366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.

(a) *Exempt classes of entities.* Any person that is a holding company solely with respect to one or more of the following will be exempt from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23; such person need not make the filings provided in § 366.4(a) or (b):

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.*);

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

(b) *Exemptions of additional persons and classes of transactions*—(1) *Commission authority to exempt additional persons and classes of transactions.* The Commission shall exempt a person or class of transactions from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23 if, upon individual application or upon the motion of the Commission—

(i) The Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to

the jurisdictional rates of a public utility or natural gas company; or

(ii) The Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(2) *Commission exemption of additional persons and classes of transactions.* The Commission has determined that the following persons and classes of transactions satisfy the requirements of paragraph (b)(1) of this section, and any person that is a holding company solely with respect to one or more of the following may file to obtain an exemption for that person or class of transactions, as appropriate, from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, pursuant to the notification procedure contained in § 366.4(b):

(i) Passive investors, so long as the ownership remains passive, including:

(A) Mutual funds,

(B) Collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers/dealers; and

(C) Persons that directly, or indirectly through their subsidiaries or affiliates, buy and sell the securities of public-utility companies in the ordinary course of business as a broker/dealer, underwriter or fiduciary, and not exercising operational control over such companies;

(ii) Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and that do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services and that are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities;

(iii) Transactions where the holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company in its holding company system any costs or expenses in connection with goods and services transactions, and will not engage in financing transactions with any such public utility or natural gas company;

(iv) Transactions between or among affiliates that are independent of and do not include a public utility or natural gas company;

(v) Electric power cooperatives;

(vi) Local distribution companies that are not regulated as ''natural gas companies'' pursuant to sections 1(b) or 1(c) of the Natural Gas Act, (15 U.S.C. 717(b), (c)).

(c) *Waivers.* Any person that is a holding company solely with respect to one or more of the following may file to obtain a waiver of the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, pursuant to the notification procedures contained in § 366.4(c):

(1) Single-state holding company systems; for purposes of § 366.3(c)(1), a holding company system will be deemed to be a single-state holding company system if the holding company system derives no more than 13 percent of its public-utility company revenues from outside a single state;

(2) Holding companies that own generating facilities that total 100 MW or less in size and are used fundamentally for their own load or for sales to affiliated end-users; or

(3) Investors in independent transmission-only companies.

(d) *Other requests for exemptions and waivers.* Any person seeking an exemption or waiver that is not covered by paragraphs (a), (b)(2) or (c) of this section, shall file a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying the request for exemption or waiver. Any person seeking such an exemption or waiver shall bear the burden of demonstrating that such an exemption or waiver is warranted.

(e) Nothing in paragraphs (a)–(d) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services under the Federal Power Act and Natural Gas Act and with respect to access to books and records under the Federal Power Act and Natural Gas Act.

§ 366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.

(a) *Notification of holding company status*—(1) Persons that meet the definition of a holding company as provided by § 366.1 as of February 8, 2006 shall notify the Commission of their status as a holding company no later than June 15, 2006. Holding companies formed after February 8, 2006 shall notify the Commission of their status as a holding company, no later than the later of June 15, 2006 or 30 days after they become holding companies.

(2) The notification required pursuant to § 366.4(a)(1) shall be made by submitting FERC–65 (notification of holding company status), which shall contain the following: The identity of the holding company and of the public utilities and natural gas companies in the holding company system; the identity of service companies, including special-purpose subsidiaries providing non-power goods and services; the identity of all affiliates and subsidiaries; and their corporate relationship to each other. This filing will be for informational purposes and will not be noticed in the **Federal Register,** but will be available on the Commission's Web site. FERC–65 must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified.

(3) Notwithstanding § 366.4(a)(1) and (2), holding companies that are exempt holding companies pursuant to § 366.3(a) are not required to notify the Commission of their status or to submit FERC–65 (notification of holding company status).

(b) *FERC–65A (exemption notification) and petitions for exemption.* (1) Persons that, pursuant to § 366.3(b)(2), seek exemption from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, may seek such exemption by filing FERC–65A (exemption notification); FERC–65A must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. These filings will be noticed in the **Federal Register;** persons that file FERC–65A must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. Persons that file FERC–65A in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing FERC–65A, the exemption shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the claim for exemption will remain temporary until such time as the Commission has determined whether to grant or deny the exemption. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested FERC–65A filings is delegated to the Director of the Office of Energy Markets and Reliability, or its successor, or the Director's designee.

(2) Notwithstanding § 366.4(b)(1), persons that are exempt holding companies pursuant to § 366.3(a) are not required to file FERC–65A (exemption notification).

(3) Persons that do not qualify for exemption pursuant to § 366.3(b)(2) may seek an individual exemption from this subchapter. They may not do so by means of filing FERC–65A and instead must file a petition for declaratory order as required under § 366.3(d). Such petitions will be noticed in the **Federal Register;** persons that file a petition must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. No temporary exemption will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons may also seek exemptions for classes of transactions by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying the request for exemption. Any person seeking such an exemption shall bear the burden of demonstrating that such exemption is warranted.

(c) FERC–65B (waiver notification) and petitions for waiver. (1) Persons that, pursuant to § 366.3(c), seek waiver of the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, may seek such waiver by filing FERC–65B (waiver notification); FERC–65B must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. FERC–65B will be noticed in the **Federal Register;** persons that file FERC–65B must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. Persons that file FERC–65B in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing of FERC–65B, the waiver shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the waiver will remain temporary until such time as the Commission has determined whether to grant or deny the waiver. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested FERC–65B filings is delegated to the Director of the Office of Energy Markets and Reliability, or its successor, or the Director's designee.

(2) Persons that do not qualify for waiver pursuant to § 366.3(c) may seek an individual waiver from this subchapter. They may not do so by means of filing FERC–65B and instead must file a petition for declaratory order as required under § 366.3(d). Such petitions will be noticed in the **Federal Register**; persons that file a petition must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. No temporary waiver will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons may also seek waivers for classes of transactions by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying the request for waiver. Any person seeking such waiver shall bear the burden of demonstrating that such waiver is warranted.

(d) *Procedure for notification of material change in facts.* (1) If there is any material change in facts that may affect an exemption or waiver granted pursuant to paragraphs (b) or (c) of this section, the person receiving the exemption or waiver shall within 30 days of the material change in facts:

(i) Submit a new FERC–65A (exemption notification) or FERC–65B (waiver notification) or a petition for declaratory order, pursuant to paragraphs (b) or (c) of this section, as appropriate;

(ii) File a written explanation why the material change in facts does not affect the exemption or waiver; or

(iii) Notify the Commission that it no longer seeks to maintain its exemption or waiver.

(2) If there is a material change in facts that may affect the automatic exemption allowed under § 366.3(a) of this subpart, the person receiving the exemption or waiver shall within 30 days of the material change in facts:

(i) Submit a FERC–65A (exemption notification) or FERC–65B (waiver notification) or a petition for declaratory order, pursuant to paragraphs (b) or (c) of this section, as appropriate;

(ii) File a written explanation why the material change in facts does not affect the exemption; or

(iii) Notify the Commission that it no longer seeks to maintain its exemption.

(e) *Revocation of exemption or waiver.* (1) If a person that is exempt pursuant to § 366.3(a) fails to conform to the criteria for such exemption, or if a person that has been granted an exemption or waiver pursuant to paragraphs (b) or (c) of this section either fails to conform to the criteria for such exemption or waiver or fails to conform with any material facts or representations presented in its submittals to the Commission, such person may no longer rely upon the exemption or waiver.

(2) The Commission may, on its own motion or on the complaint of any person, revoke the exemption or waiver granted under § 366.3(a) or paragraphs (b) or (c) of this section, if the person fails to conform to any of the criteria under this part for exemption or waiver.

§ 366.5 Allocation of costs for non-power goods and services.

(a) *Commission review.* In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of that holding company system or a state commission having jurisdiction over the public utility, the Commission shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company. Such election to have the Commission review and authorize cost allocations shall remain in effect until further Commission order.

(b) *Exemptions.* Paragraph (a) of this section shall not apply to any holding company system whose public utility operations are confined substantially to a single state. For purposes of this section, a holding company system will be deemed to have its public utility operations confined substantially to a single state if the holding company system derives no more than 13 percent of its public utility revenues from outside a single state. A holding company system or state commission may, pursuant to this subsection, seek a Commission determination that a holding company's public utility operations are confined substantially to a single state by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter. Any holding company system or state commission seeking such a determination shall bear the burden of demonstrating that such determination is warranted.

(c) *Other classes of transactions.* Either upon petition for declaratory order or upon its own motion, the Commission may exclude from the scope of Commission review and authorization under paragraph (a) of this section any class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility. Any holding company system or state commission seeking to obtain such a determination under this subsection shall file a petition for declaratory order pursuant to § 385.207(a) of this chapter.

Any holding company system or state commission seeking such an exemption shall bear the burden of demonstrating that such an exemption is warranted.

(d) Nothing in paragraphs (a)–(c) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services under the Federal Power Act and Natural Gas Act, and with respect to access to books and records under the Federal Power Act and Natural Gas Act.

§ 366.6 Previously authorized activities.

(a) *General*. Unless otherwise provided by Commission rule or order, a person may continue to engage in activities or transactions authorized under the Public Utility Holding Company Act of 1935 prior to the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006, until the later of the date such authorization expires or December 31, 2007, so long as that person continues to comply with the terms of such authorization. If any such activities or transactions are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide at that time the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

(b) *Financing Authorizations*. Holding companies that intend to rely on financing authorization orders or letters issued by the Securities and Exchange Commission must file these orders or letters with the Commission within 30 days after the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006; any reports or other submissions that, pursuant to such financing authorizations, previously were filed with the Securities and Exchange Commission must instead be filed with the Commission, effective February 8, 2006. For the purposes of this section, compliance with the terms of such financing authorizations includes the requirement to notify the Commission of any financing transactions that a holding company engages in pursuant to such financing authorization.

§ 366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

(a) *Self-certification notice procedure*. An exempt wholesale generator or a foreign utility company, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company (including stating the location of its generation); such notices of self-certification must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to this Commission in its submittal with this Commission that it has filed a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. Notice of the filing of a notice of self-certification will be published in the **Federal Register**. Persons that file a notice of self-certification must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. A person filing a notice of self-certification in good faith will be deemed to have temporary exempt wholesale generator or foreign utility company status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification shall be deemed to have been granted; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(c)) and section 33(a)(2) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5b(a)(2)), any self-certification may not become effective until the relevant state commissions have made the determinations and certifications provided for therein (if such determinations or certifications are not necessary, the notice of self-certification should state so). The Commission may toll the 60-day period to request additional information, or for further consideration of the request; in such cases, the person's exempt wholesale generator or foreign utility company status will remain temporary until such time as the Commission has determined whether to grant or deny exempt wholesale generator or foreign utility company status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)) and section 33(a)(2) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5b(a)(2)), any self-certification may not become effective until the relevant state commissions have made the determinations and certifications provided for therein. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel's designee.

(b) *Optional procedure for Commission determination of exempt wholesale generator status or foreign utility company status*. A person may file for a Commission determination of exempt wholesale generator status or foreign utility company status under § 366.1 by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter, justifying the request for such status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)) and section 33(a)(2) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5b(a)(2)), a Commission determination of exempt wholesale generator status or foreign utility company status may not become effective until the relevant state commissions have made the determinations and certifications provided for therein. (If such determinations or certifications are not necessary, the petition for declaratory order should state so.) Persons that file petitions must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter.

(c) *Procedure for notification of material change in facts*. If there is any material change in facts that may affect an exempt wholesale generator's or a foreign utility company's status as an exempt wholesale generator or a foreign utility company, the exempt wholesale generator or foreign utility company shall within 30 days of the material change in facts:

(1) Submit a new notice of self-certification or a new petition for declaratory order, pursuant to paragraphs (a) or (b) of this section, as appropriate;

(2) File a written explanation why the material change in facts does not affect its status; or

(3) Notify the Commission that it no longer seeks to maintain its exempt wholesale generator or foreign utility company status.

(d) *Revocation of status*. (1) If an exempt wholesale generator or a foreign

utility company fails to conform to the criteria for such status or fails to conform with any material facts or representations presented in its submittals to the Commission, the notice of self-certification of the status of the facility or Commission order certifying the status of the facility may no longer be relied upon.

(2) The Commission may, on its own motion or on the complaint of any person, revoke the status of a facility or company, if the facility or company fails to conform to any of the criteria under this part for such status.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

§ 366.21 Accounts and records of holding companies.

(a) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every holding company shall maintain and make available to the Commission books, accounts, memoranda, and other records of all of its transactions in sufficient detail to permit examination, audit and verification of the financial statements, schedules and reports either required to be filed with the Commission or issued to stockholders, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2007, all holding companies must comply with the Commission's record-retention requirements for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter). Until December 31, 2006, holding companies registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) may follow either the Commission's record-retention rules for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter), or the Security and Exchange Commission's record-retention rules in 17 CFR part 257.

(c) Nothing in this section shall relieve any company subject thereto from compliance with the requirements as to recordkeeping and record-retention that may be prescribed by any other regulatory agency.

§ 366.22 Accounts and records of service companies.

(a) *Record-retention requirements.*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2007, every service company shall maintain and make available to the Commission such books, accounts, memoranda, and other records in such manner, and preserve them for such periods as the Commission prescribes in parts 125 and 225 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(2) *Transition period.* Until December 31, 2006, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) may follow either the Commission's record-retention requirements in parts 125 and 225 of this chapter or the Securities and Exchange Commission's record-retention rules in 17 CFR part 257.

(3) Nothing in this section shall relieve any service company subject thereto from compliance with requirements as to record-retention that may be prescribed by any other regulatory agency.

(b) *Accounting requirements.*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2007, every service company that is not a special-purpose company (*e.g.*, a fuel supply company or a construction company) shall maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in parts 101 and 201 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates. Every such service company shall maintain and make available such books, accounts, memoranda, and other records in such manner as are prescribed in parts 101 and 201 of this chapter, and shall keep no other records with respect to the same subject matter except:

(i) Records other than accounts;

(ii) Records required by federal or state law;

(iii) Subaccounts or supporting accounts which are not inconsistent with the accounts required either by the Uniform System of Accounts in parts 101 and 201 of this chapter; and

(iv) Such other accounts as may be authorized by the Commission.

(2) *Transition period.* Until December 31, 2006, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*), as described in paragraph (b)(1) of this section, may follow either the Commission's Uniform System of Accounts in parts 101 and 201 of this chapter or the Securities and Exchange Commission's Uniform System of Accounts in 17 CFR part 256.

(3) Nothing in this section shall relieve any service company subject thereto from compliance with requirements as to accounting that may be prescribed by any other regulatory agency.

§ 366.23 FERC Form No. 60, annual report of service companies, and FERC–61, narrative description of service company functions.

(a) *General.*—(1) *FERC Form No. 60.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every service company in a holding company system that is not a special-purpose company (*e.g.*, a fuel supply company or a construction company) shall file with the Commission by May 1, 2006 and by May 1 each year thereafter, a report, FERC Form No. 60, for the prior calendar year. Every such report shall be submitted on the FERC Form No. 60 then in effect and shall be prepared in accordance with the instructions incorporated in such form.

(2) *FERC–61.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every service company in a holding company system, including a special-purpose company (*e.g.*, a fuel supply company or a construction company), that does not file a FERC Form No. 60 shall instead file with the Commission by May 1, 2007 and by May 1 each year thereafter, a narrative description, FERC–61, of the service company's functions during the prior calendar year. In complying with this section, a holding company may make a single filing on behalf of all such service company subsidiaries.

(3) For good cause shown, the Commission may extend the time within which any such report or narrative description required to be filed pursuant to paragraphs (a)(1) or (2) of this section is to be filed or waive the requirements applicable to any such report or narrative description. The authority to act on motions for extensions of time to file any such reports or to waive the requirements applicable to any such reports or narrative descriptions, including granting or denying such motions, in whole or in part, is delegated to the Chief Accountant or the Chief Accountant's designee.

(b) *Transition period.*—Service companies in holding company systems

exempted from the requirements of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) need not file an annual report, FERC Form No. 60, for calendar years 2005 and 2006, after which they must comply with the provisions of this section.

[FR Doc. 06–4042 Filed 5–15–06; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 366, 367, 368, 369 and 375

[Docket No. RM06–11–000]

Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005

Issued April 24, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). Specifically, the Commission is proposing to add a Uniform System of Accounts for Centralized Service Companies, to add preservation of records requirements for holding companies and service companies, to revise Form No. 60, Annual Report for Centralized Service Companies, to provide for financial reporting consistent with the proposed Uniform System of Accounts and to provide for electronic filing of Form No. 60. These changes are proposed to be made effective January 1, 2007. In addition, the Commission directs staff to hold a technical conference to provide interested entities an opportunity to discuss the proposed regulations.

DATES: Comments must be filed on or before June 15, 2006.

ADDRESSES: You may submit comments, identified by Docket No. RM06–11–000, by one of the following methods:

- Agency Web Site: *http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Rosemary Womack (Technical Information), Division of Audits and Accounting, Office of Market Oversight and Investigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8989. E-mail: *rosemary.womack@ferc.gov.*

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SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Commission proposes to amend its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). The Commission is proposing to add a new Uniform System of Accounts for Centralized Service Companies and new preservation of records requirements as new Parts 367 and 368, respectively, to the Commission's regulations; to add Form No. 60, Annual Report for Centralized Service Companies, as Part 369 to the Commission's regulations; to revise Form No. 60 to provide for financial reporting by centralized service companies, *i.e.*, service companies that are not special purpose companies, consistent with the proposed Uniform System of Accounts; and to provide for electronic filing of Form No. 60. The Commission also is proposing conforming changes to its regulations in Part 366 and corresponding changes to the Chief Accountant's delegations of authority in Part 375 of the Commission's regulations.[1] The Commission proposes to make the revised regulations effective January 1, 2007. In addition, the Commission directs staff to hold a technical conference to provide interested entities an opportunity to discuss the proposed regulations.

II. Background

2. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005)[2] was signed into law. In relevant part, it repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935)[3] and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005),[4] which, with one exception not relevant here, became effective on February 8, 2006 (six months from the date of enactment). On December 8, 2005, the Commission issued Order No. 667, adding a new Subchapter U and Part 366 to Title 18 of the *Code of Federal Regulations* to implement PUHCA 2005.[5]

3. Order No. 667 required that, unless otherwise exempted by Commission rule or order, holding companies[6] and service companies[7] must maintain and make available to the Commission their books and records.[8] In addition, Order No. 667 allowed holding companies and service companies that did not currently follow the Commission's records retention requirements to transition to the Commission's requirements by January 1, 2007. Order No. 667 further provided that holding companies would not be required to comply with a Uniform System of Accounts, but that centralized service companies would be required to do so as of January 1, 2007.

4. The Commission indicated in Order No. 667 that it would initiate a separate rulemaking proceeding to address how the Commission's Uniform Systems of Accounts and records retention requirements in Parts 101, 125, 201 and 225 of its regulations should be modified to adopt or otherwise integrate the relevant parts of the SEC's Uniform System of Accounts and records retention rules. The Commission indicated that it intended to issue a final rule on any appropriate accounting and records retention requirements modifications before January 1, 2007, so that service companies would be able to transition to the Commission's Uniform System of Accounts and records retention requirements and so that holding companies could transition to

[1] *See* 18 CFR Parts 366 and 375.

[2] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[3] 15 U.S.C. 79a *et seq.* (2000).

[4] EPAct 2005 at 1261 *et seq.*

[5] Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs.; Regulations and Preambles 2001–2005 ¶ 31,197 (2005), *order on reh'g*, Order No. 667–A, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 31,213 (2006).

[6] As defined in 18 CFR 366.1, holding company means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and (ii) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

[7] As defined in 18 CFR 366.1, service company means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.

[8] Order No. 667 also required traditional, centralized service companies to file the newly created Form No. 60, Annual Report for Centralized Service Companies.

the Commission's records retention requirements, by that date.

5. As discussed below, this Notice of Proposed Rulemaking proposes to adopt a Uniform System of Accounts for centralized service companies, and records retention requirements for holding companies and service companies, under PUHCA 2005.

III. Discussion

6. In Order No. 667, the Commission prescribed uniform accounting requirements for centralized service companies, *i.e.*, service companies that are not special purpose companies, within holding company systems, and records retention requirements for both service companies and holding companies. In that order, the Commission announced its intention to modify the existing Uniform Systems of Accounts for public utilities and licensees and natural gas companies in Parts 101 and 201, respectively, of the Commission's regulations to accommodate centralized service companies' use of those systems. The Commission also announced its intention to similarly modify the existing records retention requirements contained in Parts 125 and 225 of the Commission's regulations.

7. Since the issuance of Order No. 667, we have examined in greater depth some of the implementation issues associated with revising the Commission's existing Uniform Systems of Accounts and records retention requirements for public utilities and licensees and for natural gas companies to cover service companies and holding companies. After taking into consideration the overall framework of the Commission's regulations and the range of changes that would be required to the Uniform Systems of Accounts and records retention requirements, we have concluded that modifying the existing accounting and records retention requirements to accommodate service companies and holding companies would make understanding and applying the accounting and records retention requirements difficult for users of the systems. Instead, the Commission proposes to adopt a separate Uniform System of Accounts for centralized service companies, *i.e.*, service companies that are not special purpose companies, and separate records retention requirements for service companies and holding companies. While these new regulations appear lengthy, we believe the detail will actually make it simpler and easier for service companies and holding companies to comply with our requirements.

8. In developing the proposed regulations, we were guided by three overarching objectives: (1) The new accounting and records retention requirements should mirror the existing requirements contained in Parts 101, 201, 125 and 225 of the Commission's regulations for public utilities and licensees and natural gas companies to the maximum extent practicable, but should exclude provisions that are not relevant; (2) the new accounting requirements should allow for the consolidation of service company financial information with the financial information of associate public utilities and licensees and natural gas companies as needed for stockholder and SEC reporting; and (3) the new Uniform System of Accounts for centralized service companies should include requirements that reflect aspects of business operations that are unique to such service companies.

A. Proposed Uniform System of Accounts

9. The Commission proposes to add as Part 367 of the Commission's regulations a Uniform System of Accounts for Centralized Service Companies. The proposed Uniform System of Accounts for Centralized Service Companies conforms, to the maximum extent practicable, to the Commission's existing Uniform Systems of Accounts for public utilities and licensees and for natural gas companies as set forth in Parts 101 and 201, respectively, of the Commission's regulations. As explained more fully below, however, there are a number of instances in which the existing requirements contained in Parts 101 and 201 of the Commission's regulations need to be revised or modified to reflect the unique business characteristics of centralized service companies. In some instances, the revisions simply change a word, *e.g.*, substituting ''service company'' property for ''utility'' property.[9] In other instances, the changes were more significant. The sections that follow identify and explain the basis for the more significant revisions and modifications to the accounting requirements contained in Parts 101 and 201 of the Commission's regulations that we believe are appropriate or necessary to reflect the unique business characteristics of centralized service companies in the proposed Uniform System of Accounts for Centralized Service Companies.

[9] For purposes of discussion, when revisions to an instruction or account are limited to such word changes we consider it as adopting the affected instruction or account in total.

1. Definitions and Instructions

10. The Commission proposes to adopt most of the definitions contained in Parts 101 and 201 of the Commission's regulations. Additionally, the Commission proposes to adopt the definitions contained in the SEC's Uniform System of Accounts for direct cost, indirect cost, non-associate company, and work order system. The Commission also proposes to incorporate definitions for construction, electric utility company, gas utility company, goods, holding company system, natural gas company, public utility, public-utility company, service and service company from § 366.1 of the Commission's regulations. The definitions adopted from the SEC's Uniform System of Accounts and § 366.1 of the Commission's regulations are necessary to facilitate understanding other instructions not contained in Parts 101 and 201 of the Commission's regulations as they should be applied to centralized service companies, *i.e.*, service companies that are not special purpose companies.

11. Consistent with the instructions in Parts 101 and 201 of the Commission's regulations, we propose to adopt instructions grouped into four categories: General Instructions, Service Company Property Instructions, Operating Expense Instructions and Special Instructions. These instructions include most of the instructions contained in Parts 101 and 201 of the Commission's regulations and in the SEC's Uniform System of Accounts. We propose to adopt instructions in the SEC's Uniform System of Accounts because they provide instructions relevant to certain transactions and events of a centralized service company, that are not specifically addressed in the instructions for Parts 101 and 201 of the Commission's regulations. The instructions we propose to adopt in the Special Instructions category include many of the instructions for groups of accounts, which are embedded in the text to the accounts in Parts 101 and 201 of the Commission's regulations. Instructions not adopted from Parts 101 and 201 of the Commission's regulations and the SEC's Uniform System of Accounts are considered irrelevant to centralized service company operations or duplicative of other instructions. Additionally, many of the instructions from Parts 101 and 201 are modified for centralized service company operations. The more significant additions, deletions and modifications to the instructions contained in Parts 101 and 201 of the Commission's regulations are discussed below.

12. The instructions found in both Parts 101 and 201 of the Commission's regulations contain provisions for implementing the ratemaking principle of original cost. Under this principle, companies are required to record utility property in the plant in service accounts at the cost to the person who first devoted the property to public service. Although public utilities and natural gas companies frequently enter into property transactions in which the original cost concept is at issue, centralized service companies are expected to have few, if any, transactions in which that is the case. Moreover, centralized service companies can now provide centralized services to both utility and non-utility entities. In this context, the original cost accounting rules that exist for public utilities and natural gas companies would be difficult to apply to centralized service companies. Therefore, the proposed instructions in the Uniform System of Accounts for Centralized Service Companies do not contain the requirements that would otherwise be needed to implement the original cost concept. In proposed § 367.50,[10] Service company property to be recorded at cost, and § 367.53,[11] Service company property purchased or sold, we propose to modify Electric and Gas Plant Instructions Nos. 2 and 5, respectively, to require centralized service company property to be recorded at the cost of acquisition rather than its original cost. The instructions to proposed § 367.53 also require centralized service companies to file journal entries with the Commission when acquired property is at a purchase price of $10 million or more and has been previously devoted to public service.[12] This filing requirement provides the Commission and others the opportunity to monitor transactions involving property previously devoted to public service.

13. We propose to adopt in § 367.23 an instruction for transactions with non-associate companies from the SEC's Uniform System of Accounts (17 CFR § 265.01–2). This instruction requires that profits and losses on transactions with non-associate companies be recorded in Account 458.4, Excess or deficiency on servicing non-associate utility companies (§ 367.4584), and Account 459.4, Excess or deficiency on servicing non-associate non-utility companies (§ 367.4594), as appropriate. The instruction also requires centralized service companies to determine the sum of the closing balances, at the end of each calendar year, in Account 458.4 (§ 367.4584) and Account 459.4 (§ 367.4594). If the sum of the closing balances of these accounts combine to a net credit, the amount of the net credit must be deducted from amounts reimbursable by associate companies as compensation for use of capital invested in the centralized service company. By following this instruction, service companies will be required to channel net profits from transactions with non-associate companies to the associate companies within the holding company system. The Commission believes this requirement is appropriate and reasonable because centralized service companies should be not-for-profit in nature and provide services to associate companies at cost.[13] Therefore, profits received outside of the holding company system should be used to reduce the cost of providing service to associate companies within the holding company system.

14. We propose to adopt instructions from Parts 101 and 201 of the Commission's regulations on extraordinary items [14] with certain modifications in proposed § 367.8. Under the instructions contained in Parts 101 and 201, an item can be accounted for as extraordinary, without prior Commission approval if the item is more than five percent of income before extraordinary items. We do not view this stipulation as practical for centralized service companies because service companies typically have little or no income. Therefore, we propose to eliminate this threshold requirement to recognize an extraordinary item, but will require centralized service companies to seek Commission approval to record all extraordinary items.

15. In proposed § 367.16, we propose to adopt, in part, instructions for accounting for long-term debt from Parts 101 and 201 of the Commission's regulations.[15] We are not adopting instructions pertaining to the rate principle of amortizing gains and losses on the reacquisition of long-term debt because centralized service companies are not rate regulated and such gains and losses should be recognized immediately in income.

16. In proposed § 367.58, we propose to adopt instructions for maintaining a work order system for all construction and retirements of service company property from Parts 101 and 201 of the Commission's regulations.[16] Additionally, in proposed § 367.31, the Commission proposes to adopt instructions from the SEC's Uniform System of Accounts for maintaining work order systems for accumulating reimbursable costs and charges to customers.[17] The Commission believes it is necessary to adopt this additional instruction from the SEC's Uniform System of Accounts because this specific instruction is appropriate for this proposed Uniform System of Accounts and is not provided for in the instructions contained in Parts 101 and 201 of the Commission's regulations.

17. We note that there appears to be a regulatory gap vis-á-vis Commission jurisdiction as it relates to service companies with electric utility company affiliates and natural gas company affiliates in PUHCA 2005. As a result of the definitions for holding company, holding company system, natural gas company, public-utility company, electric utility company and gas utility company in PUHCA 2005 section 1262, it appears that the Commission can regulate holding companies with electric utility company affiliates as to their books, accounts, memoranda, and other records. On the other hand, it appears that PUHCA 2005 would not grant the Commission authority to require service companies that have only natural gas company affiliates to comply with the Commission's financial accounting and reporting and records retention requirements; this is in contrast to holding companies with gas utility company affiliates, *i.e.*, holding companies with natural gas local distribution company affiliates.[18]

[10] Proposed 18 CFR 367.50 is adopted from Electric Plant Instructions No. 2, Electric plant to be recorded at cost, and Gas Plant Instructions No. 2, Gas plant to be recorded at cost.

[11] Proposed 18 CFR 367.53 is adopted from Electric Plant Instructions No. 5, Electric plant purchased or sold, and Gas Plant Instructions No. 5, Gas plant purchased or sold.

[12] The $10 million threshold is consistent with the threshold for certain transactions subject to section 203 of the Federal Power Act, as amended by section 1289 of the Energy Policy Act of 2005. *See* Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005).

[13] Not-for-profit as used here does not preclude a reasonable return on equity capital. In addition, in Order No. 667, the Commission allowed centralized service companies to continue to sell non-power goods and services to affiliated utilities ''at-cost.'' Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 14.

[14] *See* General Instructions No. 7, Extraordinary items, in Parts 101 and 201 of the Commission's regulations.

[15] *See* General Instructions No. 17, Long-term debt: Premium, discount and expense and gain or loss on reacquisition, in Parts 101 and 201 of the Commission's regulations.

[16] *See* Electric (Gas) Plant Instructions No. 11, Work order and property record system required in Parts 101 and 201 of the Commission's regulations.

[17] *See* 17 CFR 256.00–1(f), 256.03(c).

[18] In PUHCA 2005 section 1262, a holding company is any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding

Companies with only natural gas company affiliates would not be a holding company under PUHCA 2005. The Commission is seeking comments on how we should deal with this apparent regulatory gap under PUHCA 2005, *e.g.*, what, if any, action the Commission might take under the Natural Gas Act. Commenters are invited to address (1) whether there is, in fact, a regulatory gap, (2) if there is a regulatory gap, whether there is a need to address the gap, and, (3) if so, how the Commission should address this gap under the Natural Gas Act.

2. Balance Sheet Accounts

18. The Commission proposes to adopt in the new Uniform Systems of Accounts for Centralized Service Companies most of the balance sheet accounts contained in Parts 101 and 201 of the Commission's regulations, and primary property Accounts 301 (§ 367.3010), 303 (§ 367.3030) and 389 to 399.1 (§§ 367.3890 to 367.3991). Accounts not adopted are considered not applicable to centralized service companies. In most instances, the non-applicability of those accounts to centralized service companies is apparent from the account instructions and further discussion as to the reason for not adopting them is not necessary. However, a few warrant comment.

19. The Commission does not propose to adopt Accounts 102, Electric and Gas plant purchased or sold, 114, Electric and Gas plant acquisition adjustments, and 116, Other electric and gas plant acquisition adjustments, because, as discussed above, property acquired will be included in Account 101, Service company property (§ 367.1010), at acquisition cost as opposed to original cost. As a result, these accounts are not necessary for centralized service companies.

20. In addition, we are not adopting Accounts 118, Other utility plant, and 121, Non-utility property. These accounts are used by public utilities and natural gas companies to record the cost of property used exclusively in providing other utility services, *e.g.*, water, railway, etc., or non-utility services. In the Commission's view, the corollary use of these accounts by centralized service companies would be to record in these accounts the cost of property used exclusively in providing services to non-utility customers or a non-service business activity. While we believe it is important that such investments be identified and disclosed, we feel that it can be done more appropriately by the use of a schedule as opposed to adopting a separate account. Therefore, we propose to include Schedule III-A, Summary of Service Company Property and Accumulated Provision for Depreciation and Amortization, in revised Form No. 60.

3. Income Statement Accounts

21. The Commission proposes to incorporate income statement accounts contained in Parts 101 and 201 of the Commission's regulations. We modified the accounts related to expenses for non-utility companies[19] and revenue accounts. The additions, deletions and modifications to the income statement accounts contained in Parts 101 and 201 that are proposed for inclusion in the Uniform System of Accounts for Centralized Service Companies are discussed further below.

22. The Commission is proposing to include in the Uniform System of Accounts for Centralized Service Companies the same instructions covering income tax accounting presently contained in Parts 101 and 201 of the Commission's regulations. We are aware that those instructions need to be revised to reflect the liability method of accounting for income taxes that all other Commission jurisdictional companies now follow.[20] However, the changes needed to integrate the liability method of accounting for income taxes into the Uniform Systems of Accounts and other Commission regulations are expected to be complex and should be taken up in a separate proceeding.[21] Until that proceeding can be undertaken, centralized service companies and all other Commission jurisdictional companies should account for income taxes using the same rules as modified by an Accounting Guidance Letter dated April 23, 1993. This will, in our view, facilitate the preparation of consolidated financial statements.

23. We do not propose to include the following accounts, as contained in Parts 101 and 201 of the Commission's regulations, because we do not anticipate centralized service companies having transactions that give rise to the use of these accounts:

- Account 404.1, Amortization and depletion of producing natural gas land and land rights.
- Account 404.2, Amortization of underground storage land and land rights.
- Account 406, Amortization of electric plant acquisition adjustments.
- Account 407, Amortization of property losses, unrecovered plant and regulatory study costs.
- Account 407.2, Amortization of conversion expense.
- Account 407.3, Regulatory debits.
- Account 407.4, Regulatory credits.
- Account 411.6, Gains from disposition of utility plant.
- Account 411.7, Losses from disposition of utility plant.
- Account 411.8, Gains from disposition of allowances.
- Account 411.9, Losses from disposition of allowances.
- Account 412, Revenues from electric plant leased to others.
- Account 413, Expenses of electric plant leased to others.
- Account 414, Other utility operating income.
- Account 417, Revenues from non-utility operations.
- Account 418, Non-operating rental income.
- Account 420, Investment tax credits.
- Account 428.1, Amortization of loss on reacquired debt.
- Account 429.1, Amortization of gain on reacquired debt—Credit.

24. We propose to add Account 417.1, Expenses of non-utility company related operations (§ 367.4171). This account will include expenses incurred in providing services to non-utility companies where the revenues from which are included in Account 459, Services rendered to non-utility companies (§ 367.4590). Expenses related to providing customer, sales or administrative and general services to non-utility companies will initially be recorded in the 900 series of accounts and transferred to Account 417.1 (§ 367.4171), through credits to Account 922, Administrative expenses transferred—Credit (§ 367.9220). The cost of other services provided to non-utility companies will be charged directly to Account 417.1 (§ 367.4171).

25. We propose to add the following retained earnings accounts:

- Account 433, Balance transferred from income (§ 367.4330).
- Account 436, Appropriations of retained earnings (§ 367.4360).

company of any public utility company. A public-utility company is an electric utility company or a gas utility company. An electric utility company is any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. A gas utility company is any company that owns or operates facilities used for distribution at retail of natural or manufactured gas, *i.e.*, a natural gas local distribution company.

[19] A non-utility company is defined in proposed 18 CFR § 367.1 as "a company that is not a utility company."

[20] *See* Accounting Guidance Letter AI93–50–000, Accounting for Income Taxes, (April 23, 1993).

[21] *Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981).

• Account 437, Dividends declared-preferred stock (§ 367.4370).

• Account 438, Dividends declared—common stock (§ 367.4380).

• Account 439, Adjustments to retained earnings (§ 367.4390).

26. We propose to adopt retained earnings Accounts 215, Appropriated retained earnings (§ 367.2150), and 216, Unappropriated retained earnings (§ 367.2160), as balance sheet accounts to track changes in the retained earnings accounts. We also propose to revise Form No. 60 to reflect the use of these accounts.

27. We do not propose adopting the following operating revenue accounts, contained in Parts 101 and 201 of the Commission's regulations:

• Account 440, Residential sales.

• Account 442, Commercial and industrial sales.

• Account 444, Public street and highway lighting.

• Account 445, Other sales to public authorities (Major only).

• Account 446, Sales to railroads and railways (Major only).

• Account 447, Sales for resale.

• Account 448, Interdepartmental sales.

• Account 449, Other sales (Non-major only).

• Account 449.1, Provision for rate refunds.

• Account 450, Forfeited discounts.

• Account 451, Miscellaneous service revenues.

• Account 453, Sales of water and water power.

• Account 454, Rent from electric property.

• Account 455, Interdepartmental rents.

• Account 456, Other electric revenues.

• Account 480, Residential sales.

• Account 481, Commercial and industrial sales.

• Account 482, Other sales to public authorities.

• Account 483, Sales for resale.

• Account 484, Interdepartmental sales.

• Account 485, Intracompany transfers.

These accounts are for recording revenues from the sale of electricity or gas and transmission or transportation service. Transactions of this nature would not be entered into by centralized service companies. However, we propose to adopt new revenue control Accounts 457, Services rendered to associate utility companies (§ 367.4570), 458, Services rendered to non-associate utility companies (§ 367.4580) and 459, Services rendered to non-utility companies (§ 367.4590).[22] Each of these revenue control accounts will have a corresponding subaccount or direct labor account (Accounts 457.1, 458.1 and 459.1 in §§ 367.4571, 367.4581 and 367.4591), indirect labor account (Accounts 457.2, 458.2 and 459.2 in §§ 367.4572, 367.4582 and 367.4592) and an account for compensation for use of capital (Accounts 457.3, 458.3 and 459.3 in §§ 367.4573, 367.3593 and 367.4593). This differs slightly from the SEC's Uniform System of Accounts, which provided control accounts for aggregating revenues between associate and non-associate companies only. However, the SEC's requirements were developed under PUHCA 1935, which restricted registered holding companies and their associated companies to utility operations or directly related business interests. With the repeal of the PUHCA 1935 and the elimination of the distinction between registered and exempt holding companies,[23] these restrictions no longer apply. As a consequence, we expect that centralized service companies may provide an increasing amount of services to non-utility companies. As an aid to monitoring the potential for cross subsidization, we believe that it is important to have accounts that aggregate financial information in a way that separately identifies and measures this activity. We propose including revenue Accounts 458.4, Excess or deficiency on servicing non-associate utility companies (§ 367.4584, and 459.4, Excess or deficiency on servicing non-associate non-utility companies (§ 367.4594). These accounts are necessary to monitor and ensure that centralized service companies comply with the requirements that profits from services provided to non-associate companies are used to reduce the billings of associate companies and to ensure that losses are not automatically passed on to associate companies.

28. We propose to include in the Uniform System of Accounts for Centralized Service Companies all of the 500 series of electric operation and maintenance expense accounts presently contained in Part 101 of the Commission's regulations and all of the 800 series of gas operation and maintenance accounts contained in Part 201 of the Commission's regulations. Service companies use these accounts when providing utility-related services to utility companies. However, to avoid unnecessary duplication and to ensure that symmetry is maintained between the Uniform Systems of Accounts, we propose to direct service companies to use the 500 and 800 series of accounts contained in Parts 101 and 201 of the Commission's regulations instead of including all of the 500 and 800 series of accounts in the Uniform System of Accounts for Centralized Service Companies.

29. We propose to include in the Uniform System of Accounts for CentralizedService Companies all of the 900 series of expense accounts presently contained in Parts 101 and 201 of the Commission's regulations, except the following accounts:

• Account 906, Customer service and informational expenses (Non-major only).

• Account 917, Sales expenses (Non-major only).

• Account 927, Franchise requirements.

• Account 929, Duplicate charges—Credit.

• Account 933, Transportation expenses (Non-major)

Accounts 906, 917 and 933 are non-major. Accounts 927 and 929 relate to utility sales of electricity. We could not cross reference the 900 series accounts as we did for the 500 or 800 series of accounts because the individual account instructions in Part 101 differ from the counterpart instructions in Part 201. In order to eliminate confusion that might be caused by the differences, we modified the text of these accounts and propose to adopt them, as modified, as part of the Uniform System of Accounts for Centralized Service Companies.

B. Proposed Records Retention Requirements

30. The Commission proposes to establish, as Part 368 of the Commission's regulations, records retention requirements for holding companies and service companies. We stress that, consistent with Order No. 667, while the proposed Uniform System of Accounts applies only to centralized service companies, *i.e.*, service companies that are not special purpose companies, the proposed records retention requirements apply to all holding companies and service companies. The records retention requirements proposed generally are based on the requirements contained in §§ 125.3 and 225.3 of the Commission's regulations, with certain modifications considered appropriate for holding companies and service companies.

[22] A control account includes the total of the related subaccounts.

[23] Order No. 667 states, ''[a]lthough, as also discussed below, we will provide certain exemptions from PUHCA 2005, we will not re-create the PUHCA 1935 distinction between ''exempt'' and ''registered'' holding companies.'' Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 10.

These modifications implement reduced retention periods for certain holding company and service company records where the retention periods were longer under the SEC's requirements than the retention periods applicable to similar records in §§ 125.3 and 225.3 of the Commission's regulations. In addition, the modifications incorporate certain records retention requirements that were not part of the Commission's regulations in §§ 125.3 and 225.3 of the Commission's regulations.

31. To the extent that the Commission's retention periods differ from other regulatory agency requirements, holding companies and service companies should retain records for the longer of the required retention periods.

C. Proposed Statements of Reports (Schedules)

32. The Commission proposes to add as Part 369 of the Commission's regulations instructions for filing the Form No. 60. The instructions propose to require centralized service companies to prepare and file electronically with the Commission an annual report by April 18 for the previous calendar year. Also, the instructions require service companies that do not file Form No. 60 to file annually a narrative description of their functions.

D. Proposed Revised FERC Form No. 60

33. The proposed changes, if adopted, will require revising the existing schedules in the Form No. 60 filed with the Commission. Revised Form No. 60 is included in Appendix A to this Notice of Proposed Rulemaking. We plan to develop submission software to provide for electronic filing of revised Form No. 60 similar to the software used for electronic filing of the Commission's other annual reporting forms, *i.e.*, Form No. 1 and Form No. 2.

34. The proposed revisions to revised Form No. 60 include:

(1) The title of the form is changed to ''Annual Report of Centralized Service Companies''.

(2) The format of the schedules is revised consistent with Annual Report Form Nos. 1 and 2 (Form Nos. 1 and 2). Instructions have been added to schedules, where necessary, because they are non-existent in the current Form No. 60. A new cover page is added similar to the cover page for Form Nos. 1 and 2.

(3) Two instructional pages are added to replace existing instructions. This is consistent with Form Nos. 1 and 2. General Information Item No. III is added to indicate how Form No. 60 is to be submitted. General Instruction No. II is added to indicate that amounts should be reported in whole dollars. The current Form No. 60 instruction allows reporting in whole dollars, thousands of dollars and millions of dollars. This revision is necessary for consistency. General Instruction No. IV is added consistent with the adoption of submission software. General Instruction No. VII is added to indicate the process of how resubmissions are to be filed.

(4) Page 1 is revised consistent with Form Nos. 1 and 2 and a telephone number and an e-mail address for contact person designated to respond to questions about Form No. 60 has been added. There currently is no contact information except for a correspondence address. A Corporate Officer Certification has been added the same as for Forms 1 and 2 and the Signature Clause page has been deleted.

(5) The filing date for Form No. 60 is changed to April 18 from May 1. April 18 filing date is consistent with the due date for most of the Commission's annual report forms that contain financial information.

(6) Schedule I, Comparative Balance Sheet, is revised to include the balance sheet accounts proposed to be adopted herein.

(7) Schedule II, Service Company Property, is revised to include the property accounts proposed to be adopted in this NOPR.

(8) Schedule III–A, Summary of Service Company Property and Accumulated Provision for Depreciation and Amortization, is added to distinguish service company property devoted exclusively to utility-related operations and property devoted exclusively to non-utility operations.

(9) Schedule XI, Proprietary Capital, is revised to include a statement of retained earnings.

(10) Schedule XV, Comparative Income Statement, is revised to include the income statement accounts proposed to be adopted herein.

(11) Schedule XV–A, Schedule of Utility Company Operating Expenses is added to disclose operating expenses which were only summarized in Schedule XV, Comparative Income Statement.

(12) Schedule, Analysis of Billing Associate Companies—Account 457, is revised to only include associate utility companies. This is consistent with proposed Account 457.

(13) Schedule, Analysis of Billing Non-associate Companies—Account 458, is revised to only include non-associate utility companies. This is consistent with proposed Account 458.

(14) A new schedule, Analysis of Billing Non-Utility Companies—Account 459, is added to Form No. 60. This is consistent with proposed Account 459.

(15) Schedule XVI—Analysis of Charges for Service—Associate and Non-associate Companies, is revised to reflect the breakdown of utility companies and non-utility companies proposed for Accounts 457, 458 and 459.

(16) Schedule XVII, Expense Distribution by Department or Service Function, is revised by adding all income statement accounts.

D. Proposed Conforming Revisions to Parts 366 and 375

35. The Commission proposes to revise §§ 366.21(b), 366.22(a)(1) and (b)(1) and 366.23(a) of the Commission's regulations to conform to the new accounting, and records retention and reporting requirements proposed in this notice of proposed rulemaking.

36. The Commission also proposes to revise § 375.303(c), (d), (e), (f), (g) and (h) of the Commission's regulations to update the delegations to give to the Chief Accountant or the Chief Accountant's designee certain authorities related to service company financial accounting and reporting matters. These authorities are similar to those that the Chief Accountant has for public utilities and licensees, natural gas companies and oil pipeline companies.

E. Technical Conference

37. In addition to providing an opportunity to comment on the regulations proposed in this Notice of Proposed Rulemaking, the Commission directs staff to hold a technical conference regarding the proposed Uniform System of Accounts, the records retention requirements and revised Form No. 60 to provide interested entities an opportunity to discuss the proposed regulations following the close of the comment period for this Notice of Proposed Rulemaking. Entities are invited to include a separate list of subjects they would like discussed at this technical conference in their comments.[24]

[24] This technical conference is distinct from the technical conference announced in Order No. 667. This technical conference will address the specific details associated with the proposed Uniform System of Accounts, records retention requirements and revised Form No. 60. The conference announced in Order No. 667, on the other hand, will address other issues identified in the PUHCA 2005 and FPA section 203 final rules and rehearing orders on those rules.

IV. Information Collection Statement

38. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[25] The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

ESTIMATED ANNUAL BURDEN

Data collection	Number of respondents	Number of responses	Number of hours per response	Total annual hours
FERC form No. 60	38	38	10	380
FERC–555A (new)	300	.....	1,080	324,000
Totals	.....	.....	.....	324,380

Total Annual Hours for Collection (Reporting and Recordkeeping) = 324,380.

Information Collection Costs: The Commission seeks comments on the costs to comply with the requirements. It has projected the average annualized costs for all respondents to be the following:

FERC Form 60 = 380 hours at $120 an hour (an average of 3 staff at $40 an hour) = $45,600.

FERC–555A = The Commission projects an annualized average cost of all respondents as 324,000 hours at $68 an hour ($17 an hour, an average of 4 staff) = $22,032,000 (staffing) + $6,696,000 (storage) = $28,728,000. These costs assume that the average office storage space cost is $7,440 for retaining records on-site. (Usually records after the initial years are transferred to off-site where the storage costs drop to $925 (on average). As these requirements are being approved for an initial three year period, the assumption was made that during that period the records would be retained on-site.) These costs used as an example 120 cubic feet (20 four drawer file cabinets) and include the cubic feet of storage plus the cost of floor space plus the costs for records storage cartons. 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 these requirements. Total costs (reporting and recordkeeping) = $9,908,880.

OMB regulations[26] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collection requirements are mandatory requirements.

Title: Annual Report for Centralized Service Companies (Form No. 60) and Preservation of Records for Service Companies Subject to PUHCA 2005 (555A).

Action: Proposed Collections.

OMB Control Nos.: 1902–0215 (Form No. 60) and new FERC–555A (To Be Determined).

Respondents: Businesses or other for profit.

Frequency of Responses: Annually (Form No. 60) and recordkeeping (555A).

Necessity of the Information: This proposed rule implements certain provisions of Title XII of the Energy Policy Act of 2005, by adding financial accounting requirements and reporting by centralized service companies and the establishment of recordkeeping requirements for both holding companies and service companies. Section 1275(b) provides for Commission review and authorization of cost allocations for non-power goods or services provided by service companies. In Order No. 667, the Commission prescribed, for an initial transition period, uniform financial accounting and reporting requirements for centralized service companies' requirements within holding companies and record retention requirements for both service companies and holding companies and that the modification of the Commission's Uniform System of Accounts and records retention requirements would be implemented later. However, upon further review, the decision was made to implement a new Uniform System of Accounts and records retention requirements to ensure a smoother transition for service companies and holding companies. The Commission has developed standardized accounting rules. These rules, contained in the new Uniform System of Accounts for Centralized Service Companies, are generally consistent with the accounting standards that must be followed by commercial enterprises. Timely reporting of the information is critical to monitoring the industry to ensure that practices are not discriminatory and that appropriate rates are charged. The official records maintained by the regulated companies are in accordance with schedules already set by the Commission in its regulations and already used by companies as the basis for required filings and reports with the Commission. In addition, the records will be used by the Commission's audit staff during compliance reviews and special analyses as deemed necessary by the Commission. The additional financial transparency required by these requirements will aid the Commission in meeting its oversight and market monitoring obligations and will benefit the public both as ratepayers and investors.

Internal Review: The Commission has reviewed the proposed accounting and records retention requirements and made a preliminary determination that these requirements are necessary to implement Title XII of the Energy Policy Act of 2005. By adapting relevant parts of the SEC's Uniform System of Accounts and records retention rules to the Commission's Uniform System of Accounts and records retention requirements, facilitates the Commission's need to conduct examinations, audits and verification of this information for the protection of utility customers with respect to jurisdictional rates. These requirements conform to the Commission's plan for efficient information collection, communication and management within

[25] 44 U.S.C. 3507(d).

[26] 5 CFR 1320.11.

the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*].

For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–4650, fax: (202) 295–7285, e-mail: *oira_submission@omb.eop.gov*].

V. Environmental Analysis

39. 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.[27] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that carry out legislation, involve information gathering, analyses and dissemination, and involve accounting.[28] These proposed rules, if finalized, carry out EPAct 2005, involve information gathering and analysis, and involve accounting, and, therefore, fall under these exclusions. Consequently, no environmental consideration is necessary.

VI. Regulatory Flexibility Act Certification

40. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[29] Most holding companies to which the rules proposed herein, if finalized, would not fall within the RFA's definition of small entity.[30] Consequently, the rules proposed herein, if finalized, will not have a ''significant economic impact on a substantial number of small entities.''

VII. Comment Procedures

41. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before June 15, 2006. Comments must refer to Docket No. RM06–11–000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

42. Comments may be filed electronically via the eFiling link on the Commission's website 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.

43. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

44. 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 notice of proposed rulemaking are not required to serve copies of their comments on other commenters.

VIII. Document Availability

45. 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.

46. From the Commission's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

47. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects

18 CFR Part 366

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 367

Electric power, Natural gas, Uniform System of Accounts, Reporting and recordkeeping requirements.

18 CFR Part 368

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 369

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 366 and 375 and to add parts 367, 368 and 369, Chapter I, Title 18 of the *Code of Federal Regulations*, as follows:

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

1. The authority citation for part 366 continues to read as follows:

Authority: Pub. L. 109–58, 1261 *et seq.*, 119 Stat. 594, 972 *et seq.*

2. In § 366.21, paragraph (b) is revised to read as follows:

[27] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. 1986–1990 ¶ 30,783 (1987).

[28] 18 CFR 380.4(a)(3), (a)(5), (a)(16).

[29] 5 U.S.C. 603 (2000).

[30] 5 U.S.C. 601(3)(2000), *citing* to section 3 of the Small Business Act, 15 U.S.C. 632 (2000). Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines, for example, a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. NAICS defines a natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed $6.5 million dollars for the preceding year. 13 CFR 121.201.

§ 366.21 Accounts and records for holding companies.

* * * * *

(b) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, beginning January 1, 2007, all holding companies must comply with the Commission's records retention requirements for holding companies and service companies as prescribed in part 368 of this chapter. Until December 31, 2006, holding companies registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) may follow either the Commission's records retention rules for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter), or the Securities and Exchange Commission's record retention rules in 17 CFR part 257.

* * * * *

3. In § 366.22, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 366.22 Accounts and records of service companies.

(a) *Records retention requirements*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, beginning January 1, 2007, every service company must maintain and make available to the Commission such books, accounts, memoranda, and other records in such manner and preserve them for such periods as the Commission prescribes in part 368 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

* * * * *

(b) *Accounting requirements*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, beginning January 1, 2007, every centralized service company (See § 367.2 of this chapter) must maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in part 367 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates. Every such service company must maintain and make available such books, accounts, memoranda, and other records in such manner as are prescribed in part 367 of this chapter, and must keep no other records with respect to the same subject matter except:

(i) Records other than accounts;

(ii) Records required by federal or state law;

(iii) Subaccounts or supporting accounts which are not inconsistent with the accounts required either by the Uniform System of Accounts for Centralized Service Companies in part 367 of this chapter; and

(iv) Any other accounts that may be authorized by the Commission.

* * * * *

4. In § 366.23, the section heading and paragraph (a) are revised to read as follows:

§ 366.23 FERC Form No. 60, Annual report of service companies, and FERC–61, Narrative description of service company functions.

(a) *General.* (1) FERC Form No. 60. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, every centralized service company (*See* § 367.2 of this chapter) in a holding company system must file with the Commission by May 1, 2006 and May 1, 2007, and by April 18 each year thereafter, an annual report, FERC Form No. 60, for the prior calendar year. Every report must be submitted on the FERC Form No. 60 then in effect and shall be prepared in accordance with the instructions incorporated in that form.

(2) FERC–61. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, every service company in a holding company system, including a special-purpose company (e.g., a fuel supply company or a construction company), that does not file a FERC Form No. 60 shall instead file with the Commission by April 18, 2007 and by April 18 each year thereafter, a narrative description, FERC–61, of the service company's functions during the prior calendar year. In complying with this section, a holding company may make a single filing on behalf of all such service company subsidiaries.

(3) For good cause shown, the Commission may extend the time within which any such report or narrative description required to be filed pursuant to paragraphs (a)(1) or (2) of this chapter is to be filed or waive the requirements applicable to any such report or narrative description.

* * * * *

5. Part 367 is added to read as follows:

PART 367—UNIFORM SYSTEM OF ACCOUNTS FOR CENTRALIZED SERVICE COMPANIES SUBJECT TO THE PROVISIONS OF PUCHA 2005

Subpart A—Definitions

Sec.

367.1 Definitions.

Subpart B—General Instructions

367.2 Companies for which this system of accounts is prescribed.
367.3 Records.
367.4 Numbering system.
367.5 Accounting period.
367.6 Submittal of questions.
367.7 Item list.
367.8 Extraordinary items.
367.9 Prior period items.
367.10 Unaudited items.
367.11 Distribution of pay and expenses of employees.
367.12 Payroll distribution.
367.13 Accounting to be on accrual basis.
367.14 Transactions with associate companies.
367.15 Contingent assets and liabilities.
367.16 Long-term debt: Premium, discount and expense, and gain or loss on reacquisition.
367.17 Comprehensive inter-period income tax allocation.
367.18 Criteria for classifying leases.
367.19 Accounting for leases.
367.20 Depreciation accounting.
367.22 Accounting for asset retirement obligations
367.23 Transactions with non-associate companies.
367.24 Construction and service contracts for other companies.
367.25 Determination of service cost.
367.26 Departmental classification.
367.27 Billing procedures.
367.28 Methods of allocation.
367.29 Compensation for use of capital.
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Subpart A—Definitions

§ 367.1 Definitions.

(a) When used in this system of accounts:

(1) *Accounts* means the accounts prescribed by this Uniform System of Accounts.

(2) *Actually issued*, as applied to securities issued or assumed by the service companies, means those which have been sold to bona fide purchasers for a valuable consideration, those issued as dividends on stock, and those which have been issued in accordance with contractual requirements direct to trustees of sinking funds.

(3) *Actually outstanding*, as applied to securities issued or assumed by the service company, means those which have been actually issued and are neither retired nor held by or for the service company; provided, however, that securities held by trustees must be considered as actually outstanding.

(4) *Amortization* means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

(5) *Associate company* means any company in the same holding company system with such company.

(6) *Book cost* means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization, or for other purposes.

(7) *Commission* means the Federal Energy Regulatory Commission.

(8) *Company*, when not otherwise indicated in the context, means a service company.

(9) *Construction*, when used in the context of a service provided to other companies, means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

(10) *Cost* means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger, the value of such consideration must be determined on a cash basis.

(11) *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing service property, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (*See* General Instructions in § 367.22).

(12) *Debt expense* means all expenses in connection with the issuance and initial sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds and certificates of indebtedness; fees paid trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for

marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

(13) *Depreciation*, as applied to depreciable service company property, means the loss in service value not restored by current maintenance. Among the causes to be used as consideration for causes of loss in service value are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.

(14) *Direct cost* includes the labor costs and expenses which can be identified through a work order system as being applicable to services performed for a single or group of associate and non-associate companies. Cost incidental to or related to a directly charged item must be classified as direct costs.

(15) *Discount*, as applied to the securities issued or assumed by the service company, means the excess of the par (stated value of no-par stocks) or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

(16) *Electric utility company* means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. For the purposes of this subchapter, ''electric utility company'' shall not include entities that engage only in marketing of electric energy.

(17) *Gas utility company* means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. For the purposes of this subchapter, ''gas utility company'' shall not include entities that engage only in marketing of natural and manufactured gas.

(18) *Goods* means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

(19) *Holding company*—(i) *In general*. The term ''holding company'' means—

(A) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(B) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon holding companies.

(ii) *Exclusions*. The term ''holding company'' must not include—

(A) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(*1*) Held as collateral for a loan;

(*2*) Held in the ordinary course of business as a fiduciary; or

(*3*) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(B) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(*1*) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(*2*) Acquired in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution within 12 months of the specific securities so acquired.

(20) *Holding company system* means a holding company, together with its subsidiary companies.

(21) *Indirect cost* includes the costs of a general overhead nature such as general services, housekeeping costs, and other support cost which cannot be separately identified to a single or group of associate and non-associate companies and, therefore, must be allocated. Indirect costs must be accumulated on a departmental basis.

(22) *Investment advances* means advances, represented by notes or by book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they must be settled by the issuance of securities or must not be subject to current settlement.

(23) *Lease, capital* means a lease of property used by the service company, which meets one or more of the criteria stated in General Instructions in § 367.18.

(24) *Lease, operating* means a lease of property used by a service company, which does not meet any of the criteria stated in General Instructions in § 367.18.

(25) *Minor items of property* means the associated parts or items of which retirement units are composed.

(26) *Natural gas company* means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(27) *Net salvage value* means the salvage value of property retired less the cost of removal.

(28) *Nominally issued*, as applied to securities issued or assumed by the service company, means those which have been signed, certified, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the service company, but which have not been sold, or issued direct to trustees of sinking funds in accordance with contractual requirements.

(29) *Nominally outstanding*, as applied to securities issued or assumed by the service company, means those which, after being actually issued, have been reacquired by or for the service company under circumstances which require them to be considered as held alive and not retired, provided, however, that securities held by trustees must be considered as actually outstanding.

(30) *Non-associate companies* means a person, partnership, organization, government body or company which is not a member of the holding company system.

(31) *Non-utility company* means a company that is not a utility company.

(32) *Person* means an individual or company.

(33) *Premium*, as applied to securities issued or assumed by the service company, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no-par stocks) or face value and interest or dividends accrued at the date of sale.

(34) *Public utility* means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(35) *Public-utility company* means an electric utility company or gas utility company.

(36) *Replacing or replacement*, when not otherwise indicated in the context, means the construction or installation of service property in place of property retired, together with the removal of the property retired.

(37) *Research, development, and demonstration* (RD&D) means expenditures incurred by a service company, for the service company or on behalf of others, either directly or through another person or organization (such as research institute, industry association, foundation, university, engineering company or similar contractor) in pursuing research, development, and demonstration activities including experiment, design, installation, construction, or operation. This definition includes expenditures for the implementation or development of new and/or existing concepts until technically feasible and commercially feasible operations are verified. When conducted on behalf of an associate or non-associate utility company such research, development, and demonstration costs should be reasonably related to the existing or future business of such company. The term includes, but is not limited to: all the costs incidental to the design, development or implementation of an experimental facility, a plant process, a product, a formula, an invention, a system or similar items, and the improvement of already existing items of a like nature; amounts expended in connection with the proposed development and/or proposed delivery of alternate sources of electricity or substitute or synthetic gas supplies (alternate fuel sources, for example, an experimental coal gasification plant or an experimental plant synthetically producing gas from liquid hydrocarbons); and the costs of obtaining its own patent, such as attorney's fees expended in making and perfecting a patent application. The term includes preliminary investigations and detailed planning of specific projects for securing for customers' non-conventional electric power or pipeline gas supplies that rely on technology that has not been verified previously to be feasible. The term does not include expenditures for efficiency surveys; studies of management, management techniques and organization; consumer surveys, advertising, promotions, or items of a like nature.

(38) *Retained earnings* means the accumulated net income of the service company less distribution to stockholders and transfers to other capital accounts.

(39) *Retirement units* means those items of property which, when retired, with or without replacement, are accounted for by crediting the book cost of the retirement units to the property account in which it is included.

(40) *Salvage value* means the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recoverable is chargeable to materials and supplies, or other appropriate account.

(41) *Service* means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

(42) *Service company* means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.

(43) *Service cost* means the total of direct and indirect costs incurred to provide a service to an associate or non-associate company which are properly charged to expense by the service company.

(44) *Service life* means the time between the date property is placed in service, or property is leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production.

(45) *Service value* means the difference between the cost and net salvage value of service property.

(46) *State commission* means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public-utility companies.

(47) *Uniform System of Accounts* means the Uniform System of Accounts for Centralized Service Companies prescribed in this part, as amended from time to time.

(48) *Utility company* means a public-utility company or natural gas company whose rates are regulated by the Commission, state commission or other similar regulatory body.

(49) *Work order system* means a system for the accumulation of service company cost on a job, project, or functional basis. It includes schedules and worksheets used to account for charges billed to single and groups of associate and non-associate companies.

Subpart B—General Instructions

§ 367.2 Companies for which this system of accounts is prescribed.

(a) This Uniform System of Accounts applies to any centralized service company operating, or organized specifically to operate, within a holding company system for the purpose of providing non-power services to any public utility in the same holding company system. A centralized service company is not a special-purpose company (e.g., a fuel supply company or a construction company), but rather is a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. To the extent that the term service company is used in this Uniform System of Accounts, it applies only to centralized service companies.

(b) This Uniform System of Accounts is not applicable to:

(1) Service companies that are specifically organized as a special-purpose company such as a fuel supply company or a construction company.

(2) Electric or gas utility companies.

(3) Companies primarily engaged:

(i) In the production of goods, including exploration and development of fuel resources,

(ii) In the provision of water, telephone, or similar services, the sale of which is normally subject to public rate regulation,

(iii) In the provision of transportation, whether or not regulated, or

(iv) In the ownership of property, including leased property and fuel reserves, for the use of associate companies.

(4) A service company that provides services exclusively to a local gas distribution company.

§ 367.3 Records.

(a) Each service company must keep its books of account, and all other books, records, and memoranda that support the entries in the books of account, so as to be able to furnish full information on any item included in any account. Each entry must be supported by sufficient detailed information that will permit ready identification, analysis, and verification of all facts relevant and related to the records.

(b) The books and records referred to in this part include not only accounting

records in a limited technical sense, but all other records, such as minutes books, stock books, reports, correspondence, and memoranda, that may be useful in developing the history of or facts regarding any transaction.

(c) No service company may destroy any books or records unless the destruction is permitted by the rules and regulations of the Commission.

(d) In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subaccounts of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired.

(e) The arrangement or sequence of the accounts prescribed in this part must not be controlling as to the arrangement or sequence in report forms that may be prescribed by the Commission.

§ 367.4 Numbering system.

(a) The account numbering plan used in this part consists of a system of three-digit whole numbers as follows:

(1) 100–199, Assets and other debits.

(2) 200–299, Liabilities and other credits.

(3) 300–399, Property accounts.

(4) 400–432 and 434–435, Income accounts.

(5) 433, 436 and 439, Retained earnings accounts.

(6) 457–459, Revenue accounts.

(7) 500–599, Electric operating expenses.

(8) 800–894, Gas operating expenses.

(9) 900–949, Customer accounts, customer service and informational, sales, and general and administrative expenses.

(b) The numbers prefixed to account titles are to be considered as parts of the titles. Each service company, however, may adopt for its own purposes a different system of account numbers (*See also* General Instructions in § 367.3(d)) provided that the numbers prescribed in this part must appear in the descriptive headings of the ledger accounts and in the various sources of original entry; however, if a service company uses a different system of account numbers and it is not practicable to show the prescribed account numbers in the various sources of original entry, the reference to the prescribed account numbers may be omitted from the various sources of original entry. Each service company using different account numbers for its own purposes must keep readily available a list of the account numbers that it uses and a reconciliation of those account numbers with the account numbers provided in this part. It is intended that the service company's records must be kept so as to permit ready analysis by prescribed accounts (by direct reference to sources of original entry to the extent practicable) and to permit preparation of financial and operating statements directly from the records at the end of each accounting period according to the prescribed accounts.

§ 367.5 Accounting period.

Each service company must keep its books on a monthly basis so that for each month all transactions applicable to the account, as nearly as may be ascertained, must be entered in the books of the service company. Amounts applicable or assignable to a single or group of associate and non-associate companies must be segregated monthly. Each service company must close its books at the end of each calendar year unless otherwise authorized by the Commission.

§ 367.6 Submittal of questions.

To maintain uniformity of accounting, service companies must submit questions of doubtful interpretation to the Commission for consideration and decision.

§ 367.7 Item list.

Lists of items appearing in the texts of the accounts or elsewhere in this part are for the purpose of indicating clearly the application of the prescribed accounting. The lists are intended to be representative, but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

§ 367.8 Extraordinary items.

Those items related to the effects of events and transactions that have occurred during the current period and that are of an unusual nature and infrequent occurrence must be considered extraordinary items. Accordingly, there will be events and transactions of significant effect that are abnormal and significantly different from the ordinary and typical activities of the service company, and that would not reasonably be expected to recur in the foreseeable future. In determining significance, items must be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate. For an item to be recognized as extraordinary, Commission approval must be obtained. (*See* Accounts 434 and 435 in §§ 367.4340 and 367.4350.)

§ 367.9 Prior period items.

(a) Items of profit and loss related to the following must be accounted for as prior period adjustments and excluded from the determination of net income for the current year:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of pre-acquisition operating loss carry forwards of purchased subsidiaries.

(b) All other items of profit and loss recognized during the year must be included in the determination of net income for that year.

§ 367.10 Unaudited items.

Whenever a financial statement is required by the Commission, if it is known that a transaction has occurred that affects the accounts but the amount involved in the transaction and its effect upon the accounts cannot be determined with absolute accuracy, the amount must be estimated and the estimated amount included in the proper accounts. The service company is not required to anticipate minor items that would not appreciably affect the accounts.

§ 367.11 Distribution of pay and expenses of employees.

The charges to property, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, must be based upon the actual time engaged in the respective classes of work, or an appropriate allocation method.

§ 367.12 Payroll distribution.

Underlying accounting data must be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. The underlying data must permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, operating functions.

§ 367.13 Accounting to be on accrual basis.

(a) The service company is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount that affect the accounts. If bills covering the transactions have not been received or

rendered, the amounts must be estimated and appropriate adjustments made when the bills are received. When the amount is ascertained, the necessary adjustments must be made through the accounts in which the estimate was recorded. If it is determined during the interval that a material adjustment will be required, the estimate must be adjusted through the current accounts. The service company is not required to anticipate minor items which would not appreciably affect these accounts.

(b) When payments are made in advance for items such as insurance, rents, taxes or interest, the amount applicable to future periods must be charged to account 165, Prepayments (§ 367.1650), and spread over the periods to which they are applicable by credits to account 165 (§ 367.1650), and charges to the accounts appropriate for the expenditure.

§ 367.14 Transactions with associate companies.

Each service company must keep its accounts and records so as to be able to furnish accurately and expeditiously statements of all transactions with associate companies. The statements may be required to show the general nature of the transactions, the amounts involved in the transactions and the amounts included in each account prescribed in this part with respect to such transactions. Transactions with associate companies must be recorded in the appropriate accounts for transactions of the same nature. Nothing contained in this part, however, must be construed as restraining the service company from subdividing accounts for the purpose of recording separately transactions with associate companies.

§ 367.15 Contingent assets and liabilities.

Contingent assets represent a possible source of value to the service company contingent upon the fulfillment of conditions regarded as uncertain. Contingent liabilities include items that, under certain conditions, may become obligations of the service company but that are neither direct nor assumed liabilities at the date of the balance sheet. The service company must be prepared to give a complete statement of significant contingent assets and liabilities (including cumulative dividends on preference stock) in its annual report and at such other times as may be requested by the Commission.

§ 367.16 Long-term debt: Premium, discount and expense, and gain or loss on reacquisition.

(a) A separate premium, discount and expense account must be maintained for each class and series of long-term debt (including receivers' certificates) issued or assumed by the service company. The premium must be recorded in account 225, Unamortized premium on long-term debt (§ 367.2250), the discount must be recorded in account 226, Unamortized discount on long-term debt—Debit (§ 367.2260), and the expense of issuance must be recorded in account 181, Unamortized debt expense (§ 367.1810). The premium, discount and expense must be amortized over the life of the respective issues under a plan that will distribute the amounts equitably over the life of the securities. The amortization must be on a monthly basis, and the amounts relating to discounts and expenses must be charged to account 428, Amortization of debt discount and expense (§ 367.4280). The amounts relating to premiums must be credited to account 429, Amortization of premium on debt—Credit (§ 367.4290).

(b) When long-term debt is reacquired the difference between the amount paid upon reacquisition of any long-term debt and the face value, adjusted for unamortized discount, expenses or premium, as the case may be, applicable to the debt redeemed must be recognized currently in income and recorded in account 421, Miscellaneous income or loss (§ 367.4210), or account 426.5, Other deductions (§ 367.4265).

§ 367.17 Comprehensive inter-period income tax allocation.

(a) Where there are timing differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income, the income tax effects of such transactions are to be recognized in the periods in which the differences between book accounting income and taxable income arise and in the periods in which the differences reverse using the deferred tax method. In general, comprehensive inter-period tax allocation should be followed whenever transactions enter into the determination of pretax accounting income for the period even though some transactions may affect the determination of taxes payable in a different period, as further qualified in this section.

(b) Once comprehensive inter-period tax allocation has been initiated, either in whole or in part, it must be practiced on a consistent basis and must not be changed or discontinued without prior Commission approval.

(c) Tax effects deferred currently will be recorded as deferred debits or deferred credits in accounts 190, Accumulated deferred income taxes (§ 367.1900), 282, Accumulated deferred income taxes—Other property (§ 367.2820), and 283, Accumulated deferred income taxes—Other (§ 367.2830), as appropriate. The resulting amounts recorded in these accounts must be disposed of as prescribed in this system of accounts or as otherwise authorized by the Commission.

§ 367.18 Criteria for classifying leases.

(a) If, at its inception, a lease meets one or more of the following criteria, the lease must be classified as a capital lease. Otherwise, it must be classified as an operating lease.

(1) The lease transfers ownership of the property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase option.

(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion must not be used for purposes of classifying the lease.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any related profit, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by the lessor. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion must not be used for purposes of classifying the lease. The lessee must compute the present value of the minimum lease payments using its incremental borrowing rate, unless:

(i) It is practicable for the company to learn the implicit rate computed by the lessor, and

(ii) The implicit rate computed by the lessor is less than the lessee's incremental borrowing rate.

(iii) If both of those conditions are met, the lessee must use the implicit rate.

(b) If, at any time, the lessee and lessor agree to change the provisions of the lease, other than by renewing the lease would have resulted in a different classification of the lease under the criteria in paragraph (a) of this section had the changed terms been in effect at the inception of the lease, the revised

agreement must be considered as a new agreement over its term, and the criteria in paragraph (a) of this section must be applied for purposes of classifying the new lease. Likewise, any action that extends the lease beyond the expiration of the existing lease term, such as the exercise of a lease renewal option other than those already included in the lease term, must be considered as a new agreement and must be classified according to the criteria in paragraph (a) of this section. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the leased property) or changes in circumstances (for example, default by the lessee) must not give rise to a new classification of a lease for accounting purposes.

§ 367.19 Accounting for leases.

(a) All leases must be classified as either capital or operating leases.

(b) The service company must record a capital lease as an asset in account 101.1, Property under capital leases (§ 367.1011) and an obligation in account 227, Obligations under capital leases—Non-current (§ 367.2270), or account 243, Obligations under capital leases—Current (§ 367.2430), at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any related profit. However, if the determined amount exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation must be the fair value.

(c) The service company, as a lessee, must recognize an asset retirement obligation (*See* General Instructions in § 367.22) arising from the property under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The service company must record the asset retirement cost by debiting account 101.1, Property under capital leases (§ 367.1011), and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations (§ 367.2300). Asset retirement costs recorded in account 101.1 (§ 367.1011) must be amortized by charging rent expense (*See* Operating Expense Instructions in § 367.82) or account 421, Miscellaneous income or loss (§ 367.4210), as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations (§ 367.2300), must be recorded by a charge to account 411.10, Accretion expense, for service company property (§ 367.4111), and account 421, Miscellaneous income or loss, for non-service company property (§ 367.4210) and a credit to account 230, Asset retirement obligations (§ 367.2300).

(d) Rental payments on all leases must be charged to rent expense, fuel expense, construction work in progress, or other appropriate accounts as they become payable.

(e) For a capital lease, for each period during the lease term, the amounts recorded for the asset and obligation must be reduced by an amount equal to the portion of each lease payment that would have been allocated to the reduction of the obligation, if the payment had been treated as a payment on an installment obligation (liability) and allocated between interest expense and a reduction of the obligation so as to produce a constant periodic rate of interest on the remaining balance.

§ 367.20 Depreciation accounting.

(a) *Method.* Service companies must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.

(b) *Service lives.* Estimated useful service lives of depreciable property must be supported by engineering, economic, or other depreciation studies.

(c) *Rate.* Service companies must use percentage rates of depreciation that are based on a method of depreciation that allocates the service value of depreciable property over the service life of the property. Where composite depreciation rates are used, they must be based on the weighted average estimated useful service lives of the depreciable property comprising the composite group.

§ 367.22 Accounting for asset retirement obligations.

(a) An asset retirement obligation represents a liability for the legal obligation associated with the retirement of a tangible, long-lived asset that a service company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract, or by legal construction of a contract under the doctrine of promissory estoppel. An asset retirement cost represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost must be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

(b) The service company must initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations (§ 367.2300), and charge the associated asset retirement costs to service company property (including account 101.1 in § 367.1011) related to the property that gives rise to the legal obligation. The asset retirement cost must be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a service company must recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations (§ 367.2300), as follows:

(1) The service company must record the accretion of the liability by debiting account 411.10, Accretion expense (§ 367.4116); and

(2) The service company must recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations (§ 367.2300), for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to service company property. The service company must on a timely basis monitor any measurement changes of the asset retirement obligations.

(c) Gains or losses resulting from the settlement of asset retirement obligations associated with service company property resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations(§ 367.2300), and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous income or loss (§ 367.4210), and;

(2) Losses shall be charged to account 426.5, Other deductions (§ 367.4265).

(d) Separate subsidiary records must be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the

liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analysis, a service company must maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating to each component and supporting computations related to the measurement of the asset retirement obligation.

§ 367.23 Transactions with non-associate companies.

When a service or construction is performed for non-associate companies at an amount other than cost, the amount of revenues in excess or deficiency of the cost on servicing the non-associate companies must be charged to account 458.4, Excess or deficiency on servicing non-associate utility companies (§ 367.4584), or account 459.4, Excess or deficiency on servicing non-associate non-utility companies(§ 367.4594), as appropriate. A deficiency incurred in a project deemed beneficial to the associate companies may be charged to associate companies subject to disallowance by a State Commission or Federal Commission having jurisdiction over the rates or services of the associate companies. To the extent not charged, or if disallowed, the deficiency will be charged to account 458.4 (§ 367.4584) or account 459.4 (§ 367.4594), as appropriate. In computing charges to associate companies for any calendar year, the sum of the closing balances in these accounts, if a credit, must be deducted from amounts reimbursable by associate companies as compensation for use of capital invested in the service company.

§ 367.24 Construction and service contracts for other companies.

(a) Specific accounts have not been provided to classify expenditures made in the performance of construction or service contracts, under which the service company undertakes projects to construct physical property for associate or non-associate companies. The service company must keep records pursuant to its work order system indicating the cost of each contract or project, the amount of service costs allocated to the contracts, and the additional classification of expenditures relating to projects that will meet the accounting requirements of the company for which the work is performed.

(b) Service costs allocated to construction must include the proper proportion of salaries, expense of officers and employees, pay of employees on the service company's regular staff specifically assigned to construction work, and other expenses of maintaining the service company's organization and equipment. Cost of materials, construction payrolls, outside services, and other expenses directly attributable to construction work must be excluded from the accounting system of the service company and charged directly by the vendor or supplier to the construction project.

(c) Service costs allocated to centralized procurement activities must include only the cost of the support services performed by the service company in connection with the procurement of goods for associate companies. Cost of goods procured must be excluded from the accounting system of the service company and charged directly by the vendor or supplier to the associate company concerned. The service company must keep records indicating the cost of goods, if any, that it procures for each associate company and the amount of service costs allocated thereto. These records must be maintained to meet the Commission's accounting requirements for electric and gas companies.

§ 367.25 Determination of service cost.

A service must be deemed at cost and fair allocation of costs requires an accurate accounting for the elements that makes up the aggregate expense of conducting the business of the service company. In the accounts prescribed in this part, the total amounts included in the expense accounts during any period plus the amount that appropriately may be added as compensation for the use of capital, if paid, constitute cost during that period.

§ 367.26 Departmental classification.

Salaries and wages and all other costs must be classified by departmental or other functional category in accordance with the departmental organization of the service company to provide a readily available basis for analysis.

§ 367.27 Billing procedures.

All invoices for services rendered must be submitted monthly with sufficient information and in sufficient detail to permit such company, where applicable, to identify and classify the charge in terms of the system of accounts prescribed by the regulatory authorities to which it is subject. Each month a statement must be rendered to each associate and non-associate utility company to whom services were provided containing a summary of the accounts by work order and showing the charges, classified as direct cost, indirect cost, and compensation for use of capital.

§ 367.28 Methods of allocation.

Indirect costs and compensation for use of capital must be allocated to work orders in accordance with the service company's applicable and currently effective methods of allocation. Both direct and allocated indirect costs of work orders must be assigned among those companies in the same manner. Each work order must identify the methods of allocation and the accounts to be charged. Companies must be notified in writing of any change in the methods of allocation.

§ 367.29 Compensation for use of capital.

A servicing transaction is deemed to be performed at no more than cost if the price of the service does not exceed a fair and equitable allocation of expenses plus reasonable compensation for necessary capital procured through the issuance of capital stock. Interest on borrowed capital and compensation for the use of capital must only represent a reasonable return on the amount of capital reasonably necessary for the performance of services or construction work for, or the sale of goods to, associate companies. The compensation may be estimated and must be computed monthly. The amount of compensation must be stated separately in each billing to the associate companies. An annual statement to support the amount of compensation for use of capital billed for the previous 12 months and how it was calculated must be supplied to each associate company at the end of the calendar year.

§ 367.30 Work order system for associate companies.

Service companies must maintain a detailed classification of service costs, that permits costs to be identified with the functional processes of the associate companies served. To permit the classification, each service company must maintain a work order system for accumulating reimbursable costs and charges to the associate companies served, and maintain time records for all service company employees in order to support the accounting allocation of all expenses assignable to the types of services performed and chargeable to

the associate companies served. Service company employee records must permit a ready identification of the hours worked, account numbers charged, department work order number and other code designations that facilitate proper classification.

Subpart C—Service Company Property Instructions

§ 367.50 Service company property to be recorded at cost.

(a) All amounts included in the accounts for service company property must be stated at the cost incurred by the service company, except for property acquired by lease which qualifies as capital lease property under General Instructions in § 367.18, Criteria for classifying leases, and is recorded in Account 101.1, Property under capital leases (§ 367.1011).

(b) When the consideration given for property is other than cash, the value of the consideration must be determined on a cash basis (*See, however,* Definitions § 367.1(a)(10)). In the entry recording the transaction, the actual consideration must be described with sufficient particularity to identify it. The service company must be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration, if other than cash.

(c) When property is purchased under a plan involving deferred payments, no charge must be made to the service company property accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

(d) The service company property accounts must not include the cost or other value of service company property contributed to the company. Contributions in the form of money or its equivalent toward the construction of property must be credited to accounts charged with the cost of such construction. Property constructed from contributions of cash or its equivalent must be shown as a reduction to gross property constructed when assembling cost data in work orders for posting to property ledgers of accounts. The accumulated gross costs of property accumulated in the work order must be recorded as a debit in the plant ledger of accounts along with the related amount of contributions concurrently recorded as a credit.

§ 367.51 Components of construction.

(a) For service companies, the cost of construction properly included in the service company property accounts must include, where applicable, the direct and overhead costs as listed and defined as follows:

(1) Contract work includes amounts paid for work performed under contract by other companies, firms, or individuals, costs incident to the award of such contracts, and the inspection of the work.

(2) Labor includes the pay and expenses of employees of the service company engaged on construction work, and related workmen's compensation insurance, payroll taxes and similar items of expense. It does not include the pay and expenses of employees that are distributed to construction through clearing accounts nor the pay and expenses included in other items in this section.

(3)(i) Materials and supplies includes the purchase price at the point of free delivery plus customs duties, excise taxes, the cost of inspection, loading and transportation, the related stores expenses, and the cost of fabricated materials from the service company's shop. In determining the cost of materials and supplies used for construction, proper allowance must be made for unused materials and supplies, for materials recovered from temporary structures used in performing the work involved, and for discounts allowed and realized in the purchase of materials and supplies.

(ii) The cost of individual items of equipment of small value (for example, $500 or less) or of short life, including small portable tools and implements, must not be charged to service company property accounts unless the correctness of the accounting is verified by current inventories. The cost must be charged to the appropriate operating expense or clearing accounts, according to the use of the items, or, if the items are consumed directly in construction work, the cost must be included as part of the cost of the construction.

(4) Transportation includes the cost of transporting employees, materials and supplies, tools, purchased equipment, and other work equipment (when not under own power) to and from points of construction. It includes amounts paid to others as well as the cost of operating the service company's own transportation equipment. (*See* paragraph (a)(5) of this section.)

(5) Special machine service includes the cost of labor (optional), materials and supplies, depreciation, and other expenses incurred in the maintenance, operation and use of special machines, such as steam shovels, pile drivers, derricks, ditchers, scrapers, material unloaders, and other labor saving machines; also expenditures for rental, maintenance and operation of machines of others. It does not include the cost of small tools and other individual items of small value or short life which are included in the cost of materials and supplies. (*See* paragraph (a)(3) of this section.) When a particular construction job requires the use for an extended period of time of special machines, transportation or other equipment, the associated net book cost, less the appraised or salvage value at time of release from the job, must be included in the cost of construction.

(6) Shop service includes the proportion of the expense of the service company's shop department assignable to construction work except that the cost of fabricated materials from the service company's shop must be included in materials and supplies.

(7) Protection includes the cost of protecting the service company's property from fire or other casualties and the cost of preventing damages to others, or to the property of others, including payments for discovery or extinguishment of fires, cost of apprehending and prosecuting incendiaries, related witness fees, amounts paid to municipalities and others for fire protection, and other analogous items of expenditures in connection with construction work.

(8) Injuries and damages includes expenditures or losses in connection with construction work on account of injuries to persons and damages to the property of others; also the cost of investigation of, and defense against, actions for the injuries and damages. Insurance recovered or recoverable on account of compensation paid for injuries to persons incident to construction must be credited to the account or accounts to which such compensation is charged. Insurance recovered or recoverable on account of property damages incident to construction must be credited to the account or accounts charged with the cost of the damages.

(9) Privileges and permits includes payments for and expenses incurred in securing temporary privileges, permits or rights in connection with construction work, such as for the use of private or public property, streets, or highways, but it does not include rents.

(10) Rents include amounts paid for the use of construction quarters and office space occupied by construction forces and amounts properly includible in construction costs for the facilities jointly used.

(11) Engineering and supervision includes the portion of the pay and expenses of engineers, surveyors, draftsmen, inspectors, superintendents

and their assistants applicable to construction work.

(12) General administration capitalized includes the portion of the pay and expenses of the general officers and administrative and general expenses applicable to construction work.

(13) Engineering services includes amounts paid to other companies, firms, or individuals engaged by the service company to plan, design, prepare estimates, supervise, inspect, or give general advice and assistance in connection with construction work.

(14) Insurance includes premiums paid or amounts provided or reserved as self-insurance for the protection against loss and damages in connection with construction, by fire or other casualty injuries to or death of persons other than employees, damages to property of others, defalcation of employees and agents, and the nonperformance of contractual obligations of others. It does not include workmen's compensation or similar insurance on employees included as labor in paragraph (a)(2) of this section.

(15) Law expenditures includes the general law expenditures incurred in connection with construction and the directly related court and legal costs, other than law expenses included in protection in paragraph (a)(7) of this section, and in injuries and damages in paragraph (a)(8) of this section.

(16) Taxes include taxes on physical property (including land) during the period of construction and other taxes properly includible in construction costs before the facilities become available for service.

(17) Allowance for funds used during construction includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, not to exceed, without prior approval of the Commission, allowances computed in accordance with the formula prescribed in paragraph (i) of this section. No allowance for funds used during construction charges must be included in these accounts upon expenditures for construction projects which have been abandoned.

(i) The formula and elements for the computation of the allowance for funds used during construction must be:

(A) $Ai=s(S/W)+d(D/D+P+C)(1-S/W)$

(B) $Ae=[1-S/W][p(P/D+P+C)+c(C/D+P+C)]$

(C) Ai=Gross allowance for borrowed funds used during construction rate.

(D) Ae=Allowance for other funds used during construction rate.

(E) S=Average short-term debt.

(F) s=Short-term debt interest rate.

(G) D=Long-term debt.

(H) d=Long-term debt interest rate.

(I) P=Preferred stock.

(J) p=Preferred stock cost rate.

(K) C=Common equity.

(L) c=Common equity cost rate.

(M) W= Average balance in construction work in progress, less asset retirement costs (*See* General Instructions in § 367.22) related to property under construction.

(ii) The rates must be determined annually. The balances for long-term debt, preferred stock and common equity must be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock must be the weighted average cost determined in the manner indicated in § 35.13 of this chapter. The cost rate for common equity must be the rate granted common equity in the last rate proceeding before the ratemaking body of any associate public utility company for which services were provided during the year. If this cost rate is not available, the average rate actually earned during the preceding three years must be used. The short-term debt balances and related cost and the average balance for construction work in progress must be estimated for the current year with appropriate adjustments as actual data becomes available.

(iii) When a part only of a property or project is placed in operation or is completed and ready for service but the construction work as a whole is incomplete, that part of the cost of the property placed in operation or ready for service, must be treated as service company property and allowance for funds used during the construction as a charge to construction must cease. Allowance for funds used during construction on that part of the cost of the property that is incomplete may be continued as a charge to construction until such time as it is placed in operation or is ready for service, except as limited in paragraph (a)(17) of this section.

(18) *Earnings and expenses during construction.* The earnings and expenses during construction must constitute a component of construction costs.

(19) *Training costs.* When it is necessary that employees be trained to operate or maintain property that is being constructed and the property is not conventional in nature, or is new to the company's operations, these costs may be capitalized as a component of construction cost. Once property is placed in service, the capitalization of training costs must cease and subsequent training costs must be expensed. (*See* Operating Expense Instructions in § 367.83.)

(20) Studies include the costs of studies such as safety or environmental studies mandated by regulatory bodies relative to property under construction. Studies relative to facilities in service must be charged to account 183, Preliminary Survey and Investigation Charges (§ 367.1830).

(21) *Asset retirement costs.* The costs recognized as a result of asset retirement obligations incurred during the construction and testing of service company property must constitute a component of construction costs.

§ 367.52 Overhead construction costs.

(a) All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the service company, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, must be charged to particular jobs or units on the basis of the amounts of the reasonably applicable overheads.

(b) As far as practicable, the determination of payroll charges includible in construction overheads must be based on the related time card distributions. Where this procedure is impractical, special studies must be made periodically of the time of supervisory employees devoted to construction activities to the end that only the overhead costs that have a definite relation to construction must be capitalized.

(c) The records supporting the entries for overhead construction costs must be kept so as to show the total amount of each overhead for each year, the nature and amount of each overhead expenditure charged to each construction work order and to each property account, and the bases of distribution of such costs.

§ 367.53 Service company property purchased or sold.

(a) When service company property is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including related incidental expenses, must be charged to the appropriate service company property accounts and account 107, Construction work in progress (§ 367.1070), as appropriate.

(b) If property acquired is in a physical condition so that it is necessary to rehabilitate it substantially in order to bring the property up to the standards of the service company, the cost of the work, except replacements, must be

accounted for as a part of the purchase price of the property.

(c) Unless otherwise authorized by the Commission, all service company property acquired from an affiliate company must be at its book value. Additionally, if property is acquired that is in excess of $10 million and has been previously devoted to public service at a price above book value, the service company must file with the Commission the proposed journal entries associated with the acquisition within six months from the date of acquisition of the property.

(d) When service company property is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another must be credited to the appropriate service company property accounts. The amounts (estimated, if not known) carried with respect the accounts for accumulated provision for depreciation and amortization must be charged to those accounts. The difference, if any, between the net amount of debits and credits and the consideration received for the property (less commissions and other expenses of making the sale) must be included in account 421.1, Gain on disposition of property (§ 367.4211), or account 421.2, Loss on disposition of property (§ 367.4212).

(e) In connection with the acquisition of service company property previously devoted to service company operations or acquired from an associate company, the service company must procure, if possible, all existing records relating to the property acquired or related certified copies, and must preserve the records in conformity with regulations or practices governing the preservation of records of its own construction.

§ 367.54 Expenditures on leased property.

(a) The cost of substantial initial improvements (including repairs, rearrangements, additions, and betterments) made to prepare service company property leased to be used for a period of more than one year, and the cost of subsequent substantial additions, replacements, or betterments to the property, must be charged to the service company property account appropriate for the class of property leased. If the service life of the improvements is terminable by action of the lease, the cost, less net salvage, of the improvements must be spread over the life of the lease by charges to account 404, Amortization of limited-term service property. However, if the service life is not terminated by action of the lease but by depreciation proper, the cost of the improvements, less net salvage, must be accounted for as depreciable property. The provisions of this paragraph are applicable to property leased under either capital leases or operating leases.

(b) If improvements made to property leased for a period of more than one year are of relatively minor cost, or if the lease is for a period of not more than one year, the cost of the improvements must be charged to the account in which the rent is included, either directly or by amortization.

§ 367.55 Land and land rights.

(a) The accounts for land and land rights must include the cost of land owned in fee by the service company and rights. Interests, and privileges held by the service company in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of property. The costs must be included in the appropriate property accounts directly benefited.

(b) Where special assessments for public improvements provide for deferred payments, the full amount of the assessments must be charged to the appropriate land account and the unpaid balance must be carried in an appropriate liability account. Interest on unpaid balances must be charged to the appropriate interest account. If any part of the cost of public improvements is included in the general tax levy, the related amount must be charged to the appropriate tax account.

(c) The net profit from the sale of timber, cord wood, sand, gravel, other resources or other property acquired with the rights-of-way or other lands must be credited to the appropriate property account to which it is related. Where land is held for a considerable period of time and timber and other natural resources on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the natural resources) from the sales of timber or its products or other natural resources must be credited to the appropriate operating income account when the land has been recorded in account 101, Service company property (§ 367.1010), otherwise to account 421, Miscellaneous income or loss (§ 367.4210).

(d) Separate entries must be made for the acquisition, transfer, or retirement of each parcel of land, and each land right (except rights of way for distribution lines), or water right, having a life of more than one year. A record must be maintained showing the nature of ownership, full legal description, area, map reference, purpose for which used, city, county, and tax district on which situated, from whom purchased or to whom sold, payment given or received, other costs, contract date and number, date of recording of deed, and book and page of record. Entries transferring or retiring land or land rights must refer to the original entry recording its acquisition.

(e) Any difference between the amount received from the sale of land or land rights, less agents' commissions and other costs incident to the sale, and the book cost of such land or rights, must be included in account 421.1, Gains on disposition of property (§ 367.4211), or account 421.2, Losses on disposition of property (§ 367.4212), when the property has been recorded in account 101, Service company property (§ 367.1010). Appropriate adjustments of the accounts must be made with respect to any structures or improvements located on the land sold.

(f) The cost of buildings and other improvements (other than public improvements) must not be included in the land accounts. If, at the time of acquisition of an interest in land the interest extends to buildings or other improvements (other than public improvements) that are then devoted to operations, the land and improvements must be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking must be charged and the salvage credited to the account in which the cost of the land is recorded.

(g) Provisions must be made for amortizing amounts carried in the accounts for limited-term interests in land so as to apportion equitably the cost of each interest over the life thereof. (*See* account 111, Accumulated provision for amortization of service company property in § 367.1110, and account 404, Amortization of limited-term property in § 367.4040.)

(h) The items of cost to be included in the accounts for land and land rights are as follows:

(1) Bulkheads, buried, not requiring maintenance or replacement.

(2) Cost, first, of acquisition including mortgages and other liens assumed (but not the related subsequent interest).

(3) Condemnation proceedings, including court and counsel costs.

(4) Consents and abutting damages, payment for.

(5) Conveyancers' and notaries' fees.

(6) Fees, commissions, and salaries to brokers, agents and others in connection with the acquisition of the land or land rights.

(7) Leases, cost of voiding upon purchase to secure possession of land.

(8) Removing, relocating, or reconstructing, property of others, such as buildings, highways, railroads, bridges, cemeteries, churches, telephone and power lines, in order to acquire quiet possession.

(9) Retaining walls unless identified with structures.

(10) Special assessments levied by public authorities for public improvements on the basis of benefits for new roads, new bridges, new sewers, new curbing, new pavements, and other public improvements, but not taxes levied to provide for the maintenance of such improvements.

(11) Surveys in connection with the acquisition, but not amounts paid for topographical surveys and maps where the costs are attributable to structures or plant equipment erected or to be erected or installed on the land.

(12) Taxes assumed, accrued to date of transfer of title.

(13) Title, examining, clearing, insuring and registering in connection with the acquisition and defending against claims relating to the period prior to the acquisition.

(14) Appraisals prior to closing title.

(15) Cost of dealing with distributees or legatees residing outside of the state or county, such as recording power of attorney, recording will or exemplification of will, recording satisfaction of state tax.

(16) Filing satisfaction of mortgage.

(17) Documentary stamps.

(18) Photographs of property at acquisition.

(19) Fees and expenses incurred in the acquisition of water rights and grants.

(20) Cost of fill to extend bulkhead line over land under water, where riparian rights are held, that is not occasioned by the erection of a structure.

(21) Sidewalks and curbs constructed by the service company on public property.

(22) Labor and expenses in connection with securing rights of way, where performed by company employees and company agents.

§ 367.56 Structures and improvements.

(a) The accounts for structures and improvements must include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and that cannot be removed from the buildings and facilities without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on, or to, land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of property.

(b) The cost of specially-provided foundations not intended to outlast the machinery or apparatus for which provided, and associated costs, such as angle irons, castings, and other items installed at the base of an item of equipment, must be charged to the same account as the cost of the machinery, apparatus, or equipment.

(c) Where the structure of a dam also forms the foundation of the service company building, the foundation must be considered a part of the dam.

(d) The cost of disposing of materials excavated in connection with construction of structures must be considered as a part of the cost of that work, except as follows:

(1) When the material is used for filling, the cost of loading, hauling, and dumping must be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used.

(2) When the material is sold, the net amount realized from the sales must be credited to the work in connection with which the removal occurs. If the amount realized from the sale of excavated materials exceeds the removal costs and the costs in connection with the sale, the excess must be credited to the land account in which the site is carried.

(e) Lighting or other fixtures temporarily attached to buildings for purposes of display or demonstration must not be included in the cost of the building but in the appropriate equipment account.

(f) This account must include the following items:

(1) Architects' plans and specifications including supervision.

(2) Ash pits (when located within the building).

(3) Athletic field structures and improvements.

(4) Boilers, furnaces, piping, wiring, fixtures, and machinery for heating, lighting, signaling, ventilating, and air-conditioning systems, plumbing, vacuum cleaning systems, incinerator and smoke pipe, flues and similar items.

(5) Bulkheads, including dredging, riprap fill, piling, decking, concrete, fenders, and similar items when exposed and subject to maintenance and replacement.

(6) Chimneys.

(7) Coal bins and bunkers.

(8) Commissions and fees to brokers, agents, architects, and others.

(9) Conduit (not to be removed) with its contents.

(10) Damages to abutting property during construction.

(11) Docks.

(12) Door checks and door stops.

(13) Drainage and sewerage systems.

(14) Elevators, cranes, hoists, and the machinery for operating them.

(15) Excavation, including shoring, bracing, bridging, refill and disposal of excess excavated material, cofferdams around foundation, pumping water from cofferdams during construction, and test borings.

(16) Fences and fence curbs (not including protective fences isolating items of equipment, which must be charged to the appropriate equipment account).

(17) Fire protection systems when forming a part of a structure.

(18) Flagpole.

(19) Floor covering (permanently attached).

(20) Foundations and piers for machinery, constructed as a permanent part of a building or other item listed in this paragraph.

(21) Grading and clearing when directly occasioned by the building of a structure.

(22) Intrasite communication system, poles, pole fixtures, wires, and cables.

(23) Landscaping, lawns, shrubbery and similar items.

(24) Leases, voiding upon purchase to secure possession of structures.

(25) Leased property, expenditures on.

(26) Lighting fixtures and outside lighting system.

(27) Mail chutes when part of a building.

(28) Marquee, permanently attached to building.

(29) Painting, first cost.

(30) Permanent paving, concrete, brick, flagstone, asphalt, within the property lines.

(31) Partitions, including movable.

(32) Permits and privileges.

(33) Platforms, railings, and gratings when constructed as a part of a structure.

(34) Power boards for services to a building.

(35) Refrigerating systems for general use.

(36) Retaining walls except when identified with land.

(37) Roadways, railroads, bridges, and trestles intrasite except railroads provided for in equipment accounts.

(38) Roofs.

(39) Scales, connected to and forming a part of a structure.

(40) Screens.

(41) Sewer systems, for general use.

(42) Sidewalks, culverts, curbs and streets constructed by the service company on its property.

(43) Sprinkling systems.

(44) Sump pumps and pits.

(45) Stacks—brick, steel, or concrete, when set on foundation forming part of general foundation and steelwork of a building.

(46) Steel inspection during construction.

(47) Storage facilities constituting a part of a building.

(48) Storm doors and windows.

(49) Subways, areaways, and tunnels, directly connected to and forming part of a structure.

(50) Tanks, constructed as part of a building or as a distinct structural unit.

(51) Temporary heating during construction (net cost).

(52) Temporary water connection during construction (net cost).

(53) Temporary shanties and other facilities used during construction (net cost).

(54) Topographical maps.

(55) Tunnels, intake and discharge, when constructed as part of a structure, including sluice gates, and those constructed to house mains.

(56) Vaults constructed as part of a building.

(57) Watchmen's sheds and clock systems (net cost when used during construction only).

(58) Water basins or reservoirs.

(59) Water front improvements.

(60) Water meters and supply system for a building or for general company purposes.

(61) Water supply piping, hydrants and wells.

(62) Wharves.

(63) Window shades and ventilators.

(64) Yard drainage system.

(65) Yard lighting system.

(66) Yard surfacing, gravel, concrete, or oil. (First cost only.)

(g) Structures and Improvements accounts must be credited with the cost of structures created to house, support, or safeguard equipment, the use of which has terminated with the removal of the equipment with which they are associated even though they have not been physically removed.

§ 367.57 Equipment.

(a) The cost of equipment chargeable to the service company property accounts, unless otherwise indicated in the text of an equipment account, includes the related net purchase price, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the service company, labor employed, materials and supplies consumed, and expenses incurred by the service company in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of property.

(b) Exclude from equipment accounts hand and other portable tools, that are likely to be lost or stolen or that have relatively small value (for example, $500 or less) or short life, unless the correctness of the related accounting as service company property is verified by current inventories. Special tools acquired and included in the purchase price of equipment must be included in the appropriate property account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, or similar items, or in stores, must be charged to the property account appropriate for their use.

(c) The equipment accounts must include angle irons and similar items that are installed at the base of an item of equipment, but piers and foundations that are designed to be as permanent as the buildings that house the equipment, or that are constructed as a part of the building and that cannot be removed without cutting into the walls, ceilings or floors or without in some way impairing the building, must be included in the building accounts.

(d) The cost of efficiency or other tests made subsequent to the date equipment becomes available for service must be charged to the appropriate expense accounts, except that tests to determine whether equipment meets the specifications and requirements as to efficiency, performance, and similar items, guaranteed by manufacturers, made after operations have commenced and within the period specified in the agreement or contract of purchase may be charged to the appropriate service company property account.

§ 367.58 Work order and property record system required for service company property.

(a) Each service company must record all construction and retirements of service company property by means of work orders or job orders. Separate work orders may be opened for additions to, and retirements of, service company property or the retirements may be included with the construction work order. All items relating to the retirements must be kept separate from those relating to construction and any maintenance costs involved in the work likewise must be segregated.

(b) Each service company must keep its work order system so as to show the nature of each addition to or retirement of service company property, the related total cost, the source or sources of costs, and the property account or accounts to which charged or credited. Work orders covering jobs of short duration may be cleared monthly.

(c) Each service company must maintain records in which, for each property account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

§ 367.59 Additions and retirements of property.

(a) For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of service company property, all property will be considered as consisting of retirement units and minor items of property. Each company must maintain a written property units listing for use in accounting for additions and retirements of property and apply the listing consistently.

(b) The addition and retirement of retirement units must be accounted for as follows:

(1) When a retirement unit is added, the related cost must be added to the appropriate service company property account.

(2) When a retirement unit is retired, with or without replacement, the related book cost must be credited to the property account in which it is included, determined in the manner provided in paragraph (d) of this section. If the retirement unit is of a depreciable class, the book cost of the unit retired and credited to service company property must be charged to the accumulated provision for depreciation applicable to the property. The cost of removal and the salvage must be charged or credited, as appropriate, to the depreciation account.

(c) The addition and retirement of minor items of property must be accounted for as follows:

(1) When a minor item of property that did not previously exist is added to service company property, the related

cost must be accounted for in the same manner as for the addition of a retirement unit, as provided in paragraph (b)(1) of this section, if a substantial addition results, otherwise the charge must be to the appropriate maintenance expense account.

(2) When a minor item of property is retired and not replaced, the related book cost must be credited to the property account in which it is included; and, in the event the minor item is a part of depreciable property, the account for accumulated provision for depreciation must be charged with the book cost and cost of removal and credited with the salvage. If, however, the book cost of the minor item retired and not replaced has been or will be accounted for by its inclusion in the retirement unit of which it is a part when the unit is retired, no separate credit to the property account is required when the minor item is retired.

(3) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement must be charged to the maintenance account appropriate for the item. However, if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment must be charged to the appropriate property account.

(d) The book cost of service company property retired must be the amount at which the property is included in the property accounts, including all components of construction costs. The book cost must be determined from the service company's records and, if this cannot be done, it must be estimated. Service companies must furnish the particulars of the estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or related small cost, an appropriate average book cost of the units, with due allowance for any differences in size and character, must be used as the book cost of the units retired.

(e) The book cost of land retired must be credited to the appropriate land account. If the land is sold, the difference between the book cost (less any accumulated provision for related depreciation or amortization that has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) must be recorded in accounts 421.1, Gain on disposition of property (§ 367.4211) or 421.2, Loss on disposition of property (§ 367.4212), as appropriate.

(f) The book cost less net salvage of depreciable service company property retired must be charged in its entirety to account 108, Accumulated provision for depreciation of service company property (§ 367.1080).

(g) The accounting for the retirement of amounts included in account 303, Miscellaneous intangible property (§ 367.3030), and the items of limited-term interest in land included in the accounts for land and land rights, must be as provided for in the text of account 111, Accumulated provision for amortization of service company property (§ 367.1110), account 404, Amortization of limited-term property (§ 367.4040), and account 405, Amortization of other property (§ 367.4050).

Subpart D—Operating Expense Instructions

§ 367.80 Supervision and engineering.

(a) The supervision and engineering includible in the operating expense accounts must consist of the pay and expenses of superintendents, engineers, clerks, other employees and consultants engaged in supervising and directing the operation and maintenance of each service company function. Wherever allocations are necessary in order to arrive at the amount to be included in any account, the method and basis of allocation must be reflected by underlying records.

(b) This account must include the following labor items:

(1) Special tests to determine efficiency of equipment operation.

(2) Preparing or reviewing budgets, estimates, and drawings relating to operation or maintenance for departmental approval.

(3) Preparing instructions for operations and maintenance activities.

(4) Reviewing and analyzing operating results.

(5) Establishing organizational setup of departments and executing related changes.

(6) Formulating and reviewing routines of departments and executing related changes.

(7) General training and instruction of employees by supervisors whose pay is chargeable to the training and instruction. Specific instruction and training in a particular type of work is chargeable to the appropriate functional expense account (*See* Service Company Property in § 367.51(a)(19)).

(8) Secretarial work for supervisory personnel, but not general clerical and stenographic work chargeable to other accounts.

(c) This account must include the following expense items:

(1) Consultants' fees and expenses.

(2) Meals, traveling and incidental expenses.

§ 367.81 Maintenance.

(a) The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, materials, overheads and other expenses incurred in maintenance work. A list of work operations applicable generally to service company property is included in paragraph (d) of this section. Other work operations applicable to specific classes of property are listed in functional maintenance expense accounts.

(b) Materials recovered in connection with the maintenance of property must be credited to the same account to which the maintenance cost was charged.

(c) Maintenance of property leased from others must be treated as provided in operating expense instruction in § 367.82.

(d) This account must include the following items:

(1) Direct field supervision of maintenance.

(2) Inspecting, testing, and reporting on condition of property specifically to determine the need for repairs, replacements, rearrangements and changes and inspecting and testing the adequacy of repairs which have been made.

(3) Work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining life of property.

(4) Rearranging and changing the location of property.

(5) Repairing for reuse materials recovered from property.

(6) Testing for locating and clearing trouble.

(7) Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service.

(8) Replacing or adding minor items of plant which do not constitute a retirement unit. (*See* Service Company Property Instruction in § 367.59.)

§ 367.82 Rents.

(a) The rent expense accounts provided under the several functional groups of expense accounts must include all rents, including taxes paid by the lessee on leased property, for property used in the operations of the service company, except:

(1) Minor amounts paid for occasional or infrequent use of any property or

equipment and all amounts paid for use of equipment that, if owned, would be includible in property accounts 391 to 398 (§§ 367.3910 to 367.3980), inclusive, that must be treated as an expense item and included in the appropriate functional account, and

(2) Rents that are chargeable to clearing accounts, and distributed from the clearing accounts to the appropriate account. If rents cover property used for more than one function, such as production and transmission, or by more than one department, the rents must be apportioned to the appropriate rent expense or clearing accounts of each department on an actual, or, if necessary, an estimated basis.

(b) When a portion of property or equipment rented from others for use in connection with service company operations is subleased, the revenue derived from the subleasing must be credited to the rent revenue account in operating revenues. However, if the rent was charged to a clearing account, amounts received from subleasing the property must be credited to the clearing account.

(c) The cost, when incurred by the lessee, of operating and maintaining leased property, must be charged to the accounts appropriate for the expense if the property were owned.

(d) The cost incurred by the lessee of additions and replacements to property leased from others must be accounted for as provided in Service Company Property Instruction in § 367.54.

§ 367.83 Training costs.

When it is necessary that employees be trained to specifically operate or maintain facilities that are being constructed, the related costs must be accounted for as a current operating and maintenance expense. These expenses must be charged to the appropriate functional accounts currently as they are incurred. However, when the training costs involved relate to facilities that are not conventional in nature, or are new to the service company's operations, these costs may be capitalized until the time that the facilities are ready for functional use.

Subpart E—Special Instructions

§ 367.100 Accounts 131—174, Current and accrued assets.

Current and accrued assets are cash, those assets which are readily convertible into cash or are held for current use in operations or construction, current claims against others, payment of which is reasonably assured, and amounts accruing to the service company that are subject to current settlement, except those items for which accounts other than those designated as current and accrued assets are provided. There must not be included in the group of accounts designated as current and accrued assets any item, the amount or collectibility of which is not reasonably assured, unless an adequate provision for the related possible loss has been made. Items of current character but of doubtful value may be written down and for record purposes carried in these accounts at nominal value.

§ 367.101 Accounts 231—243, Current and accrued liabilities.

Current and accrued liabilities are those obligations which have either matured or which become due within one year from the date from the date of issuance or assumption, except for: bonds, receivers' certificates and similar obligations which must be classified as long-term debt until date of maturity; accrued taxes, such as income taxes, which must be classified as accrued liabilities even though payable more than one year from date; compensation awards, which must be classified as current liabilities regardless of date due; and minor amounts payable in installments which may be classified as current liabilities. If a liability is due more than one year from date of issuance or assumption by the service company, it shall be credited to a long-term debt account appropriate for the transaction, except, however, the current liabilities previously mentioned.

§ 367.102 Accounts 408.1 and 408.2, Taxes other than income taxes.

(a) These accounts must include the amounts of ad valorem, gross revenue or gross receipts taxes, state unemployment insurance, franchise taxes, Federal excise taxes, social security taxes, and all other taxes assessed by Federal, state, county, municipal, or other local governmental authorities, except income taxes.

(b) These accounts shall be charged in each accounting period with the amounts of taxes which are applicable to each account, with concurrent credits to account 236, Taxes accrued (§ 367.2360), or account 165, Prepayments (§ 367.1650), as appropriate. When it is not possible to determine the exact amounts of taxes, the amounts shall be estimated and adjustments made in current accruals as the actual tax levies become known.

(c) The accruals for these taxes must be apportioned among service company departments and to Other Income and Deductions so that, as nearly as practicable, each tax is included in the expenses of the service company department or Other Income and Deductions, the item from which gave rise to the tax.

(d) Special assessments for street and similar improvements must be included in the appropriate service company property account.

(e) Taxes specifically applicable to construction must be included in the cost of construction.

(f) Gasoline and other sales taxes must be charged as far as practicable to the same account as the materials on which the tax is levied.

(g) Social security and other forms of so-called payroll taxes must be distributed to utility and non-utility functions on a basis related to payroll. Amounts applicable to construction must be charged to the appropriate plant account.

(h) Interest on tax refunds or deficiencies must not be included in these accounts but in account 419, Interest and dividend income (§ 367.4190), or 431, Other interest expense (§ 367.4310), as appropriate.

§ 367.103 Accounts 409.1, 409.2, and 409.3, Income taxes.

(a) These accounts must include the amounts of local, state and Federal income taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals must be made to account 236, Taxes accrued (§ 367.2360), and as the exact amounts of taxes become known, the current tax accruals must be adjusted by charges or credits to these accounts, so that these accounts include the actual taxes payable by the service company.

(b) The accruals for income taxes shall be apportioned among service company departments and to Other Income and Deductions so that, as nearly as practicable, each tax will be included in the expenses of the service company department or Other Income and Deductions, the income from which gave rise to the tax.

(c) Taxes assumed by the service company on interest must be charged to account 431, Other interest expense (§ 367.4310).

(d) Interest on tax refunds or deficiencies must not be included in these accounts but in account 419, Interest and dividend income (§ 367.4190), or account 431, Other interest expense (§ 367.4310), as appropriate.

§ 367.104 Accounts 410.1, 410.2, 411.1, and 411.2, Provision for deferred income taxes.

(a) Accounts 410.1 (§ 367.4101) and 410.2 (§ 367.4102) must be debited, and Accumulated Deferred Income Taxes must be credited, with amounts equal to any current deferrals of taxes on income or any allocations of deferred taxes originating in prior periods, as provided by the texts of accounts 190 (§ 367.1900), 282 (§ 367.2820), and 283 (§ 367.2830). There must not be netted against entries required to be made to these accounts any credit amounts appropriately includible in accounts 411.1 (§ 367.4111) or 411.2 (§ 367.4112).

(b) Accounts 411.1 (§ 367.4111) and 411.2 (§ 367.4112) must be credited, and Accumulated Deferred Income Taxes must be debited, with amounts equal to any allocations of deferred taxes originating in prior periods or any current deferrals of taxes on income, as provided by the texts of accounts 190 (§ 367.1900), 282 (§ 367.2820), and 283 (§ 367.2830). There must not be netted against entries required to be made to these accounts any debit amounts appropriately includible in account 410.1 (§ 367.4101) or 410.2 (§ 367.4102).

§ 367.105 Accounts 411.4, and 411.5, Investment tax credit adjustments.

(a) Account 411.4 (§ 367.4114) must be debited with the amounts of investment tax credits related to service company property that are credited to account 255, Accumulated deferred investment tax credits (§ 367.2550), by companies which do not apply the entire amount of the benefits of the investment credit as a reduction of the overall income tax expense in the year in which such credit is realized (See account 255 in § 367.2550).

(b) Account 411.4 (§ 367.4114) must be credited with the amounts debited to account 255 (§ 367.2550) for proportionate amounts of tax credit deferrals allocated over the average useful life of service company property to which the tax credits relate or such lesser period of time as may be adopted and consistently followed by the company.

(c) Account 411.5 (§ 367.4115) must also be debited and credited as directed in paragraphs (a) and (b), for investment tax credits related to other income and deductions.

§ 367.106 Accounts 426.1, 426.2, 426.3, 426.4, and 426.5, Miscellaneous expense accounts.

These accounts must include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

Subpart F—Balance Sheet Chart of Accounts

Service Company Property

§ 367.1010 Account 101, Service company property.

(a) This account must include the cost of service company property, included in accounts 301 (§ 367.3010), 303 (§ 367.3030) and 389 to 399.1 (§§ 376.3890 to 367.3991), owned and used by the service company in its operations, and having an expectation of life in service of more than one year from date of installation.

(b) The cost of additions to, and betterments of, property leased from others, that are includible in this account, must be recorded in subaccounts separate and distinct from those relating to owned property. (*See* Service Company Property Instruction in § 367.54.)

§ 367.1011 Account 101.1, Property under capital leases.

(a) This account must include the amount recorded under capital leases for property leased from others and used by the service company in its operations.

(b) The property included in this account must be classified separately according to detailed accounts 301 (§ 367.3010), 303 (§ 367.3030) and 389 to 399.1 (§§ 367.3890 to 367.3991) prescribed for service company property.

(c) Records must be maintained with respect to each capital lease reflecting:

(1) Name of lessor,

(2) Basic details of lease,

(3) Terminal date,

(4) Original cost or fair market value of property leased,

(5) Future minimum lease payments,

(6) Executory costs,

(7) Present value of minimum lease payments,

(8) The amount representing interest and the interest rate used, and

(9) Expenses paid.

§ 367.1070 Account 107, Construction work in progress.

(a) This account must include the total of the balances of work orders for service company property in process of construction.

(b) Work orders must be cleared from this account as soon as practicable after completion of the job. Further, if a project is designed to consist of two or more units that may be placed in service at different dates, any expenditures that are common to and that will be used in the operation of the project as a whole must be included in service company property upon the completion and the readiness for service of the first unit. Any expenditures that are identified exclusively with units of property not yet in service must be included in this account.

(c) Expenditures on research, development, and demonstration projects for construction of facilities are to be included in a separate subaccount in this account. Records must be maintained to show separately each project along with complete detail of the nature and purpose of the research, development, and demonstration project together with the related costs.

§ 367.1080 Account 108, Accumulated provision for depreciation of service company property.

(a) This account must be credited with the following:

(1) Amounts charged to account 403, Depreciation expense (§ 367.4030), or to clearing accounts for current depreciation expense for service company property.

(2) Amounts charged to account 416, Costs and expenses of merchandising, jobbing, and contract work (§ 367.4160), or to clearing accounts for current depreciation expense.

(3) Amounts of depreciation applicable to properties acquired. (*See* Service Company Property Instruction in § 367.53.)

(4) Amounts of depreciation applicable to service company property donated to the service company.

(b) The service company must maintain separate subaccounts for depreciation applicable to service company property.

(c) At the time of retirement of depreciable service company property, this account must be charged with the book cost of the property retired and the cost of removal, and must be credited with the salvage value and any other amounts recovered, such as insurance. When retirement, costs of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate related subaccount. Upon completion of the work order, the proper distribution to subaccounts of this account must be made as provided in paragraph (d) of this section.

(d) The subsidiary records for this account must reflect the current credits and debits to this account in sufficient detail to show the following separately:

(1) The amount of accrual for depreciation,

(2) The book cost of property retired,

(3) Cost of removal,

(4) Salvage, and

(5) Other items, including recoveries from insurance.

(e) The service company is restricted in its use of the accumulated provision for depreciation to the purposes identified in paragraphs (a) through (d) of this section. It must not transfer any portion of this account to retained earnings or make any other use of the depreciation without authorization by the Commission.

§ 367.1110 Account 111, Accumulated provision for amortization of service company property.

(a) This account must be credited with the following:

(1) Amounts charged to account 404, Amortization of limited-term property (§ 367.4040), for the current amortization of limited-term service company property investments.

(2) Amounts charged to account 405, Amortization of other property (§ 367.4050).

(3) Amounts charged to account 425, Miscellaneous amortization (§ 367.4250), for the amortization of intangible or other property, that does not have a definite or terminable life and is not subject to charges for depreciation expense, with Commission approval.

(b) The service company must maintain subaccounts of this account for the amortization applicable to service company property and property leased to others.

(c) When any property to which this account applies is sold, relinquished, or otherwise retired from service, this account must be charged with the amount previously credited in respect to the property. The book cost of the retired property less the amount chargeable to this account and less the net proceeds realized at retirement must be included in account 421.1, Gain on disposition of property (§ 367.4211), or account 421.2, Loss on disposition of property (§ 367.4212), as appropriate.

(d) For general ledger and balance sheet purposes, this account must be regarded and treated as a single composite provision for amortization. The subsidiary records must reflect the current credits and debits to this account in sufficient detail to show the following separately:

(1) The amount of accrual for amortization,

(2) The book cost of property retired,

(3) Cost of removal,

(4) Salvage, and

(5) Other items, including recoveries from insurance.

(e) The service company is restricted in its use of the accumulated provision for amortization to the purposes provided in paragraphs (a) through (d) of this section. It must not transfer any portion of this account to retained earnings or make any other use of the amortization without authorization by the Commission.

§ 367.1230 Account 123, Investment in associate companies.

(a) This account must include the book cost of investments in securities issued or assumed by associate companies and investment advances to the companies, including related accrued interest when the interest is not subject to current settlement, provided that the investment does not relate to a subsidiary company. (If the investment relates to a subsidiary company, it must be included in account 123.1, Investment in subsidiary companies (§ 367.1231).) Include in this account the offsetting entry to the recording of amortization of discount or premium on interest-bearing investments. (*See* account 419, Interest and dividend income (§ 367.4190).)

(b) This account must be maintained in a manner so as to show the investment in securities of, and advances to, each associate company together with full particulars regarding any of the investments that are pledged.

(c) Securities and advances of associate companies owned and pledged must be included in this account, but the securities, if held in special deposits or in special funds, must be included in the appropriate deposit or fund account. A complete record of securities pledged must be maintained.

(d) Securities of associate companies held as temporary cash investments are includible in account 136, Temporary cash investments (§ 367.1360).

(e) Balances in open accounts with associate companies that are subject to current settlement are includible in account 146, Accounts receivable from associate companies (§ 367.1460).

(f) The service company must write down the cost of any security in recognition of a decline in the related value. Securities must be written off or written down to a nominal value if there is no reasonable prospect of substantial value. Fluctuations in market value must not be recorded but a permanent impairment in the value of securities must be recognized in the accounts. When securities are written off or written down, the amount of the adjustment must be charged to account 426.5, Other deductions (§ 367.4265), or to an appropriate account for accumulated provisions for loss in value established as a separate subdivision of this account.

§ 367.1240 Account 124, Other investments.

(a) This account must include the book cost of investments in securities issued or assumed by non-associate companies, investment advances to these companies, and any investments not accounted for elsewhere. This account must also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest-bearing investments. (*See* account 419, Interest and dividend income (§ 367.4190).)

(b) The records must be maintained in a manner so as to show the amount of each investment and the investment advances to each person.

§ 367.1280 Account 128, Other special funds.

(a) This account must include the amount of cash and book cost of investments that have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account must also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, must be kept for each fund.

(b) Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employee benefits must not be included in this account.

Current and Accrued Assets

§ 367.1310 Account 131, Cash.

This account must include the amount of current cash funds except working funds.

§ 367.1340 Account 134, Other special deposits.

(a) This account must include deposits with fiscal agents or others for special purposes other than the payment of interest and dividends. The special deposits may include, among other things, cash deposited with federal, state, or municipal authorities as a guaranty for the fulfillment of obligations; cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced; cash realized from the sale of the accounting service company's securities and deposited with trustees to be held until invested in property of the service company. Entries to this account must specify the purpose for which the deposit is made.

(b) Assets available for general corporate purposes must not be

included in this account. Further, deposits for more than one year, that are not offset by current liabilities, must be charged to account 128, Other special funds (§ 367.1280).

§ 367.1350 Account 135, Working funds.

This account must include cash advanced to officers, agents, employees, and others as petty cash or working funds.

§ 367.1360 Account 136, Temporary cash investments.

(a) This account must include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

(b) This account must be maintained so as to show separately temporary cash investments in securities of associate companies and of others. Records must be kept of any pledged investments.

§ 367.1410 Account 141, Notes receivable.

(a) This account must include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue, except, however, notes receivable from associate companies. (*See* account 136, Temporary cash investments (§ 367.1360), and account 145, Notes receivable from associate companies (§ 367.1450).)

(b) The face amount of notes receivable discounted, sold, or transferred without releasing the service company from liability as a related endorser, must be credited to a separate subaccount of this account and appropriate disclosure must be made in financial statements of any contingent liability arising from the transactions.

§ 367.1420 Account 142, Customer accounts receivable.

(a) This account must include amounts due from customers for service, and for merchandising, jobbing and contract work. This account must not include amounts due from associate companies.

(b) This account must be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing and contract work.

§ 367.1430 Account 143, Other accounts receivable.

(a) This account must include amounts due the service company upon open accounts, other than amounts due from associate companies and from customers for services and merchandising, jobbing and contract work.

(b) This account must be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account must not include amounts advanced to officers or others as working funds. (See account 135, Working funds (§ 367.1350).)

§ 367.1440 Account 144, Accumulated provision for uncollectible accounts—Credit.

(a) This account must be credited with amounts provided for losses on accounts receivable that may become uncollectible, and also with collections on related previously charged accounts. Concurrent charges must be made to account 904, Uncollectible accounts (§ 367.9040), for amounts applicable to service company operations, and to corresponding accounts for other operations. Records must be maintained so as to show the write-offs of account receivable for each service company department.

(b) This account must be subdivided to show the provision applicable to the following classes of accounts receivable:

(1) Service company customers.

(2) Merchandising, jobbing and contract work.

(3) Officers and employees.

(4) Others.

(c) Accretions to this account must not be made in excess of a reasonable provision against losses of the related character.

(d) If provisions for uncollectible notes receivable or for uncollectible receivables from associate companies are necessary, separate related subaccounts must be established under the account in which the receivable is carried.

§ 367.1450 Account 145, Notes receivable from associate companies.

(a) This account must include notes and drafts upon which associate companies are liable, and that mature and are expected to be paid in full not later than one year from the date of issue, together with any related interest, and debit balances subject to current settlement in open accounts with associate companies. Items that do not bear a specified due date but that have been carried for more than twelve months and items that are not paid within twelve months from due date must be transferred to account 123, Investment in associate companies (§ 367.1230).

(b) On the balance sheet, accounts receivable from an associate company may be set off against accounts payable to the same company.

(c) The face amount of notes receivable discounted, sold or transferred without releasing the service company from liability as endorser thereon, must be credited to a separate subaccount of this account and appropriate disclosure must be made in financial statements of any contingent liability arising from such transactions.

§ 367.1460 Account 146, Accounts receivable from associate companies.

(a) This account must include notes and drafts upon which associate companies are liable, and that mature and are expected to be paid in full not later than one year from the date of issue, together with any related interest thereon, and debit balances subject to current settlement in open accounts with associate companies. Items that do not bear a specified due date but that have been carried for more than twelve months and items that are not paid within twelve months from due date must be transferred to account 123, Investment in associate companies (§ 367.1230).

(b) On the balance sheet, accounts receivable from an associate company may be set off against accounts payable to the same company.

(c) The face amount of notes receivable discounted, sold or transferred without releasing the service company from liability as the related endorser, must be credited to a separate subaccount of this account and appropriate disclosure must be made in financial statements of any contingent liability arising from the transactions.

§ 367.1520 Account 152, Fuel stock expenses undistributed.

The service company must utilize this account, where appropriate, to include the cost of service company labor and of office supplies used and operating expenses incurred with respect to the review, analysis and management of fuel supply contracts or agreements, the accumulation of fuel information and its interpretation, the logistics and handling of fuel, and other related support functions, as a service to the company engaged in the procurement and transportation of fuel. This account must be maintained to show the expenses attributable to each company through the use of work orders. All expenses of a service company's fuel department or functions must be cleared through this account.

§ 367.1540 Account 154, Materials and operating supplies.

(a) This account must include the cost of materials purchased primarily for use

in the service company business for construction, operation and maintenance purposes. It must include the book cost of materials recovered in connection with construction, maintenance or the retirement of service company property, the materials being credited to construction, maintenance or accumulated depreciation provision, respectively. This account must include the following items:

(1) Reusable materials consisting of large individual items must be included in this account at original cost, estimated if not known. The cost of repairing the items must be charged to the maintenance account appropriate for the previous use.

(2) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the related final abandonment or sale) cannot be ascertained without undue refinement in accounting, must be included in this account at current prices new for the items. The cost of repairing the items must be charged to the appropriate expense account as indicated by previous use.

(3) Scrap and non-usable materials included in this account must be carried at the estimated net amount realizable. The difference between the amounts realized for scrap and non-usable materials sold and the net amount at which the materials were carried in this account, as far as practicable, must be adjusted to the accounts credited when the materials were charged to this account.

(b) Materials and supplies issued must be credited in this account and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative average, first-in-first-out, or any other method of inventory accounting that conforms with accepted accounting standards consistently applied.

(c) This account must include the following items:

(1) Invoice price of materials less cash or other discounts.

(2) Freight, switching or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.

(3) Customs duties and excise taxes.

(4) Costs of inspection and special tests prior to acceptance.

(5) Insurance and other directly assignable charges.

(d) Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account (account 163, Stores expense undistributed (§ 367.1630)), and distributed from there to the appropriate account.

(e) When materials and supplies are purchased for immediate use, they need not be carried through this account, but may be charged directly to the appropriate service company property or expense account.

§ 367.1630 Account 163, Stores expense undistributed.

(a) This account must include the cost of supervision, labor and expenses incurred in the operation of general storerooms, including purchasing, storage, handling and distribution of materials and supplies.

(b) This account must be cleared by adding to the cost of materials and supplies issued a suitable loading charge that will distribute the expense equitably over stores issues. The balance in the account at the close of the calendar year must not exceed the amount of stores expenses reasonably attributable to the inventory of materials and supplies exclusive of fuel, as any amount applicable to fuel costs should be included in account 152, Fuel stock expenses undistributed (§ 367.1520).

(c) This account must include the following labor items:

(1) Inspecting and testing materials and supplies when not assignable to specific items.

(2) Unloading from shipping facility and putting in storage.

(3) Supervision of purchasing and stores department to extent assignable to materials handled through stores.

(4) Getting materials from stock and in readiness to go out.

(5) Inventorying stock received or stock on hand by stores employees but not including inventories by general department employees as part of internal or general audits.

(6) Purchasing department activities in checking material needs, investigating sources of supply, analyzing prices, preparing and placing orders, and related activities to extent applicable to materials handled through stores. (Optional. Purchasing department expenses may be included in administrative and general expenses.)

(7) Maintaining stores equipment.

(8) Cleaning and tidying storerooms and stores offices.

(9) Keeping stock records, including recording and posting of material receipts and issues and maintaining inventory record of stock.

(10) Collecting and handling scrap materials in stores.

(d) This account must include the following supplies and expenses items:

(1) Adjustments of inventories of materials and supplies, but not including large differences that can readily be assigned to important classes of materials and equitably distributed among the accounts to which the classes of materials have been charged since the previous inventory.

(2) Cash and other discounts not practically assignable to specific materials.

(3) Freight, express, and similar items, when not assignable to specific items.

(4) Heat, light and power for storerooms and store offices.

(5) Brooms, brushes, sweeping compounds and other supplies used in cleaning and tidying storerooms and stores offices.

(6) Injuries and damages.

(7) Insurance on materials and supplies and on stores equipment.

(8) Losses due to breakage, leakage, evaporation, fire or other causes, less credits for amounts received from insurance, transportation companies or others in compensation of the losses.

(9) Postage, printing, stationery and office supplies.

(10) Rent of storage space and facilities.

(11) Communication service.

(12) Excise and other similar taxes not assignable to specific materials.

(13) Transportation expense on inward movement of stores and on transfer between storerooms, but not including charges on materials recovered from retirements that must be accounted for as part of cost of removal.

(e) A physical inventory of each class of materials and supplies must be made at least every two years.

§ 367.1650 Account 165, Prepayments.

This account must include amounts representing prepayments of insurance, rents, taxes, interest and miscellaneous items, and must be kept or supported in a manner so as to disclose the amount of each class of prepayment.

§ 367.1710 Account 171, Interest and dividends receivable.

(a) This account must include the amount of interest on bonds, mortgages, notes, commercial paper, loans, open accounts, deposits, and other similar items, the payment of which is reasonably assured, and the amount of dividends declared or guaranteed on stocks owned.

(b) Interest that is not subject to current settlement must not be included in this account, but in the account in which is carried the principal on which the interest is accrued.

(c) Interest and dividends receivable from associate companies must be

included in account 146, Accounts receivable from associate companies (§ 367.1460).

§ 367.1720 Accounts 172, Rents receivable.

(a) This account must include rents receivable or accrued on property rented or leased by the service company to others.

(b) Rents receivable from associate companies must be included in account 146, Accounts receivable from associate companies (§ 367.1460).

§ 367.1730 Account 173, Accrued revenues.

At the option of the service company, the estimated amount accrued for service rendered, but not billed at the end of any accounting period, may be included in this account. In case accruals are made for unbilled revenues, they must be made likewise for unbilled expenses, such as for the purchase of energy.

§ 367.1740 Account 174, Miscellaneous current and accrued assets.

This account must include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included in the account.

Deferred Debits

§ 367.1810 Account 181, Unamortized debt expense.

This account must include expenses related to the issuance or assumption of debt securities. Amounts recorded in this account must be amortized over the life of each respective issue under a plan that will distribute the amount equitably over the life of the security. The amortization must be on a monthly basis, and the related amounts must be charged to account 428, Amortization of debt discount and expense (§ 367.4280). Any unamortized amounts outstanding at the time that the related debt is prematurely reacquired must be accounted for as indicated in General Instructions in § 367.16.

§ 367.1830 Account 183, Preliminary survey and investigation charges.

(a) This account must be charged with all expenditures for preliminary surveys, plans, investigations, and other similar items, made for the purpose of determining the feasibility of service company projects under contemplation. If construction results, this account must be credited and the appropriate service company property account charged. If the work is abandoned, the charge must be made to account 426.5, Other deductions (§ 367.4265), or to the appropriate operating expense account.

(b) The records supporting the entries to this account must be kept so that the service company can furnish complete information as to the nature and the purpose of the survey, plans, or investigations and the nature and amounts of the several charges.

(c) The amount of preliminary survey and investigation charges transferred to service company property must not exceed the expenditures that may reasonably be determined to contribute directly and immediately and without duplication to service company property.

§ 367.1840 Account 184, Clearing accounts.

This account must include undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts must be substantially cleared not later than the end of the calendar year unless the items held relate to a future period.

§ 367.1850 Account 185, Temporary facilities.

This account must include amounts shown by work orders for property installed for temporary use for a period of less than one year. Such work orders must be charged with the cost of temporary facilities and credited with payments received from customers and net salvage realized on removal of the temporary facilities. Any net credit or debit resulting must be cleared to the construction or service work order to which the facilities relate.

§ 367.1860 Account 186, Miscellaneous deferred debits.

(a) This account must include all debits not provided for elsewhere, such as miscellaneous work in progress, and unusual or extraordinary expenses, not included in other accounts, that are in the process of amortization and items the proper final disposition of which is uncertain.

(b) The records supporting the entries to this account must be kept so that the service company can furnish full information as to each deferred debit included in this account.

§ 367.1880 Account 188, Research, development, or demonstration expenditures.

(a) This account must be charged with the cost of all expenditures coming within the meaning of research, development and demonstration (RD&D) of this Uniform System of Accounts (*See* Definitions § 367.1(a)(37)), except those expenditures properly chargeable to account 107, Construction work in progress (§ 367.1070).

(b) Costs that are minor or of a general or recurring nature must be transferred from this account to the appropriate operating expense function or, if the costs are common to the overall operations or cannot be feasibly allocated to the various operating accounts, then the costs must be recorded in account 930.2, Miscellaneous general expenses (§ 367.9302).

(c) In certain instances, a service company may incur large and significant research, development, and demonstration expenditures that are nonrecurring and that would distort the annual research, development, and demonstration charges for the period. In such a case, the portion of such amounts that causes the distortion may be amortized to the appropriate operating expense account over a period not to exceed five years, unless otherwise authorized by the Commission.

(d) The entries in this account must be maintained so as to show separately each project along with complete detail of the nature and purpose of the research, development, and demonstration project together with the related costs.

§ 367.1900 Account 190, Accumulated deferred income taxes.

(a) This account must be debited and account 411.1, Provision for deferred income taxes—Credit, operating income (§ 367.4111), or account 411.2, Provision for deferred income taxes—Credit, other income and deductions (§ 367.4112), as appropriate, must be credited with an amount equal to that by which income taxes payable for the year are higher because of the inclusion of certain items in income for tax purposes, which items for general accounting purposes will not be fully reflected in the service company's determination of annual net income until subsequent years.

(b) This account must be credited and account 410.1, Provision for deferred income taxes, operating income (§ 367.4101), or account 410.2, Provision for deferred income taxes, other income and deductions (§ 367.4102), as appropriate, must be debited with an amount equal to that by which income taxes payable for the year are lower because of prior payment of taxes as provided by paragraph (a) of this section, because of difference in timing for tax purposes of particular items of income or income deductions from that recognized by the utility for general accounting purposes. The credit to this account and debit to account 410.1 (§ 367.4101), or 410.2 (§ 367.4102) must, in general, represent the effect on taxes payable in the current year of the

smaller amount of book income recognized for tax purposes as compared to the amount recognized in the service company's current accounts with respect to the item or class of items for which deferred tax accounting by the service company was authorized by the Commission.

(c) The service company is restricted in its use of this account to the purpose provided in paragraphs (a) and (b) of this section. The service company must not make use of the balance in this account or any related portion except as provided in the text of this account, without prior approval of the Commission. Any remaining deferred tax account balance with respect to an amount for any prior year's tax deferral, the amortization of which or other recognition in the service company's income accounts has been completed, or other disposition made, must be debited to account 410.1, Provision for deferred income taxes, operating income (§ 367.4101), or account 410.2, Provision for deferred income taxes, other income and deductions (§ 367.4102), as appropriate, or otherwise disposed of as the Commission may authorize or direct. (*See* General Instructions in § 367.17.)

Proprietary Capital

§ 367.2010 Account 201, Common stock issued.

This account must include the par or stated value of all common capital stock issued and outstanding.

§ 367.2040 Account 204, Preferred stock issued.

This account must include the par or stated value of all preferred stock issued and outstanding.

§ 367.2110 Account 211, Miscellaneous paid-in capital.

This account must include the balance of all other credits for paid-in capital that is not properly included in proprietary capital accounts. This account may include all commissions and expenses incurred in connection with the issuance of capital stock.

§ 367.2150 Account 215, Appropriated retained earnings.

This account must include the amount of retained earnings that has been appropriated or set aside for special purposes. Separate subaccounts must be maintained under titles that will designate the purpose for which each appropriation was made.

§ 367.2160 Account 216, Unappropriated retained earnings.

This account must include the balances, either debit or credit, of unappropriated retained earnings arising from earnings of the service company. This account must not include any amounts representing the undistributed earnings of subsidiary companies.

§ 367.2161 Account 216.1, Unappropriated undistributed subsidiary earnings.

This account must include the balances, either debit or credit, of undistributed retained earnings of subsidiary companies since their acquisition. When dividends are received from subsidiary companies relating to amounts included in this account, this account must be debited and account 216, Unappropriated retained earnings (§ 367.2160), credited.

§ 367.2190 Account 219, Accumulated other comprehensive income.

(a) This account must include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include, but are not limited to, minimum pension liability adjustments, and unrealized gains and losses on certain investments in debt and equity securities. Records supporting the entries to this account must be maintained so that the service company can furnish the amount of other comprehensive income for each item included in this account.

(b) This account also must be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items must be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

Long-Term Debt

§ 367.2230 Account 223, Advances from associate companies.

(a) This account must include the face value of notes payable to associate companies and the amount of open book accounts representing advances from associate companies. It does not include notes and open accounts representing indebtedness subject to current settlement that are includible in account 233, Notes payable to associate companies (§ 367.2330), or account 234, Accounts payable to associate companies (§ 367.2340).

(b) The records supporting the entries to this account must be kept so that the service company can furnish complete information concerning each note and open account.

§ 367.2240 Account 224, Other long-term debt.

(a) This account must include, until maturity, all long-term debt not otherwise provided for. This covers items such as receivers' certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness not owned by associate companies, receipts outstanding for long-term debt, and other obligations maturing more than one year from date of issue or assumption.

(b) Separate accounts must be maintained for each class of obligation, and records must be maintained to show for each class all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, and other similar items.

§ 367.2250 Account 225, Unamortized premium on long-term debt.

(a) This account must include the excess of the cash value of consideration received over the face value upon the issuance or assumption of long-term debt securities.

(b) Amounts recorded in this account must be amortized over the life of each respective issue under a plan that will distribute the amount equitably over the life of the security. The amortization must be on a monthly basis, with the related amounts credited to account 429, Amortization of premium on debt—Credit (§ 367.4290). (*See* General Instructions in § 367.16.)

§ 367.2260 Account 226, Unamortized discount on long-term debt—Debit.

(a) This account must include the excess of the face value of long-term debt securities over the related cash value of consideration received, related to the issue or assumption of all types and classes of debt.

(b) Amounts recorded in this account must be amortized over the life of the respective issues under a plan that will distribute the amount equitably over the life of the securities. The amortization must be on a monthly basis, with the related amounts charged to account 428, Amortization of debt discount and expense (§ 367.4280). (*See* General Instructions in § 367.16.)

Other Noncurrent Liabilities

§ 367.2270 Account 227, Obligations under capital lease—Non-current.

This account must include the portion not due within one year, of the obligations recorded for the amounts

applicable to leased property recorded as assets in account 101.1, Property under capital leases (§ 367.1011).

§ 367.2300 Account 230, Asset retirement obligations.

(a) This account must include the amount of liabilities for the recognition of asset retirement obligations related to service company property. This account must be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate property account to record the related asset retirement costs.

(b) The service company must charge the accretion expense to account 411.10, Accretion expense (§ 367.4116), and credit account 230, Asset retirement obligations (§ 367.2300).

(c) This account must be debited with amounts paid to settle the asset retirement obligations recorded in this account.

(d) The service company must clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in the General Instructions in § 367.22.

Current and Accrued Liabilities

§ 367.2310 Account 231, Notes payable.

This account must include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue, to other than associate companies.

§ 367.2320 Account 232, Accounts payable.

This account must include all amounts payable by the service company within one year, that are not provided for in other accounts.

§ 367.2330 Account 233, Notes payable to associate companies.

(a) This account must include amounts owing to associate companies on notes, drafts, acceptances, or other similar evidences of indebtedness, and open accounts payable on demand or not more than one year from date of issue or creation.

(b) Exclude from this account notes and accounts that are includible in account 223, Advances from associate companies (§ 367.2230).

§ 367.2340 Account 234, Accounts payable to associate companies.

(a) This account must include amounts owing to associate companies on notes, drafts, acceptances, or other similar evidences of indebtedness, and open accounts payable on demand or not more than one year from date of issue or creation.

(b) Exclude from this account notes and accounts that are included in account 223, Advances from associate companies (§ 367.2230).

§ 367.2360 Account 236, Taxes accrued.

(a) This account must be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. The credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits must be adjusted so as to include as nearly as can be determined in each year the related applicable taxes. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet, must be shown under account 165, Prepayments (§ 367.1650).

(b) If accruals for taxes are found to be insufficient or excessive, corrections must be made through current tax accruals.

(c) Accruals for taxes must be based upon the net amounts payable after credit for any discounts, and must not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds must be credited to account 419, Interest and dividend income (§ 367.4190), and interest paid on deficiencies must be charged to account 431, Other interest expense (§ 367.4310).

(d) The records supporting the entries to this account must be kept so as to show for each class of taxes, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

§ 367.2370 Account 237, Interest accrued.

This account must include the amount of interest accrued but not matured on all liabilities of the service company not including, however, interest that is added to the principal of the debt on which it is incurred. Supporting records must be maintained so as to show the amount of interest accrued on each obligation.

§ 367.2380 Account 238, Dividends declared.

This account must include the amount of dividends that have been declared but not paid. Dividends must be credited to this account when they become a liability.

§ 367.2410 Account 241, Tax collections payable.

(a) This account must include the amount of taxes collected by the service company through payroll deductions or otherwise pending transmittal of the taxes to the proper taxing authority.

(b) Do not include liability for taxes assessed directly against the service company that is accounted for as part of the service company's own tax expense.

§ 367.2420 Account 242, Miscellaneous current and accrued liabilities.

This account must include the amount of all other current and accrued liabilities not provided for in accounts 231 through 243 (§§ 367.2310 through 367.2430), appropriately designated and supported so as to show the nature of each liability.

§ 367.2430 Account 243, Obligations under capital leases—current.

This account must include the portion, due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under capital leases (§ 367.1011).

Deferred Credits

§ 367.2530 Account, 253, Other deferred credits.

This account must include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

§ 367.2550 Account 255, Accumulated deferred investment tax credits.

This account must be credited with all investment tax credits deferred by companies that have elected to follow deferral accounting, partial or full, rather than recognizing in the income statement the total benefits of the tax credit as realized. After this election, a company may not transfer amounts from this account, except as authorized in this account and in accounts 411.4, Investment tax credit adjustments, service company property (§ 367.4114) or 411.5, Investment tax credit adjustments, other income and deductions (§ 367.4115), or with approval of the Commission.

§ 367.2820 Account 282, Accumulated deferred income taxes—Other property.

(a) This account must include the tax deferrals resulting from adoption of the principle of comprehensive inter-period income tax allocation described in the General Instructions in § 367.17 that are related to all property other than accelerated amortization property.

(b) This account must be credited and accounts 410.1, Provision for deferred income taxes, operating income (§ 367.4101), or 410.2, Provision for deferred income taxes, Other income and deductions (§ 367.4102), as appropriate, must be debited with tax

effects related to property described in paragraph (a) of this section where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(c) This account must be debited, and accounts 411.1, Provision for deferred income taxes—credit, operating income (§ 367.4111), or 411.2, Provision for deferred income taxes—credit, other income and deductions (§ 367.4112), as appropriate, must be credited with tax effects related to property described in paragraph (a) of this section where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(d) The service company is restricted in its use of this account to the purposes described in paragraphs (a) through (c) of this account. It must not transfer the balance in this account or any related portion to retained earnings or make any other use of the balance except as provided in paragraph (a) through (c) of this account without prior approval of the Commission. Upon the disposition by sale, exchange, transfer, abandonment or premature retirement of property on which there is a related balance, this account must be charged with an amount equal to the related income tax expense, if any, arising from the disposition and accounts 411.1, Income taxes deferred in prior years—Credit (§ 367.4111), or 411.2, Income taxes deferred in prior years—Credit, other income and deductions (§ 367.4112), must be credited. When property is disposed of by transfer to a wholly-owned subsidiary, the related balance in this account also must be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balance must be retained to offset future group item tax deficiencies.

§ 367.2830 Account 283, Accumulated deferred income taxes—Other.

(a) This account must include all credit tax deferrals resulting from the adoption of the principles of comprehensive inter-period income tax allocation described in the General Instructions in § 367.17 other than those deferrals that are includible in accounts and account 282, Accumulated deferred income taxes—Other property (§ 367.2820).

(b) This account must be credited, and accounts 410.1 Provision for deferred income taxes, operating income (§ 367.4101), or 410.2 Provision for deferred income taxes, other income and deductions (§ 367.4102), as appropriate, must be debited with tax effects related to items described in paragraph (a) of this account where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(c) This account must be debited, and accounts 411.1, Provision for deferred income taxes—Credit, operating income (§ 367.4111), or 411.2, Provision for deferred income taxes—Credit, other income and deductions (§ 367.4112), as appropriate, must be credited with tax effects related to items described in paragraph (a) of this account where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(d) Records with respect to entries to this account, as described in paragraphs (a) through (c) of this account, and the account balance, must be maintained so as to show the factors of calculation with respect to each annual amount of the item or class of items.

(e) The service company is restricted in its use of this account to the purposes described in paragraphs (a) through (c) of this account. It must not transfer the balance in the account or any portion of the account to retained earnings or to any other account or make any use of the account except as provided in the text of this account, without prior approval of the Commission. Upon the disposition by sale, exchange, transfer, abandonment or premature retirement of items on which there is a related balance herein, this account must be charged with an amount equal to the related income tax effect, if any, arising from the disposition and accounts 411.1, Provision for deferred income taxes—Credit, operating income (§ 367.4111), or 411.2, Provision for deferred income taxes—Credit, other income and deductions (§ 367.4112), as appropriate, must be credited.

(f) When property is disposed of by transfer to a wholly-owned subsidiary, the related balance in this account also must be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balance must be retained to offset future group item tax deficiencies.

Subpart G—Service Company Property Chart of Accounts

§ 367.3010 Account 301, Organization.

(a) This account must include all fees paid to federal or state governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership, or other enterprise and putting it into readiness to do business

(b) This account must include the following items:

(1) Cost of obtaining certificates authorizing the service company to engage in its business.

(2) Fees and expenses for incorporation.

(3) Fees and expenses for mergers or consolidations.

(4) Office expenses incident to organizing the service company.

(5) Stock and minute books and corporate seal.

(c) This account must not include any discounts upon securities issued or assumed; nor may it include any costs incident to negotiating loans, selling bonds or other evidences of debt or expenses in connection with the authorization, issuance or sale of capital stock.

(d) Exclude from this account and include in the appropriate expense account, the cost of preparing and filing papers in connection with the extension of the term of incorporation unless the first organization costs have been written off. When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included in this account or in similar accounts in the books of the companies concerned must be excluded from this account.

§ 367.3030 Account 303, Miscellaneous intangible property.

(a) This account must include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of service company operations and not specifically chargeable to any other account.

(b) When any item included in this account is retired or expires, the related book cost must be credited to this account and charged to account 426.5, Other deductions (§ 367.4265), or account 111, Accumulated provision for amortization of property (§ 367.1110).

(c) This account must be maintained in a manner so that the service company can furnish full information with respect to the amounts included in this account.

§ 367.3890 Account 389, Land and land rights.

This account must include the cost of land and land rights used for service company purposes, the cost of which is not properly includible in other land and land rights accounts. (*See* Service Company Property Instructions in § 367.55.)

§ 367.3900 Account 390, Structures and improvements.

This account must include the cost in place of structures and improvements used for service company purposes, the cost of which is not properly includible in other structures and improvements accounts (*See* Service Company Property Instructions in § 367.56).

§ 367.3910 Account 391, Office furniture and equipment.

(a) This account must include the cost of office furniture and equipment owned by the service company and devoted to service company operations, and not permanently attached to buildings, except the cost of the furniture and equipment that the service company elects to assign to other property accounts on a functional basis.

(b) This account must include the following items:

(1) Bookcases and shelves.
(2) Desks, chairs, and desk equipment.
(3) Drafting-room equipment.
(4) Filing, storage, and other cabinets.
(5) Floor covering.
(6) Library and library equipment.
(7) Mechanical office equipment, such as accounting machines, typewriters, and other similar items.
(8) Safes.
(9) Tables.

§ 367.3920 Account 392, Transportation equipment.

(a) This account must include the cost of transportation vehicles used for service company purposes.

(b) This account must include the following items:

(1) Airplanes.
(2) Automobiles.
(3) Bicycles.
(4) Electrical vehicles.
(5) Motor trucks.
(6) Motorcycles.
(7) Repair cars or trucks.
(8) Tractors and trailers.
(9) Other transportation vehicles.

§ 367.3930 Account 393, Stores equipment.

(a) This account must include the cost of equipment used for the receiving, shipping, handling, and storage of materials and supplies.

(b) This account must include the following items:

(1) Chain falls.
(2) Counters.
(3) Cranes (portable).
(4) Elevating and stacking equipment (portable).
(5) Hoists.
(6) Lockers.
(7) Scales.
(8) Shelving.
(9) Storage bins.
(10) Trucks, hand and power driven.
(11) Wheelbarrows.

§ 367.3940 Account 394, Tools, shop and garage equipment.

(a) This account must include the cost of tools, implements, and equipment used in construction, repair work, general shops and garages and not specifically provided for or includible in other accounts.

(b) This account must include the following items:

(1) Air compressors.
(2) Anvils.
(3) Automobile repair shop equipment.
(4) Battery charging equipment.
(5) Belts, shafts and countershafts.
(6) Boilers.
(7) Cable pulling equipment.
(8) Concrete mixers.
(9) Drill presses.
(10) Derricks.
(11) Electric equipment.
(12) Engines.
(13) Forges.
(14) Furnaces.
(15) Foundations and settings specially constructed for equipment in this account and not expected to outlast the equipment for which provided.
(16) Gas producers.
(17) Gasoline pumps, oil pumps and storage tanks.
(18) Greasing tools and equipment.
(19) Hoists.
(20) Ladders.
(21) Lathes.
(22) Machine tools.
(23) Motor-driven tools.
(24) Motors.
(25) Pipe threading and cutting tools.
(26) Pneumatic tools.
(27) Pumps.
(28) Riveters.
(29) Smithing equipment.
(30) Tool racks.
(31) Vises.
(32) Welding apparatus.
(33) Work benches.

§ 367.3950 Account 395, Laboratory equipment.

(a) This account must include the cost installed of laboratory equipment used for general laboratory purposes.

(b) This account must include the following items:

(1) Ammeters.
(2) Balances and scales.
(3) Barometers.
(4) Calorimeters-bomb, flow, recording types, and other similar items.
(5) Current batteries.
(6) Electric furnaces.
(7) Frequency changers.
(8) Galvanometers.
(9) Gas burning equipment.
(10) Gauges.
(11) Glassware, beakers, burettes, and other similar items.
(12) Humidity testing apparatus.
(13) Inductometers.
(14) Laboratory hoods.
(15) Laboratory standard millivolt meters.
(16) Laboratory standard volt meters.
(17) Laboratory tables and cabinets.
(18) Meter-testing equipment.
(19) Millivolt meters.
(20) Motor generator sets.
(21) Muffles.
(22) Oil analysis apparatus.
(23) Panels.
(24) Phantom loads.
(25) Piping.
(26) Portable graphic ammeters, voltmeters, and wattmeters.
(27) Portable loading devices.
(28) Potential batteries.
(29) Potentiometers.
(30) Rotating standards.
(31) Specific gravity apparatus.
(32) Standard bottles for meter prover testing.
(33) Standard cell, reactance, resistor, and shunt.
(34) Stills.
(35) Sulphur and ammonia apparatus.
(36) Switchboards.
(37) Synchronous timers.
(38) Tar analysis apparatus.
(39) Testing panels.
(40) Testing resistors.
(41) Thermometers-indicating and recording.
(42) Transformers.
(43) Voltmeters.
(44) Other testing, laboratory, or research equipment not provided for elsewhere.
(45) Other items of equipment for testing gas, fuel, flue gas, water, residuals, and other similar items.

§ 367.3960 Account 396, Power operated equipment.

(a) This account must include the cost of power operated equipment used in construction or repair work exclusive of equipment includible in other accounts. Include, also, the tools and accessories acquired for use with the equipment and the vehicle on which the equipment is mounted.

(b) This account must include the following items:

(1) Air compressors, including driving unit and vehicle.
(2) Back filling machines.
(3) Boring machines.
(4) Bulldozers.
(5) Cranes and hoists.
(6) Diggers.
(7) Engines.
(8) Pile drivers.
(9) Pipe cleaning machines.
(10) Pipe coating or wrapping machines.
(11) Tractors—Crawler type.
(12) Trenchers.
(13) Other power operated equipment.

(b) It is intended that this account include only the large units that are generally self-propelled or mounted on movable equipment.

§ 367.3970 Account 397, Communication equipment.

(a) This account must include the cost installed of telephone, telegraph, and wireless equipment for general use in connection with service company operations.

(b) This account must include the following items:

(1) Amplifiers.
(2) Antennae.
(3) Booths.
(4) Cables.
(5) Carrier terminal equipment.
(6) Conductors.
(7) Distributing boards.
(8) Extension cords.
(9) Gongs.
(10) Hand sets, manual and dial.
(11) Insulators.
(12) Intercommunicating sets.
(13) Loading coils.
(14) Microwave equipment.
(15) Operators' desks.
(16) Paraboloids.
(17) Poles and fixtures used wholly for telephone or telegraph wire.
(18) Power supply equipment.
(19) Radio transmitting and receiving sets.
(20) Reflectors.
(21) Repeaters.
(22) Remote control equipment and lines.
(23) Sending keys.
(24) Storage batteries.
(25) Switchboards.
(26) Telautograph circuit connections.
(27) Telegraph receiving sets.
(28) Telephone and telegraph circuits.
(29) Testing instruments.
(30) Towers.
(31) Underground conduit used wholly for telephone or telegraph wires and cable wires.

§ 367.3980 Account 398, Miscellaneous equipment.

(a) This account must include the cost of equipment, apparatus, and other similar items, used in the service company's operations, that is not included in any other account of this system of accounts.

(b) This account must include the following items:

(1) Hospital and infirmary equipment.
(2) Kitchen equipment.
(3) Employees' recreation equipment.
(4) Radios.
(5) Restaurant equipment.
(6) Soda fountains.
(7) Operators' cottage furnishings.
(8) Other miscellaneous equipment.

§ 367.3990 Account 399, Other tangible property.

This account must include the cost of tangible service company property not provided for elsewhere.

§ 367.3991 Account 399.1, Asset retirement costs for service company property.

This account must include asset retirement cost on service company property.

Subpart H—Income Statement Chart of Accounts

Service Company Operating Income

§ 367.4000 Account 400, Operating revenues.

There must be shown under this caption the total amount included in the service company operating revenue accounts 457 through 459 (§§ 367.4570 through 367.4590).

§ 367.4010 Account 401, Operation expense.

There must be shown under this caption the total amount included in the service company operation expense accounts 500 through 589 (§§ 367.5000 through 367.5890), 800 through 881 (§§ 367.8000 through 367.8810) and 901 through 931 (§§ 367.9010 through 367.9310).

§ 367.4020 Account 402, Maintenance expense.

There must be shown under this caption the total amount included in the service company maintenance expense accounts 500 through 598 (§§ 367.5000 through 367.5890), 800 though 894 (§§ 367.8000 through 367.8810), and 935 (§ 367.9350).

§ 367.4030 Account 403, Depreciation expense.

(a) This account must include the amount of depreciation for all service company property, the cost of which is included in accounts 390 through 399.1 (§§ 367.3900 through 367.3991). Provide subaccounts by each class of service company property owned or leased except the depreciation expense that is charged to clearing accounts or to account 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160).

(b) The service company must keep the records of property and property retirements that will reflect the service life of property that has been retired and aid in estimating probable service life by mortality, turnover, or other appropriate methods; and also the records that will reflect the percentage of salvage and costs of removal for property retired from each account, or related subaccount, for depreciable property.

(c) Depreciation expenses applicable to transportation equipment, shop equipment, tools, work equipment, power operated equipment and other general equipment may be charged to clearing accounts as necessary in order to obtain a proper distribution of expenses between construction and operation.

§ 367.4031 Account 403.1, Depreciation expense for asset retirement costs.

This account must include the depreciation expense for asset retirement costs included in service company property.

§ 367.4040 Account 404, Amortization of limited-term property.

This account must include amortization charges applicable to amounts included in the service company property's accounts for limited-term franchises, licenses, patent rights, limited-term interests in land, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account must be sufficient to distribute the book cost of each investment as evenly as may be over the period of its benefit. (*See* account 111, Accumulated provision for amortization of service company property (§ 367.1110).)

§ 367.4050 Account 405, Amortization of other property.

(a) When authorized by the Commission, this account must include charges for amortization of intangible or other property that does not have a definite or terminable life and that is not subject to charges for depreciation expense.

(b) This account must be supported in sufficient detail to show the amortization applicable to each investment being amortized, together with the book cost of the investment and the period over which it is being written off.

§ 367.4081 Account 408.1, Taxes other than income taxes, operating income.

This account must include those taxes, other than income taxes, that relate to service company operating income. This account must be maintained so as to allow ready identification of the various classes of taxes.

§ 367.4082 Account 408.2, Taxes other than income taxes, other income and deductions.

This account must include those taxes, other than income taxes, that relate to other income and deductions.

§ 367.4091 Account 409.1, Income taxes, operating income.

This account must include the amount of those local, state and Federal income taxes that relates to service company operating income.

§ 367.4092 Account 409.2, Income taxes, other income and deductions.

This account must include the amount of those local, state and Federal income taxes (both positive and negative), that relate to other income and deductions.

§ 367.4093 Account 409.3, Income taxes, extraordinary items.

This account must include the amount of those local, state and Federal income taxes (both positive and negative), that relate to extraordinary items.

§ 367.4101 Account 410.1, Provision for deferred income taxes, operating income.

This account must include the amounts of those deferrals of taxes and allocations of deferred taxes that relate to service company operating income.

§ 367.4102 Account 410.2, Provision for deferred income taxes, other income and deductions.

This account must include the amounts of those deferrals of taxes and allocations of deferred taxes that relate to other income and deductions.

§ 367.4111 Account 411.1, Provision for deferred income taxes—Credit, operating income.

This account must include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, that relate to service company operating income.

§ 367.4112 Account 411.2, Provision for deferred income taxes—Credit, other income and deductions.

This account must include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, that relate to other income and deductions.

§ 367.4114 Account 411.4, Investment tax credit adjustments, service company property.

This account must include the amount of those investment tax credit adjustments that relate to service company property.

§ 367.4115 Account 411.5, Investment tax credit adjustments, other.

This account must include the amount of those investment tax credit adjustments not properly included in other accounts.

§ 367.4116 Account 411.10, Accretion expense.

This account must be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations (§ 367.2300), related to service company property.

§ 367.4150 Account 415, Revenues from merchandising, jobbing and contract work.

(a) These accounts shall include respectively, all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the service company on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities. Interest related income from installment sales must be recorded in Account 419, Interest and Dividend income (§ 367.4190).

(b) Records in support of this account must be so kept as to permit ready summarization of revenues by such major items as are feasible.

(c) This account must include revenues from the sale of merchandise and from jobbing and contract work, and discounts and allowances made in settlement of bills for merchandise and jobbing work.

(d) Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2, Income taxes, other income and deductions (§ 367.4092), as appropriate.

§ 367.4160 Account 416, Costs and expenses of merchandising, jobbing and contract work.

(a) This account must include the following labor items:

(1) Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.

(2) Demonstrating and selling activities in sales rooms.

(3) Installing appliances on customer premises where the work is done only for purchasers of appliances from the utility.

(4) Installing wiring, piping, or other property work, on a jobbing or contract basis.

(5) Preparing advertising materials for appliance sales purposes.

(6) Receiving and handling customer orders for merchandise or for jobbing services.

(7) Cleaning and tidying sales rooms.

(8) Maintaining display counters and other equipment used in merchandising.

(9) Arranging merchandise in sales rooms and decorating display windows.

(10) Reconditioning repossessed appliances.

(11) Bookkeeping and other clerical work in connection with merchandise and jobbing activities.

(12) Supervising merchandise and jobbing operations.

(b) This account must include the following materials and expenses items:

(1) Advertising in newspapers, periodicals, radio, television, and other similar items.

(2) Cost of merchandise sold and of materials used in jobbing work.

(3) Stores expenses on merchandise and jobbing stocks.

(4) Fees and expenses of advertising and commercial artists' agencies.

(5) Printing booklets, dodgers, and other advertising data.

(6) Premiums given as inducement to buy appliances.

(7) Light, heat and power.

(8) Depreciation on equipment used primarily for merchandise and jobbing operations.

(9) Rent of sales rooms or of equipment.

(10) Transportation expense in delivery and pick-up of appliances by the utility's facilities or by others.

(11) Stationery and office supplies and expenses.

(12) Losses from uncollectible merchandise and jobbing accounts.

(c) Records in support of this account shall be so kept as to permit ready summarization of costs and expenses by such major items as are feasible.

(d) Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2, Income taxes, other income and deductions (§ 367.4092), as appropriate.

§ 367.4171 Account 417.1, Expenses of non-utility related operations.

(a) This account will include expenses incurred in providing services to non-utility companies where the revenues from which are included in Account 459, Services rendered to non-utility companies (§ 367.4590).

Expenses related to providing customer, sales or administrative and general services to non-utility companies will initially be recorded in the 900 series of accounts and transferred to Account 417.1 (§ 367.4171), through credit to Account 922, Administrative expenses transferred—Credit (§ 367.9220). The cost of other services provided to non-utility companies will be charged directly to Account 417.1 (§ 367.4171).

(b) Related taxes must be recorded in account 408.1, Taxes other than income taxes, operating income (§ 367.4081), or account 409.1, Income taxes, operating income (§ 367.4091).

§ 367.4181 Account 418.1, Equity in earnings of subsidiary companies.

This account must include the service company's equity in the earnings or losses of subsidiary companies for the year.

§ 367.4190 Account 419, Interest and dividend income.

(a) This account must include interest revenues on securities, loans, notes, advances, special deposits, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking or other special fund accounts.

(b) This account may include the *pro rata* amount necessary to extinguish (during the interval between the date of acquisition and the date of maturity) the difference between the cost to the service company and the face value of interest-bearing securities. The amounts credited or charged must be concurrently included in the accounts in which the securities are carried.

(c) Where significant in amount, expenses, excluding operating taxes and income taxes, applicable to security investments and to interest and dividend revenues on the account must be charged in this account.

(d) Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2 Income taxes, other income and deductions (§ 367.4092).

(e) Interest accrued, the payment of which is not reasonably assured, dividends receivable that have not been declared or guaranteed, and interest or dividends upon reacquired securities issued or assumed by the service company must not be credited to this account.

§ 367.4191 Account 419.1, Allowance for other funds used during construction.

This account must include concurrent credits for allowance for other funds used during construction.

§ 367.4210 Account 421, Miscellaneous income or loss.

This account must include all revenue and expense items except taxes properly includible in the income account and not provided for elsewhere. Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2, Income taxes, other income and deductions (§ 367.4092).

§ 367.4211 Account 421.1, Gain on disposition of property.

This account must be credited with the gain on the sale, conveyance, exchange, or transfer of service or other property to another. Income taxes on gains recorded in this account must be recorded in account 409.2, Income taxes, other income and deductions (§ 367.4092).

§ 367.4212 Account 421.2, Loss on disposition of property.

This account must be charged with the loss on the sale, conveyance, exchange or transfer of service or other property to another. The reduction in income taxes relating to losses recorded in this account must be recorded in account 409.2 Income taxes, other income and deductions (§ 367.4092).

§ 367.4250 Account 425, Miscellaneous amortization.

(a) This account must include amortization charges not includible in other accounts which are properly deductible in determining the income of the service company before interest charges. Charges included in this account, if significant in amount, must be in accordance with an orderly and systematic amortization program.

(b) This account must include the following items:

(1) Amortization of intangibles included in service company property.

(2) Other miscellaneous amortization charges authorized to be included in this account by the Commission.

§ 367.4261 Account 426.1, Donations.

This account must include all payments or donations for charitable, social or community welfare purposes.

§ 367.4262 Account 426.2, Life insurance.

This account must include all payments for life insurance of officers and employees where the service company is beneficiary (net premiums less increase in cash surrender value of policies).

§ 367.4263 Account 428.3, Penalties.

This account must include payments by the service company for penalties or fines for violation of any regulatory statutes by the service company or its officials.

§ 367.4264 Account 426.4, Expenditures for certain civic, political and related activities.

(a) This account must include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials.

(b) This account must not include expenditures that are directly related to appearances before regulatory or other governmental bodies in connection with an associate utility company's existing or proposed operations.

§ 367.4265 Account 426.5, Other deductions.

This account must include other miscellaneous expenses that are not properly included in service company operations.

§ 367.4270 Account 427, Interest on long-term debt.

(a) This account must include the amount of interest on outstanding long-term debt issued or assumed by the service company, the liability for which is included in account 224, Other long-term debt (§ 367.2240).

(b) This account must be kept or supported so as to show the interest accruals on each class and series of long-term debt.

(c) This account must not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

§ 367.4280 Account 428, Amortization of debt discount and expense.

(a) This account must include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account must be credited concurrently to accounts 181, Unamortized debt expense (§ 367.1810), and 226, Unamortized discount on long-term debt—Debit (§ 367.2260).

(b) This account must be kept or supported so as to show the debt

discount and expense on each class and series of long-term debt.

§ 367.4290 Account 429, Amortization of premium on debt—Credit.

(a) This account must include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account must be charged concurrently to account 225, Unamortized premium on long-term debt (§ 367.2250).

(b) This account must be kept or supported so as to show the premium on each class and series of long-term debt.

(c) This account must include the following items:

(1) Loss relating to investments in securities written-off or written-down.

(2) Loss on sale of investments.

(3) Loss on reacquisition, resale or retirement of service company's debt securities.

(4) Preliminary survey and investigation expenses related to abandoned projects, when not written-off to the appropriate operating expense account.

§ 367.4300 Account 430, Interest on debt to associate companies.

This account must include interest accrued on amounts included in account 223, Advances from associate companies (§ 367.2230), and account 233, Notes payable to associate companies (§ 367.2330). The records supporting the entries to this account must be kept so as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued. Separate subaccounts must be maintained for each related debt account.

§ 367.4310 Account 431, Other interest expense.

This account must include all interest charges not provided for elsewhere.

§ 367.4320 Account 432, Allowance for borrowed funds used during construction—Credit.

This account must include concurrent credits for allowance for borrowed funds used during construction.

Subpart I—Retained Earnings Accounts

§ 367.4330 Account 433, Balance transferred from income.

This account must include the net credit or debit transferred from income for the year.

§ 367.4340 Account 434, Extraordinary income.

This account must be credited with gains of unusual nature and infrequent occurrence, that would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account must be recorded in account 409.3, Income taxes, extraordinary items (§ 367.4093). (See General Instructions in § 367.8.)

§ 367.4350 Account 435, Extraordinary deductions.

This account must be debited with losses of unusual nature and infrequent occurrence that would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account must be recorded in account 409.3, Income taxes, extraordinary items (§ 367.4093). (*See* General Instructions in § 367.8.)

§ 367.4360 Account 436, Appropriations of retained earnings.

This account must include appropriations of retained earnings as follows:

(a) Appropriations required under terms of mortgages, orders of courts, contracts, or other agreements.

(b) Appropriations required by action of regulatory authorities.

(c) Other appropriations made at option of the service company for specific purposes.

§ 367.4370 Account 437, Dividends declared—preferred stock.

(a) This account must include amounts declared payable out of retained earnings as dividends on actually outstanding preferred or prior lien capital stock issued by the service company.

(b) Dividends must be segregated for each class and series of preferred stock as to those payable in cash, stock, and other forms. If not payable in cash, the medium of payment must be described with sufficient detail to identify it.

§ 367.4380 Account 438, Dividends declared—common stock.

(a) This account must include amounts declared payable out of retained earnings as dividends on actually outstanding common capital stock issued by the service company.

(b) Dividends must be segregated for each class of common stock as to those payable in cash, stock and other forms. If not payable in cash, the medium of payment must be described with sufficient detail to identify it.

§ 367.4390 Account 439, Adjustments to retained earnings.

(a) This account must, with prior Commission approval, include significant non-recurring transactions accounted for as prior period adjustments, as follows:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of reacquisition operating loss carry forwards of purchased subsidiaries. All other items of profit and loss recognized during a year must be included in the determination of net income for that year.

(b) Adjustments, charges, or credits due to losses on reacquisition, resale or retirement of the company's own capital stock must be included in this account.

Subpart J—Operating Revenue Chart of Accounts

§ 367.4570 Account 457, Services rendered to associate utility companies.

This account must include amounts billed to associate utility companies for services rendered at cost. (*See* accounts 457.1 through 457.3 in §§ 367.4571 through 367.4573). Overbillings or underbillings arising from adjustments of estimated costs to actual costs must be cleared through this account and concurrent adjustments made to other accounts involved.

§ 367.4571 Account 457.1, Direct costs charged to associate utility companies.

This account must include those direct costs that can be identified through a work order system as being applicable to services performed for associate utility companies. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4572 Account 457.2, Indirect costs charged to associate utility companies.

This account must include recovery of those indirect costs that cannot be separately identified to a single or group of associate companies and therefore must be allocated. Only journal or memorandum entries should be prepared monthly, by departments, for all such cost accumulated and billed to customers. Amounts billed to associate utility companies must be included in this account. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4573 Account 457.3, Compensation for use of capital-associate utility companies.

This account must include only the portion of compensation for use of equity capital and inter-company interest on indebtedness before income taxes that is properly allocable to services rendered to each associate utility company.

§ 367.4580 Account 458, Services rendered to non-associate utility companies.

This account must include amounts billed for services rendered to non-associate utility companies. (*See* accounts 458.1 through 458.4 (§§ 367.4581 through 367.4584).)

§ 367.4581 Account 458.1, Direct costs charged to non-associate utility companies.

This account must include those direct costs that can be identified through a work order system as being applicable to services performed for non-associate utility companies. This account must not include any compensation for use of equity capital or interest on indebtedness.

§ 367.4582 Account 458.2, Indirect costs charged to non-associate utility companies.

This account must include recovery of those indirect costs of services performed for non-associate utility companies that cannot be specifically assigned and therefore must be allocated. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4583 Account 458.3, Compensation for use of capital—Non-associate utility companies.

This account must include only the portion of compensation for use of equity capital and inter-company interest on indebtedness before income taxes that is properly allocable to services rendered to non-associate utility companies. A statement to support the basis for the compensation and how it was calculated must be attached to a separate journal entry, ledger system, or memorandum file.

§ 367.4584 Account 458.4, Excess or deficiency on servicing non-associate utility companies.

This account must include the amount by which the aggregate price received for services rendered to non-associate utility companies differs from the sum of the total direct and indirect costs and compensation for use of capital which are properly allocable to such services. (*See* accounts 458.1 through 458.3 (§§ 367.4581 through 367.4583) and General Instructions in § 367.23.)

§ 367.4590 Account 459, Services rendered to non-utility companies.

This account must include amounts billed for services rendered to non-utility companies. (*See* accounts 459.1 through 459.4 (§§ 367.4591 through 367.4594).)

§ 367.4591 Account 459.1, Direct costs charged to non-utility companies.

This account must include those direct costs that can be identified through a work order system as being applicable to services performed for associate and non-associate companies except utility companies. This account must not include any compensation for use of equity capital or interest on indebtedness.

§ 367.4592 Account 459.2, Indirect costs charged to non-utility companies.

This account must include recovery of those indirect costs of services performed for associate and non-associate companies except utility companies that cannot be separately identified and therefore must be allocated. This account must exclude amounts billed to associate and non-associate utility companies. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4593 Account 459.3, Compensation for use of capital—non-utility companies.

This account must include only the portion of compensation for use of equity capital and inter-company interest on indebtedness before income taxes that is properly allocable to services rendered to associate and non-associate companies except utility companies. A statement to support the basis for the compensation and how it was calculated must be attached to a separate journal entry, ledger system, or memorandum file.

§ 367.4594 Account 459.4, Excess or deficiency on servicing non-associate non-utility companies.

This account must include the amount by which the aggregate price received for services rendered to non-associate companies except utility companies differs from the sum of the total direct and indirect costs and compensation for use of capital which are properly allocable to such services. (*See* Accounts 459.1 through 459.3 (§§ 367.4591 through 367.4593) and General Instructions (§ 367.23).)

Subpart K—Operation and Maintenance Expense Chart of Accounts

§ 367.5000 Accounts 500–598, Electric operation and maintenance accounts.

Service companies must use accounts 500 through 598 in part 101 of this chapter.

§ 367.8000 Accounts 800–894, Gas operation and maintenance accounts.

Service companies must use accounts 800 through 894 in part 201 of this chapter.

§ 367.9010 Account 901, Supervision.

This account must include the cost of labor and expenses incurred in the general direction and supervision of customer accounting and collecting activities. Direct supervision of a specific activity must be charged to account 902, Meter reading expenses (§ 367.9020), or account 903, Customer records and collection expenses (§ 367.9030), as appropriate. (*See* Operating Expense Instructions in § 367.80.)

§ 367.9020 Account 902, Meter reading expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in reading customer meters, and determining consumption when performed by employees engaged in reading meters.

(b) This account must include the following labor items:

(1) Addressing forms for obtaining meter readings by mail.

(2) Changing and collecting meter charts used for billing purposes.

(3) Inspecting time clocks, checking seals, and other similar items, when performed by meter readers and the work represents a minor activity incidental to regular meter reading routine.

(4) Reading meters, including demand meters, and obtaining load information for billing purposes. Exclude and charge to account 586, Meter expenses (§ 367.5860), account 878, Meter and house regulator expenses (§ 367.8780), or to account 903, Customer records and collection expenses (§ 367.9030), as applicable, the cost of obtaining meter readings, first and final, if incidental to the operation of removing or resetting, sealing, or locking, and disconnecting or reconnecting meters.

(5) Computing consumption from meter reader's book or from reports by mail when done by employees engaged in reading meters.

(6) Collecting from prepayment meters when incidental to meter reading.

(7) Maintaining record of customers' keys.

(8) Computing estimated or average consumption when performed by employees engaged in reading meters.

(c) This account must include the following materials and expenses items:

(1) Badges, lamps, and uniforms.

(2) Demand charts, meter books and binders and forms for recording readings, but not the cost of preparation.

(3) Postage and supplies used in obtaining meter readings by mail.

(4) Transportation, meals, and incidental expenses.

§ 367.9030 Account 903, Customer records and collection expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in work on customer applications, contracts, orders, credit investigations, billing and accounting, collections and complaints.

(b) This account must include the following labor items:

(1) Receiving, preparing, recording and handling routine orders for service, disconnections, transfers or meter tests initiated by the customer, excluding the cost of carrying out the orders, that is chargeable to the account appropriate for the work called for by the orders.

(2) Investigations of customers' credit and keeping of records pertaining to the investigations, including records of uncollectible accounts written off.

(3) Receiving, refunding or applying customer deposits and maintaining customer deposit, line extension, and other miscellaneous records.

(4) Checking consumption shown by meter readers' reports where incidental to preparation of billing data.

(5) Preparing address plates and addressing bills and delinquent notices.

(6) Preparing billing data.

(7) Operating billing and bookkeeping machines.

(8) Verifying billing records with contracts or rate schedules.

(9) Preparing bills for delivery, and mailing or delivering bills.

(10) Collecting revenues, including collection from prepayment meters unless incidental to meter-reading operations.

(11) Balancing collections, preparing collections for deposit, and preparing cash reports.

(12) Posting collections and other credits or charges to customer accounts and extending unpaid balances.

(13) Balancing customer accounts and controls.

(14) Preparing, mailing, or delivering delinquent notices and preparing reports of delinquent accounts.

(15) Final meter reading of delinquent accounts when done by collectors incidental to regular activities.

(16) Disconnecting and reconnecting service because of nonpayment of bills.

(17) Receiving, recording, and handling of inquiries, complaints, and requests for investigations from customers, including preparation of necessary orders, but excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by the orders.

(18) Statistical and tabulating work on customer accounts and revenues, but not including special analyses for sales department, rate department, or other general purposes, unless incidental to regular customer accounting routines.

(19) Preparing and periodically rewriting meter reading sheets.

(20) Determining consumption and computing estimated or average consumption when performed by employees other than those engaged in reading meters.

(c) This account must include the following materials and expenses items:

(1) Address plates and supplies.

(2) Cash overages and shortages.

(3) Commissions or fees to others for collecting.

(4) Payments to credit organizations for investigations and reports.

(5) Postage.

(6) Transportation expenses (Major only), including transportation of customer bills and meter books under centralized billing procedure.

(7) Transportation, meals, and incidental expenses.

(8) Bank charges, exchange, and other fees for cashing and depositing customers' checks.

(9) Forms for recording orders for services removals, and other similar forms.

(10) Rent of mechanical equipment.

(d) The cost of work on meter history and meter location records is chargeable to account 586, Meter expenses (§ 367.5860) or account 878, Meter and house regulator expenses (§ 367.8780).

§ 367.9040 Account 904, Uncollectible accounts.

This account must be charged with amounts sufficient to provide for losses from uncollectible service company revenues. Concurrent credits must be made to account 144, Accumulated provision for uncollectible accounts—Credit (§ 367.1440). Losses from uncollectible accounts also must be charged to account 144 (§ 367.1440).

§ 367.9050 Account 905, Miscellaneous customer accounts expenses.

(a) This account must include the cost of labor, materials used and expenses incurred not provided for in other accounts.

(b) This account must include the following labor items:

(1) General clerical and stenographic work.

(2) Miscellaneous labor.

(c) This account must include the following materials and expenses items:

(1) Communication service.

(2) Miscellaneous office supplies and expenses and stationery and printing other than those specifically provided for in accounts 902 and 903 (§§ 367.9020 and 367.9030).

§ 367.9070 Account 907, Supervision.

This account must include the cost of labor and expenses incurred in the general direction and supervision of customer service activities, the object of which is to encourage safe, efficient and economical use of the associate utility company's service. Direct supervision of a specific activity within customer service and informational expense classification must be charged to the account wherein the costs of such activity are included. (*See* Operating Expense Instructions in § 367.80.)

§ 367.9080 Account 908, Customer assistance expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in providing instructions or assistance to customers, the object of which is to encourage safe, efficient and economical use of the associate utility company's service.

(b) This account must include the following labor items:

(1) Direct supervision of department.

(2) Processing customer inquiries relating to the proper use of electric equipment, the replacement of such equipment and information related to the equipment.

(3) Advice directed to customers as to how they may achieve the most efficient and safest use of electric equipment.

(4) Demonstrations, exhibits, lectures, and other programs designed to instruct customers in the safe, economical or efficient use of electric service, and/or oriented toward conservation of energy.

(5) Engineering and technical advice to customers, the object of which is to promote safe, efficient and economical use of the associate utility company's service.

(c) This account must include the following materials and expenses items:

(1) Supplies and expenses pertaining to demonstrations, exhibits, lectures, and other programs.

(2) Loss in value on equipment and appliances used for customer assistance programs.

(3) Office supplies and expenses.

(4) Transportation, meals, and incidental expenses.

(d) Do not include in this account expenses that are provided for elsewhere, such as accounts 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160), 587, Customer installations expenses (§ 368.5870), 879, Customer installations expenses (§ 367.8790), and 912, Demonstrating and selling expenses (§ 367.9120).

§ 367.9090 Account 909, Informational and instructional advertising expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in activities which primarily convey information as to what the associate utility company urges or suggests customers should do in utilizing service to protect health and safety, to encourage environmental protection, to utilize their equipment safely and economically, or to conserve energy.

(b) This account must include the following labor items:

(1) Direct supervision of informational activities.

(2) Preparing informational materials for newspapers, periodicals, billboards, and other similar forms of advertisement, and preparing and conducting informational motion pictures, radio and television programs.

(3) Preparing informational booklets, bulletins, and other similar forms of advertisement, used in direct mailings.

(4) Preparing informational window and other displays.

(5) Employing agencies, selecting media and conducting negotiations in connection with the placement and subject matter of information programs.

(c) This account must include the following materials and expenses items:

(1) Use of newspapers, periodicals, billboards, radio, and other similar forms of advertisement, for informational purposes.

(2) Postage on direct mailings to customers exclusive of postage related to billings.

(3) Printing of informational booklets, dodgers, bulletins, and other similar items.

(4) Supplies and expenses in preparing informational materials for the associate utility company.

(5) Office supplies and expenses.

(d) Exclude from this account and charge to account 930.2, Miscellaneous general expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also exclude all expenses of a promotional, institutional, goodwill or political nature, that are included in accounts 913, Advertising expenses (§ 367.9130), 930.1, General advertising expenses (§ 367.9301), and 426.4, Expenditures for certain civic, political, and related expenses (§ 367.4264).

(e) Entries relating to informational advertising included in this account must contain or refer to supporting documents that identify the specific advertising message. If references are used, copies of the advertising message must be readily available.

§ 367.9100 Account 910, Miscellaneous customer service and informational expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in connection with customer service and informational activities that are not includible in other customer information expense accounts.

(b) This account must include the following labor items:

(1) General clerical and stenographic work not assigned to specific customer service and informational programs.

(2) Miscellaneous labor.

(c) This account must include the following materials and expenses items:

(1) Communication service.

(2) Printing, postage and office supplies expenses.

§ 367.9110 Account 911, Supervision.

This account must include the cost of labor and expenses incurred in the general direction and supervision of sales activities, except merchandising. Direct supervision of a specific activity, such as demonstrating, selling, or advertising, must be charged to the account wherein the costs of such activity are included. (*See* Operating Expense Instructions in § 367.80.)

§ 367.9120 Account 912, Demonstrating and selling expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in promotional, demonstrating, and selling activities, except by merchandising, the object of which is to promote or retain the use of utility services by present and prospective customers.

(b) This account must include the following labor items:

(1) Demonstrating uses of utility services.

(2) Conducting cooking schools, preparing recipes, and related home service activities.

(3) Exhibitions, displays, lectures, and other programs designed to promote use of utility services.

(4) Experimental and development work in connection with new and improved appliances and equipment, prior to general public acceptance.

(5) Solicitation of new customers or of additional business from old customers, including commissions paid employees.

(6) Engineering and technical advice to present or prospective customers in connection with promoting or retaining the use of utility services.

(7) Special customer canvasses when their primary purpose is the retention of business or the promotion of new business.

(c) This account must include the following materials and expenses items:

(1) Supplies and expenses pertaining to demonstration and experimental and development activities.

(2) Booth and temporary space rental.

(3) Loss in value on equipment and appliances used for demonstration purposes.

(4) Transportation, meals, and incidental expenses.

§ 367.9130 Account 913, Advertising expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in advertising designed to promote or retain the use of utility service, except advertising the sale of merchandise by the utility company.

(b) This account must include the following labor items:

(1) Direct supervision of department.

(2) Preparing advertising material for newspapers, periodicals, billboards, and other similar forms of advertisement, and preparing and conducting motion pictures, radio and television programs.

(3) Preparing booklets, bulletins, and other similar forms of advertisement, used in direct mail advertising.

(4) Preparing window and other displays.

(5) Clerical and stenographic work.

(6) Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of sales advertising.

(c) This account must include the following materials and expenses items:

(1) Advertising in newspapers, periodicals, billboards, radio, and other similar forms of advertisement, for sales promotion purposes, but not including institutional or goodwill advertising included in account 930.1, General advertising expenses.

(2) Materials and services given as prizes or otherwise in connection with civic lighting contests, canning, or cooking contests, bazaars, and other similar materials and services, in order to publicize and promote the use of utility services.

(3) Fees and expenses of advertising agencies and commercial artists.

(4) Novelties for general distribution.

(5) Postage on direct mail advertising.

(6) Premiums distributed generally, such as recipe books, and other similar items, when not offered as inducement to purchase appliances.

(7) Printing booklets, dodgers, bulletins, and other similar forms of advertisement.

(8) Supplies and expenses in preparing advertising material.

(9) Office supplies and expenses.

(d) The cost of advertisements which set forth the value or advantages of utility service without reference to specific appliances or, if reference is made to appliances invites the reader to purchase appliances from his dealer or refer to appliances not carried for sale by the utility company, must be considered sales promotion advertising and charged to this account. However, advertisements that are limited to specific makes of appliances sold by the utility company and prices, terms, and other similar items, without referring to the value or advantages of utility service, must be considered as merchandise advertising and the cost must be charged to account 416, Costs and expenses of merchandising, jobbing and contract work.

(e) Advertisements that substantially mention or refer to the value or advantages of utility service, together with specific reference to makes of appliances sold by the utility company and the price, terms, and other similar items, and designed for the joint purpose of increasing the use of utility service and the sales of appliances, must be considered as a combination advertisement and the costs must be distributed between this account and account 416 (§ 367.4160) on the basis of space, time, or other proportional factors.

(f) Exclude from this account and charge to account 930.2, Miscellaneous general expenses (§ 367.9302), the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Exclude also all institutional or goodwill advertising. (See account 930.1, General advertising expenses (§ 367.9301).)

§ 367.9160 Account 916, Miscellaneous sales expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in connection with sales activities, except merchandising, which are not includible in other sales expense accounts.

(b) This account must include the following labor items:

(1) General clerical and stenographic work not assigned to specific functions.

(2) Special analysis of customer accounts and other statistical work for sales purposes not a part of the regular customer accounting and billing routine.

(3) Miscellaneous labor.

(c) This account must include the following materials and expenses items:

(1) Communication service.

(2) Printing, postage, and office supplies and expenses applicable to sales activities, except those chargeable to account 913, Advertising expenses (§ 367.9130).

§ 367.9200 Account 920, Administrative and general salaries.

(a) This account must include salaries, wages, bonuses and other consideration for services, with the exception of director's fees paid directly to officers and employees of the service company.

(b) This account must be supported by time records and appropriately referenced to detailed records subdividing salaries and wages by departments or other functional organization units.

§ 367.9210 Account 921, Office supplies and expenses.

(a) This account must include office supplies and expenses incurred in connection with the general administration of service company operations assignable to specific administrative or general departments and not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are included in account 920 (§ 367.9200).

(b) This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the service company. The following items must be included in this account:

(1) Automobile service, including charges through clearing account.

(2) Bank messenger and service charges.

(3) Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax service, and other similar items.

(4) Building service expenses for customer accounts, sales, and administrative and general purposes.

(5) Communication service expenses to include telephone, telegraph, wire transfer, micro-wave, and other similar items.

(6) Cost of individual items of office equipment used by general departments which are of small value or short life.

(7) Membership fees and dues in trade, technical, and professional associations paid by a utility for employees. (Company memberships must be included in account 930.2 in § 367.9302.)

(8) Office supplies and expenses.

(9) Payment of court costs, witness fees, and other expenses of legal department.

(10) Postage, printing and stationery.

(11) Meals, traveling, entertainment and incidental expenses.

(c) Records must be so maintained to permit ready analysis by item showing the nature of the expense and identity of the person furnishing the service.

§ 367.9220 Account 922, Administrative expenses transferred—Credit.

This account must be credited with administrative expenses recorded in accounts 920 and 921 (§§ 367.9200 and 367.9210) that are transferred to construction costs or to other accounts. (*See* Service Company Property Instructions in § 367.51.) Also, this account must be credited with the amount of operating expenses related to services provided to non-utility companies and account 417.1, Expenses of non-utility company related operations (§ 367.4171), must be debited.

§ 367.9230 Account 923, Outside services employed.

(a) This account must include the fees and expenses of professional consultants and others for general services with the exception of fees and expenses for outside services of account 928, Regulatory commission expense (§ 367.9280), and account 930.1, General advertising expenses (§ 367.9301). Separate subaccounts must be provided for auditing, legal, engineering, management consulting fees and any other fees for professional or outside services.

(b) Records must be maintained so as to permit ready analysis showing nature of service, identity of the person furnishing the service, affiliation to the service company, and, if allocated to more than one company, the specific method of allocation.

§ 367.9240 Account 924, Property insurance.

(a) This account must include the cost of insurance or reserve accruals to protect the service company against losses and damages to owned or leased property used in service company operations. It also must include the cost of labor and related supplies and

expenses incurred in property insurance activities.

(b) Recoveries from insurance companies or others for property damages must be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit must be to the appropriate account for accumulated provision for depreciation.

(c) Records must be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies must be credited to the accounts to which the insurance premiums were charged. The following items must be included in this account:

(1) Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

(2) Special costs incurred in procuring insurance.

(3) Insurance inspection service.

(4) Insurance counsel, brokerage fees, and expenses.

(d) The cost of insurance or reserve accruals capitalized must be charged to construction either directly or by transfer to construction work orders from this account.

(e) The cost of insurance or reserve accruals for the following classes of property must be charged as indicated.

(1) Materials and supplies and stores equipment, to account 163, Stores expense undistributed (§ 367.1630), or appropriate materials account.

(2) Transportation and other general equipment to appropriate clearing accounts that may be maintained.

(3) Merchandise and jobbing property, to account 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160).

(f) The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in property insurance work may be included in accounts 920 and 921 (§§ 367.9200 and 367.9210), as appropriate.

§ 367.9250 Account 925, Injuries and damages.

(a) This account must include the cost of insurance or reserve accruals to protect the service company against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. It also must include the cost of labor and related supplies and expenses incurred in injuries and damages activities.

(b) Reimbursements from insurance companies or others for expenses charged to this account because of injuries and damages and insurance dividends or refunds must be credited to this account. The following items must be included in this account:

(1) Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, and other similar items.

(2) Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

(3) Fees and expenses of claim investigators.

(4) Payment of awards to claimants for court costs and attorneys' services.

(5) Medical and hospital service and expenses for employees as the result of occupational injuries, or resulting from claims of others.

(6) Compensation payments under workmen's compensation laws.

(7) Compensation paid while incapacitated as the result of occupational injuries. (See paragraph (c) of this section.)

(8) Cost of safety, accident prevention and similar educational activities.

(c) Payments to or on behalf of employees for accident or death benefits, hospital expenses, medical supplies or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, must be charged to account 926, Employee pensions and benefits (§ 367.9260). (See also paragraph (e) of account 926 (§ 367.9260).)

(d) The cost of injuries and damages or reserve accruals capitalized must be charged to construction directly or by transfer to construction work orders from this account.

(e) Exclude the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

(f) The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities may be included in accounts 920 and 921 (§§ 367.9200 and 367.9210), as appropriate.

§ 367.9260 Account 926, Employee pensions and benefits.

(a) This account must include pensions paid to, or on behalf of, retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for this purpose, when the service company has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payments for employee accident, sickness, hospital, and death benefits, or insurance related to this account. Include, also, expenses incurred in medical, educational or recreational activities for the benefit of employees, and administrative expenses in connection with employee pensions and benefits.

(b) The service company must maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

(c) Records in support of this account must be kept so that the total pensions expense, the total benefits expense, the administrative expenses included in this account, and the amounts of pensions and benefits expenses transferred to construction or other accounts will be readily available. The following items must be included in this account:

(1) Payment of pensions under a non-accrual or non-funded basis.

(2) Accruals for or payments to pension funds or to insurance companies for pension purposes.

(3) Group and life insurance premiums (credit dividends received).

(4) Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

(5) Payments for accident, sickness, hospital, and death benefits or insurance.

(6) Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, or in excess of statutory awards.

(7) Expenses in connection with educational and recreational activities for the benefit of employees.

(d) The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in accounts 920 and 921 (§§ 367.9200 and 367.9210), as appropriate.

(e) Salaries paid to employees during periods of non-occupational sickness may be charged to the appropriate labor

account rather than to employee benefits.

§ 367.9280 Account 928, Regulatory commission expense.

(a) This account must include all expenses, properly included in service company operating expenses, incurred by the service company in connection with formal cases before regulatory commissions, or other regulatory bodies, on its own behalf or on behalf of associate companies, including payments made to a regulatory commission for fees assessed to the service company for pay and expenses of such commission, its officers, agents and employees, and for filings or reports made under regulations of regulatory commissions. The service company must be prepared to show the cost of each formal case. The following items must be included in this account:

(1) Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of, or defense against petitions or complaints presented to regulatory bodies.

(2) Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

(b) Exclude from this account and include in other appropriate operating expense accounts, expenses incurred in the improvement of service, additional inspection, or rendering reports, which are made necessary by the rules and regulations, or orders, of regulatory bodies.

§ 367.9301 Account 930.1, General advertising expenses.

(a) This account must include the cost of labor, materials used, and expenses incurred in advertising and related activities, the cost of which by their content and purpose are not provided for elsewhere.

(b) This account must include the following labor items:

(1) Supervision.

(2) Preparing advertising material for newspapers, periodicals, billboards, and other similar items, and preparing or conducting motion pictures, radio and television programs.

(3) Preparing booklets, bulletins, and other similar forms of advertisement, used in direct mail advertising.

(4) Preparing window and other displays.

(5) Clerical and stenographic work.

(6) Investigating and employing advertising agencies, selecting media and conducting negotiations in connection with the placement and subject matter of advertising.

(c) This account must include the following materials and expenses items:

(1) Advertising in newspapers, periodicals, billboards, radio, and other similar forms of advertisement.

(2) Advertising matter such as posters, bulletins, booklets, and related items.

(3) Fees and expenses of advertising agencies and commercial artists.

(4) Postage and direct mail advertising.

(5) Printing of booklets, dodgers, bulletins, and other related items.

(6) Supplies and expenses in preparing advertising materials.

(7) Office supplies and expenses.

(d) Properly includible in this account is the cost of advertising activities on a local or national basis of a good will or institutional nature, which is primarily designed to improve the image of the associate utility company or the industry, including advertisements which inform the public concerning matters affecting the associate utility company's operations, such as, the cost of providing service, the associate utility company's efforts to improve the quality of service, the company's efforts to improve and protect the environment, and other similar forms of advertisement. Entries relating to advertising included in this account must contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message must be readily available.

(e) Exclude from this account and include in account 426.4, Expenditures for certain civic, political and related activities (§ 367.4264), expenses for advertising activities that are designed to solicit public support or the support of public officials in matters of a political nature.

§ 367.9302 Account 930.2, Miscellaneous general expenses.

(a) This account must include the cost of expenses incurred in connection with the general management of the service company not provided for elsewhere.

(b) This account must include labor items including miscellaneous labor not elsewhere provided for.

(c) This account must include the following expenses items:

(1) Industry association dues for company memberships.

(2) Contributions for conventions and meetings of the industry.

(3) Research, development, and demonstration expenses not charged to other operation and maintenance expense accounts on a functional basis.

(4) Communication service not chargeable to other accounts.

(5) Trustee, registrar, and transfer agent fees and expenses.

(6) Stockholders meeting expenses.

(7) Dividend and other financial notices.

(8) Printing and mailing dividend checks.

(9) Directors' fees and expenses.

(10) Publishing and distributing annual reports to stockholders.

(11) Public notices of financial, operating and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

(d) Records must be maintained so as to permit ready analysis by item showing the nature of the expense and identity of the person furnishing the service.

§ 367.9310 Account 931, Rents.

This account must include rents, including taxes, paid for the property of others used, occupied or operated in connection with service company functions. Provide subaccounts for major groupings such as office space, warehouses, other structure, office furniture, fixtures, computers, data processing equipment, microwave and telecommunication equipment, airplanes, automobiles, and other similar groupings of property. The cost, when incurred by the lessee, of operating and maintaining leased property, must be charged to the accounts appropriate for the expense as if the property were owned.

§ 367.9350 Account 935, Maintenance of structures and equipment.

This account must include materials used and expenses incurred in the maintenance of property owned, the cost of which is included in accounts 390 through 399 (§§ 367.3900 through 367.3990), and of property leased from others. Provide subaccounts by major classes of structures and equipment, owned and leased.

6. Part 368 is added to read as follows:

PART 368—PRESERVATION OF RECORDS OF HOLDING COMPANIES AND SERVICE COMPANIES

Sec.
368.1 Promulgation.
368.2 General instructions.
368.3 Schedule of records and periods of retention.

Authority: 42 U.S.C. 16451–16463.

§ 368.1 Promulgation.

This part is prescribed and promulgated as the regulations

governing the preservation of records by any holding company and by any service company within a holding company system subject to the jurisdiction of the Commission under the PUHCA 2005.

§ 368.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared, maintained or held by any agent or employee on behalf of the company. The specification in the schedule in § 368.3 of a record related to a type of transaction includes all documents and correspondence, not redundant or duplicative of other records retained, needed to explain or verify the transaction.

(2) *Company* means a service company or a holding company as defined in § 367.1 of this chapter. Public utilities, licensees, and natural gas companies must continue to use parts 125 and 225 of this chapter.

(3) Any company subject to this regulation, that, as agent, operator, lessor or otherwise, maintains or has possession of any records relating to the operation, property or obligations of a public utility, licensee, or natural gas company, as defined in the Federal Power Act, the Natural Gas Act, or the laws of any state within which the public utility, licensee, or natural gas company operates, must comply with the laws or regulations as to record retention and destruction which would apply to the records if they were records of the public utility, licensee, or natural gas company as codified in parts 125 and 225 of the Commission's regulations.

(4) The regulations in this part should not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.

(5) To the extent that any Commission regulations may provide for a different record retention period, the records must be retained for the longer of the retention periods.

(6) Records, other than those listed in the schedule, may be destroyed at the option of the company. However, records that are used in lieu of those listed must be preserved for the periods prescribed for the records used for substantially similar purposes. Additionally, retention of records pertaining to added services, functions, plant, and other similar service, the establishment of which cannot be presently foreseen, must conform to the principles embodied in this section.

(7) Notwithstanding the provisions of the records retention schedule in this section, the Commission may, upon the request of the company, authorize a shorter period of retention for any record listed in the schedule upon a showing by the company that preservation of the record for a longer period is not necessary or appropriate, in the public interest or for the protection of investors or consumers.

(b) *Designation of supervisory official.* Each company subject to these record retention regulations must designate one or more officials to supervise the preservation or authorized destruction of its records.

(c) *Protection and storage of records.* The company must provide reasonable protection from damage by fire, flood, and other hazards for records required by these record retention regulations to be preserved and, in the selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Index of records.* At each site or location where company records are kept or stored, the records must be arranged, filed, and currently indexed so that records may be readily identified and made available for inspection by authorized representatives of any regulatory agency concerned, including the Commission.

(e) *Record storage media.* Each company has the flexibility to select its own storage media subject to the following conditions.

(1) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 368.3 unless there is a quality transfer from one media to another with no loss of data.

(2) Each company is required to implement internal control procedures that assure the reliability of, and ready access to, data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(3) Each transfer of data from one media to another must be verified for accuracy and documented. Software and hardware required to produce readable records must be retained for the same period the media format is used.

(f) *Destruction of records.* At the expiration of the retention period, the company may use any appropriate method to destroy records. Precautions should be taken, however, to macerate or otherwise destroy the legibility of records, the content of which is forbidden by law to be divulged to unauthorized persons.

(g) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within 90 days from the date of discovery of the destruction.

(h) *Schedule of records and periods of retention.* The schedule of records retention periods constitutes a part of these record retention regulations. The schedule prescribes the periods of time that designated records must be preserved. Plant records related to public utilities and licensees and natural gas companies must be retained in accordance with §§ 125.3 and 225.3 of this chapter.

(i) *Retention periods designated ''Destroy at option''.* ''Destroy at option'' constitutes authorization for destruction of records at managements' discretion if the destruction does not conflict with other legal retention requirements or usefulness of the records in satisfying pending regulatory actions or directives. ''Destroy at option after audit'' requires retention until the company has received an opinion from its independent accountants with respect to the financial statements including the transactions to which the records relate.

(j) *Records of services performed by associate companies.* Holding companies and service companies must assure the availability of records of services performed by and for public utilities and licensees and natural gas companies with supporting cost information for the periods indicated in §§ 125.3 and 225.3 of this chapter as necessary to be able to readily furnish detailed information as to the nature of the transaction, the amounts involved, and the accounts used to record the transactions.

(k) *Rate case.* Notwithstanding the minimum retention periods provided in these regulations, the company must retain the appropriate records to support the costs and adjustments proposed in any rate case.

(l) *Pending complaint litigation or governmental proceedings.* Notwithstanding the minimum requirements, if a company is involved in pending litigation, complaint procedures, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years

or for 10 years after property is retired, whichever is longer.

§ 368.3 Schedule of records and periods of retention.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Reports to stockholders: Annual reports or statements to stockholders.	5 years.
2. Organizational documents:	
(a) Minute books of stockholders, directors' and directors' committee meetings.	5 years or termination of the corporation's existence, whichever occurs first.
(b) Title, franchises, and licenses: Copies of formal orders of regulatory commissions served upon the company.	6 years after final non-appealable order.
(1) Certificates of incorporation, or equivalent agreements and amendments thereto.	Life of corporation.
(2) Deeds, leases and other title papers (including abstracts of title and supporting data), and contracts and agreements related to the acquisition or disposition of property or investments.	6 years after property or investment is disposed of unless delivered to transferee.
3. Contracts and agreements: Contracts, including amendments and agreements (except contracts provided for elsewhere):	
(a) Service contracts, such as for management, consulting, accounting, legal, financial or engineering services.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes pertaining to such contracts, whichever is later.
(b) Memoranda essential to clarify or explain provisions of contracts and agreements.	For same period as contract to which they relate.
(c) Card or book records of contracts, leases, and agreements made, showing dates of expirations and of renewals, memoranda of receipts, and payments under such contracts.	For the same periods as contracts to which they relate.
(d) Contracts and other agreements relating to services performed in connection with construction of property (including contracts for the construction of property by others for the company and for supervision and engineering relating to construction work).	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes or governmental proceedings pertaining to such contracts, whichever is later.
4. Accountants' and auditors' reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the company (such as reports of public accounting firms and commission accountants).	5 years after the date of the report.
(b) Internal audit reports and working papers	5 years after the date of the report.
Information Technology Management	
5. Automatic data processing records (retain original source data used as input for data processing and data processing report printouts for the applicable periods prescribed elsewhere in the schedule): Software program documentation and revisions thereto.	Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter.
General Accounting Records	
6. General and subsidiary ledgers:	
(a) Ledgers:	
(1) General ledgers	10 years.
(2) Ledgers subsidiary or auxiliary to general ledgers except ledgers provided for elsewhere.	10 years.
(b) Indexes:	
(1) Indexes to general ledgers	10 years.
(2) Indexes to subsidiary ledgers except ledgers provided for elsewhere.	10 years.
(c) Trial balance sheets of general and subsidiary ledgers	2 years.
7. Journals: General and subsidiary	10 years.
8. Journal vouchers and journal entries including supporting detail:	
(a) Journal vouchers and journal entries	10 years.
(b) Analyses, summarization, distributions, and other computations which support journal vouchers and journal entries:	
(1) Charging property accounts	25 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(2) Charging all other accounts	6 years.
9. Cash books: General and subsidiary or auxiliary books	5 years after close of fiscal year.
10. Voucher registers: Voucher registers or similar records when used as a source document.	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
11. Vouchers:	
(a) Paid and canceled vouchers (one copy-analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers).	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(c) Paid checks and receipts for payments of specific vouchers	5 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(d) Authorization for the payment of specific vouchers	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(e) Lists of unaudited bills (accounts payable), list of vouchers transmitted, and memoranda regarding changes in audited bills.	Destroy at option.
(f) Voucher indexes	Destroy at option.
(g) Purchases and stores records related to disbursement vouchers.	5 years.
Insurance	
12. Insurance records:	
(a) Records of insurance policies in force, showing coverage, premiums paid, and expiration dates.	Destroy at option after expiration of such policies.
(b) Records of amounts recovered from insurance companies in connection with losses and of claims against insurance companies, including reports of losses, and supporting papers.	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(c) Records of self-insurance against:	
(1) Losses from fire and casualty	6 years after date of last accounting entry with respect thereto.
(2) Damage to property of others, and	6 years after date of last accounting entry with respect thereto.
(3) personal injuries	6 years after date of last accounting entry with respect thereto.
(d) Inspectors' reports and reports of condition of property	Destroy when superseded.
Maintenance	
13. Maintenance work orders and job orders:	
(a) Authorizations for expenditures for maintenance work to be covered by work orders, including memoranda showing the estimates of costs to be incurred.	5 years.
(b) Work order sheets to which are posted in detail the entries for labor, material, and other charges in connection with maintenance, and other work pertaining to company operations.	5 years.
(c) Summaries of expenditures on maintenance and job orders and clearances to operating other accounts (exclusive of property accounts).	5 years.
Property, Depreciation and Investments	
14. Property records, excluding documents included in Item 2(a)(2):	
(a) Ledgers of property accounts including land and other detailed ledgers showing the cost of property by classes.	25 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(b) Continuing property inventory ledger, book or card records showing description, location, quantities, cost, etc., of physical units (or items) of property owned.	25 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(c) Operating equipment records.	3 years after disposition, termination of lease, or write-off of property or investment.
(d) Office furniture and equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(e) Automobiles, other vehicles and related garage equipment records.	3 years after disposition, termination of lease or write-off of property or investment.
(f) Aircraft and airport equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(g) Other property records not defined elsewhere	3 years after disposition, termination of lease or write-off of property or investment.
15. Construction work in progress ledgers, work orders, and supplemental records:	
(a) Construction work in progress ledgers	5 years after clearance to property account, provided continuing inventory records are maintained; otherwise 5 years after property is retired.
(b) Work orders sheets to which are posted in summary form or in detail the entries for labor, materials, and other charges for property additions and the entries closing the work orders to property records at completion.	5 years after clearance to property account, provided continuing inventory records are maintained; otherwise 5 years after property is retired.
(c) Authorizations for expenditures for additions to property, including memoranda showing the detailed estimates of cost, and the bases therefore (including original and revised or subsequent authorizations).	5 years after clearance to property account.
(d) Requisitions and registers of authorizations for property expenditures.	5 years after clearance to property account.
(e) Completion or performance reports showing comparison between authorized estimates and actual expenditures for property additions.	5 years after clearance to property account.
(f) Analysis or cost reports showing quantities of materials used, unit costs, number of man-hours etc., in connection with completed construction project.	5 years after clearance to property account.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(g) Records and reports pertaining to progress of construction work, the order in which jobs are to be completed, and similar records which do not form a basis of entries to the accounts.	Destroy at option.
16. Retirement work in progress ledgers, work orders, and supplemental records:	
(a) Work order sheets to which are posted the entries for removal costs, materials recovered, and credits to property accounts for cost of property retirement.	5 years after the property is retired.
(b) Authorizations for retirement of property, including memoranda showing the basis for determination to be retired and estimates of salvage and removal costs.	5 years after the property is retired.
(c) Registers of retirement work	5 years.
17. Summary sheets, distribution sheets, reports, statements, and papers directly supporting debits and credits to property accounts not covered by construction or retirement work orders and their supporting records.	5 years.
18. Appraisals and valuations:	
(a) Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. (Includes all records essential thereto.).	3 years after appraisal.
(b) Determinations of amounts by which properties or investments of the company or any of its associated companies will be either written up or written down as a result of:	
(1) Mergers or acquisitions	10 years after completion of transaction or as ordered by the Commission.
(2) Asset impairments	10 years after recognition of asset impairment.
(3) Other bases	10 years after the asset was written up or down.
19. Production maps, geological maps, reproductions, including aerial photographs, showing the location of all facilities the subject matter of which falls within the work orders of the company.	6 years after completion of work order.
20. Engineering records, drawings, supporting data to include diagrams, profiles, photographs, field-survey notes, plot plans, detail drawings, and records of engineering studies that are part of or performed by the company within the work order system.	6 years after completion of work order.
21. Records of building space occupied by various departments of the company.	6 years.
22. Contracts relating to property:	
(a) Contracts relating to acquisition or sale of property	6 years after property is retired or sold.
(b) Contracts and other agreements relating to services performed in connection with construction of property (including contracts for the construction of property by others for the company and for supervision and engineering relating to construction work).	6 years after property is retired or sold.
23. Records pertaining to reclassification of property accounts to conform to prescribed systems of accounts including supporting papers showing the bases for such reclassifications.	6 years.
24. Records of accumulated provisions for depreciation and depletion of property and amortization of intangible property and supporting computation of expense:	
(a) Detailed records or analysis sheets segregating the accumulated depreciation according to the classification of property.	25 years.
(b) Records reflecting the service life of property and the percentage of salvage and cost of removal for property retired from each account for depreciable company property.	25 years.
25. Investment records:	
(a) Records of investment in associate companies	3 years after disposition of investment.
(b) Records of other investments, including temporary investments of cash.	3 years after disposition of investment.
Purchase and Stores	
26. Procurement:	
(a) Agreements entered into for the acquisition of goods or the performance of services. Includes all forms of agreements such as but not limited to: Letters of intent, exchange of correspondence, master agreements, term contracts, rental agreements, and the various types of purchase orders:	
(1) For goods or services relating to property construction	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(2) For other goods or services	6 years.
(b) Supporting documents including accepted and unaccepted bids or proposals (summaries of unaccepted bids or proposals may be kept in lieu of originals) evidencing all relevant elements of the procurement.	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
27. Material ledgers: Ledger sheets of materials and supplies received, issued, and on hand.	6 years after the date the records/ledgers were created.
28. Materials and supplies received and issued: Records showing the detailed distribution of materials and supplies issued during accounting periods.	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies).
Revenue Accounting	
29. Miscellaneous billing data: Billing department's copies of contracts with customers (other than contracts in general files).	5 years.
30. Revenue summaries: Summaries of monthly revenues according to classes of service. Including summaries of forfeited discounts and penalties.	5 years.
Tax	
31. Tax records:	
(a) Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Item 11 for vouchers evidencing disbursements:	
(1) Income tax returns	2 years after final tax liability is determined.
(2) Agreements between and schedule of allocation by associate companies of consolidated Federal income taxes.	2 years after final tax liability is determined.
(b) Other taxes, including State or local property or income taxes.	
(1) Property tax returns.	2 years after final tax liability is determined.
(2) Sales and other use taxes	2 Years.
(3) Other Taxes	2 years after final tax liability is determined.
(c) Filings with taxing authorities to qualify employee benefit plans	5 years after discontinuance of plan.
(d) Information returns and reports to taxing authorities	3 years after final tax liability is determined.
Treasury	
32. Statements of funds and deposits:	
(a) Summaries and periodic statements of cash balances on hand and with depositories for company or associate.	Destroy at option after completion of audit by independent accountants.
(b) Requisitions and receipts for funds furnished associates and others.	Destroy at option after funds have been returned or accounted for.
(c) Statements of periodic deposits with external fund administrators or trustees.	Retain records for the most recent 3 years.
(d) Statements of periodic withdrawals from external fund	Retain records for the most recent 3 years.
33. Records of deposits with banks and others:	
(a) Statements from depositories showing the details of funds received, disbursed, transferred, and balances on deposit, bank reconcilement papers and statements of interest credits.	Destroy at option after completion of audit by independent accountants.
(b) Check stubs, registers, or other records of checks issued	6 years.
Payroll Records	
34. Payroll records:	
(a) Payroll sheets or registers of payments of salaries and wages, pensions and annuities paid by company or by contractors of its account.	6 years.
(b) Records showing the distribution of salaries and wages paid for each payroll period and summaries or recapitulations of such distribution.	6 years.
Miscellaneous	
35. Financial, operating and statistical annual reports regularly prepared in the course of business for internal administrative or operating purposes.	5 years.
36. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations, including acquisitions and disposals of properties or investments.	3 years.
37. Periodic or special reports filed by the company on its own behalf with the Commission or with any other Federal or State rate-regulatory agency, including exhibits or amendments to such reports:	
(a) Reports to Federal and State regulatory commissions including annual financial, operating and statistical reports.	5 years.
(b) Monthly and quarterly reports of operating revenues, expenses, and statistics.	5 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
38. Advertising: Copies of advertisements by or for the company on behalf of itself or any associate company in newspapers, magazines, and other publications, including costs and other records relevant thereto (excluding advertising of appliances, employment opportunities, routine notices, and invitations for bids all of which may be destroyed at option).	2 years.

7. Part 369 is added to read as follows:

PART 369—STATEMENTS AND REPORTS (SCHEDULES)

Authority: Sections 1261 *et seq.* Pub. L. 109–58, 119 Stat. 594.

§ 369.1 FERC Form No. 60, Annual report of service company.

(a) *Prescription.* The Form of Annual Report for Centralized Service Companies, designated as FERC Form No. 60, is prescribed for the reporting year 2007 and each subsequent year.

(b) *Filing requirements*—(1) *Who must file.* Each centralized service company (*See* § 367.2 of this chapter) in a holding company system must prepare and file electronically with the Commission the FERC Form No. 60 pursuant to the General Instructions set out in the form.

(2) *When to file and what to file.* (i) The annual report for the year ending December 31, 2005 and 2006 must be filed by May 1, 2006 and May 1, 2007, respectively. The annual report for each year thereafter must be filed by April 18 of the subsequent years.

(ii) This report must be filed with the Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter is required.

PART 375—THE COMMISSION

8. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

9. In § 375.303, paragraphs (c), (d), (e), (f), (g) and (h) are revised to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(c) Issue interpretations of the Uniform System of Accounts for public utilities and licensees, centralized service companies, natural gas companies and oil pipeline companies.

(d) Pass upon any proposed accounting matters submitted by or on behalf of jurisdictional companies that require Commission approval under the Uniform Systems of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

(e) Pass upon applications to increase the size or combine property units of jurisdictional companies.

(f) Accept for filing FERC Form No. 60 and Quarterly Financial Report Form Nos. 3–Q and 6–Q if such filings are in compliance with Commission orders or decisions, and when appropriate, notify the party of such acceptance. Issue and sign deficiency letters if the filing fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted.

(g) Deny or grant, in whole or in part, requests for waiver of the reporting requirements for the forms under §§ 141.400, 260.300, 357.4, 366.23 and 369 of this chapter and the filing of these forms on electronic media under § 385.2011 of this chapter.

(h) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352, 356, 367 and 368 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

[FR Doc. 06–4043 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM04–12–001; Order No. 668–A]

Accounting and Financial Reporting for Public Utilities Including RTOs

Issued April 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying requests for rehearing of Order No. 668, *Accounting and Financial Reporting for Public Utilities Including RTOs.*

The Commission is also publishing a technical correction to include page 302 of Form Nos. 1 and 3–Q which was missing from Order No. 668. Finally, the Commission is clarifying the proper way to net energy transactions when an entity participates in more than one RTO-administered energy market and the proper basis for determining whether net hourly energy transactions are to be reported as a net sale or a net purchase.

DATES: *Effective Date:* Changes adopted in this order will become effective June 15, 2006.

FOR FURTHER INFORMATION CONTACT:

John Okrak (Technical Information), Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20462. (202) 502–8280.

Eric Clark (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20462. (202) 502–8586.

SUPPLEMENTARY INFORMATION:

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

1. On December 16, 2005, the Commission issued Order No. 668 amending the accounting and financial reporting requirements for public utilities.[1] On January 17, 2006, the Transmission Access Policy Study Group (TAPS) filed a request for rehearing.[2] In this order, the Commission denies rehearing of Order No. 668, publishes a technical correction, and provides certain clarifications.

Background

2. The Commission initiated this rulemaking proceeding in order to update its Uniform System of Accounts (USofA)[3] and financial reporting requirements to accommodate the restructuring changes that are occurring in the electric industry due to the availability of open-access transmission service and increasing competition in wholesale bulk power markets.

3. More specifically, the formation of independent system operators (ISOs) and regional transmission organizations (RTOs) created the need to update the Commission's accounting and financial reporting requirements to reflect the roles of ISOs and RTOs and to provide more transparent and uniform accounting for reporting of certain activities not previously addressed in the Commission's regulations. To remedy this, Order No. 668 updated the accounting requirements for public utilities and licensees, including ISOs and RTOs (hereafter, jointly referred to as RTOs). As relevant here, Order No. 668 included a new operating revenue sub-account, Account No. 456.1, Revenues from transmission of electricity of others, to record revenues the public utility receives for the transmission of electricity over its transmission facilities.[4]

4. On January 17, 2006, TAPS filed a request for rehearing, calling for the Commission to require additional detail in Account No. 456.1.[5] According to TAPS, while new Account No. 456.1 provides additional transparency, the Commission's accounting regulations would provide even more transparency if they additionally required: Sub-categorization of transmission revenues; reporting of peak loads in a manner that permits ready calculation of transmission rate divisors; separate identification of plant, depreciation and expenses associated with facilities that are accounted for as transmission but otherwise functionalized or directly assigned; expanded identification of transmission facilities that have been placed under the control of another entity and the gross plant investment of the facilities transferred; and reporting of revenue distributions received from regional transmission entities.

Discussion

5. TAPS asserts that the newly created Account 456.1 does not permit transmission customers and the Commission to monitor transmission revenues and usage to determine whether existing rates are just and reasonable. We are not persuaded the level of additional detail TAPS seeks—which TAPS readily admits is ''needed for transmission ratemaking''[6]—need be reported, however. Furthermore, the information that TAPS seeks is not financial accounting data that would be recorded in Account 456.1. Thus, while TAPS styles its request for rehearing as accounting-related by requesting that the Commission adopt certain proposed changes to Account 456.1, what TAPS is really requesting is more broadly an expansion of the Form Nos. 1 and 3–Q reporting requirements to essentially amount to a rate case. We are not persuaded to do so, and we will deny rehearing.

6. Account No. 456.1 is a revenue account, and much if not all of the added detail that TAPS seeks is not revenue data but other data not appropriately recorded in Account No. 456.1. Indeed, some of it is not even financial information, such as the requested listing of facilities placed under an RTO's control, and would not be recorded anywhere in the Uniform System of Accounts. The Commission considers the information requested by TAPS, which TAPS notes is needed for transmission ratemaking, unnecessary to accomplish the goal of this rulemaking proceeding, which is *not* to engage in transmission ratemaking, but instead simply to allow for oversight of the rates being charged by RTOs and their member transmission-owning public utilities, to compare expenditures across RTOs,[7] and to provide sufficient transparency of financial trends and

[1] *Accounting and Financial Reporting for Public Utilities Including RTOs,* Order No. 668, 70 FR 77627 (Dec. 30, 2005), FERC Stats. & Regs. ¶ 31,199 (2005).

[2] On January 17, 2006, the American Public Power Association filed a letter stating that it was not filing for rehearing, but urged the Commission to turn its attention to cost oversight.

[3] 18 CFR part 101.

[4] Order No. 668, FERC Stats. & Regs. ¶ 31,199 at P 69–71.

[5] Request for Rehearing at 2; *accord id.* at 3–6.

[6] *Id.* at 2; *accord id.* at 3.

[7] A fundamental basis for the existence of the Commission's accounting requirements, and by extension its reporting requirements, is uniformity. Uniformity of the information reported allows for meaningful comparisons to be made between accounting periods and between entities. In order to make such comparisons, reported information needs to be aggregated at a high enough level that commonality of the information being reported exists. We are concerned that the level of detail that TAPS seeks would undermine the objective of comparability due at least in part to the fact that terms contained in TAPS proposal do not necessarily have a common definition across entities. For example, ''relevant'' point-to-point loads.

emerging issues.[8] In short, the requested additional detail is beyond the scope of this rulemaking proceeding.[9]

7. Order No. 668's requirements provide information sufficient for oversight without undue burden. Form Nos. 1, 1–F, and 3–Q collect general corporate information such as summary financial information, balance sheet and income statement supporting information, and electric plant, sales, operating expenses, and other statistical data.[10] The information required allows for oversight and is not intended to be, as TAPS apparently would prefer, the equivalent of a rate case. The filing requirements for [11] and discovery available in [12] rate cases allow for parties to rate cases to obtain this additional information should they need it.

8. Further, some of the additional and more detailed information requested by TAPS is already available through other avenues. For example, TAPS requests that reporting include peak load as adjusted, i.e., with separate identification of any behind-the-meter loads that counted towards network service billing determinants and of the relevant point-to-point loads and reserved capacities, as well as the rate divisor where the principal rate through which the transmission owner's transmission investment is recovered using a different billing determinant.[13] However, when the Commission revised its annual reports and created its quarterly reports, the Commission required that public utilities provide peak load information.[14]

9. TAPS seeks revenue reporting broken down into various firmness and duration classes.[15] The Commission requires a breakdown on the Transmission of Electricity for Others Schedule of Form Nos. 1 and 3–Q, which also requires respondents to explain all components of the amount of revenues received from other charges.[16] This breakdown also addresses another TAPS concern, that is, disclosing revenues received from Financial Transmission Rights, Auction Revenue Rights and similar instruments.

10. TAPS requests that Form No. 1 be expanded to identify which facilities have been placed under the operational control of another entity.[17] Some RTOs already post information on their public websites detailing which facilities have been placed under their operational control.[18] In other cases, while the Commission has allowed for this information to be removed from public access due to security concerns,[19] the Commission has provided for access to this information where the requesting party has a ''legitimate business need.'' [20]

11. TAPS requests information detailing: the plant, depreciation, and other expenses associated with facilities that have been accounted for as transmission but are either functionalized to other functions or directly assigned; as well as revenue distributions received by a transmission owner from an RTO, broken down to distinguish operating fees or leases for transferred facilities, distribution of revenues from zonal transmission charges, pass-through of revenues for ancillary services and wholesale distribution services, reimbursement of start-up costs, distribution of revenues from third-party transactions, and distribution of Financial Transmission Rights or Auction Revenue Rights revenues.[21] The Commission declines to mandate detailed reporting of this information; as noted above, this sort of detailed information goes beyond the scope of this rulemaking proceeding. In the case of functionalized and directly assigned facilities, this information will be available at the time of a rate filing. Regarding revenue distributions from RTOs, revenue received from an RTO would be reported in the Transmission of Electricity for Others Schedule of Form Nos. 1 and 3–Q.

Technical Correction

12. The Operation and Maintenance Chart of Accounts for Regional Market Expenses in Order No. 668 is replaced to correct title errors for accounts 575.2, 575.3, 575.4 and 575.5, and to correct 576.3, 576.4 and 576.5, which were incorrectly designated as 567.3, 567.4 and 567.5. In Appendix B of Order No. 668, the Commission inadvertently neglected to include page 302 of Form Nos. 1 and 3–Q, which are referenced in paragraphs 12 and 15 of Order No. 668. The Commission is also amending the instructions on page 397 of Form Nos. 1, 1–F and 3–Q. The missing page 302 and the amended page 397 are attached to this order as Appendix A.

Clarification

13. In Order No. 668, the Commission adopted a net basis for accounting for and reporting energy transactions occurring in RTO-administered energy markets. Entities have inquired informally about (1) the proper way to net energy transactions when an entity participates in more than one RTO-administered energy market and (2) the proper basis for determining whether net hourly energy transactions are to be reported as a net sale or a net purchase. We take this opportunity to clarify the appropriate accounting for these transactions.

14. Some RTOs operate two energy markets; a day-ahead market and a real-time or balancing market. Entities that participate in both markets have requested clarification whether transactions occurring in each market should be separately netted for a given hour (as explained below, yes) or whether the transactions in the two markets should be combined for a given hour for netting purposes (as explained below, no).

15. Since RTO-administered energy markets are operated and settled separately, transactions occurring in each market should be separately netted for purposes of determining whether an entity is a net seller or purchaser in a given hour. For example, if an entity had net purchases of 12 megawatt hours in the *day-ahead* market in hour one of day one of the month and net sales of 10 megawatt hours in the *real-time* market in the same hour one of day one of the month, it would record a purchase of 12 megawatt hours in

[8] Order No. 668, FERC Stats. & Regs. ¶ 31,199 at P 5 & 71; *see Financial Reporting and Cost Accounting, Oversight and Recovery Practices for Regional Transmission Organizations and Independent System Operators,* 69 FR 58112 (September 29, 2004), FERC Stats. & Regs. ¶ 35,546 (2004); *Accounting and Financial Reporting for Public Utilities Including RTOs,* 70 FR 36865 (June 27, 2005), FERC Stats. & Regs. ¶ 32,585 (2005).

[9] The Commission has in the past denied similar requests to expand the Uniform System of Accounts. *See, e.g., Quarterly Financial Reporting and Revisions to the Annual Reports,* Order No. 646, 69 FR 9029 (February 26, 2004), FERC Stats. & Regs. ¶ 31,158 at P 103 (2004).

[10] *See, e.g., Electronic Filing of FERC Form 1, and Elimination of Certain Designated Schedules In FERC Form Nos. 1 and 1–F,* Order No. 626, 67 FR 36093 (May 23, 2002), FERC Stats. & Regs. ¶ 31,130 (2002).

[11] 18 CFR 35.13.

[12] 18 CFR 385.406.

[13] Request for Rehearing at 2, 5–6.

[14] *See Quarterly Financial Reporting and Revisions to the Annual Reports,* Order No. 646, 69 FR 9029 (February 26, 2004), FERC Stats. & Regs. ¶ 31,158 (2004).

[15] Request for Rehearing at 5.

[16] The Transmission of Electricity for Others Schedule requires entities to enter a statistical classification code based on the original contractual terms and conditions of the service, such as, firm network service, long-term firm point-to-point transmission service, short-term point-to-point service, etc.

[17] *Id.* at 6.

[18] *See, e.g., http://www.midwestiso.org/publish/Folder/3e2d0_106c60936d4_7c7c0a48324a?rev=1* (Midwest Independent Transmission System Operator, Inc. Web site, listing facilities placed under its control).

[19] *Cal. Indep. Sys. Operator Corp.*, 102 FERC ¶ 61,061 at P 21 (2003) (allowing the California Independent System Operator to restrict public access).

[20] *Id.* at P 22 (included among those with a ''legitimate business need'' are all market participants).

[21] Request for Rehearing at 6.

Account 555, Purchased Power, for the *day-ahead* market for that given hour and a sale of 10 megawatt hours in Account 447, Sales for Resale, for the *real-time* market for that given hour; the purchases and sales did not occur in the same market and so would not be netted.

16. Additionally, in each monthly reporting period, the hourly sale and purchase net amounts are to be aggregated and separately reported in Account No. 447 or Account No. 555, respectively. For example, assume that an entity in the real-time market had net sales of 10 megawatt hours during *hour one* of day one of the month and net purchases of 15 megawatt hours during *hour six* and of 5 megawatt hours during *hour ten* of day one of the month. Assuming there were no other transactions during the month, the entity would report for the month for the real-time market 10 megawatt hours of sales in Account 447 and 20 megawatt hours of purchases in Account 555; the sales and purchases did not occur in the same hour and so would not be netted.

17. Entities have also requested clarification whether net hourly energy transactions should be classified as a net purchase or sale based on a net megawatt hour basis or a net dollar basis. Net megawatt hours should be used as the primary basis for determining whether a net purchase or sale has occurred. For example, assume for a given market in a given hour that an entity purchases 10 megawatt hours at $500 and sells 12 megawatt hours at $480 in the real-time market. The transactions occurring during this hour would be accounted for and reported as a net sale in Account 447 of 2 megawatt hours at a loss of $20.

18. However, in instances where the megawatt hours net to zero for a given market in a given hour, then the net hourly energy transactions should be classified as a net purchase or sale based on a net dollar basis. For example, assume for a given market in a given hour that an entity purchases 10 megawatt hours at $500 and sells 10 megawatt hours at $480. The transactions occurring during this hour would be accounted for and reported as a net purchase in Account 555 of zero megawatt hours at a cost of $20.

19. Finally, we have revised the instructions of page 397, Amounts Included in ISO/RTO Settlement Statements, of the Form Nos. 1 and 3–Q to incorporate the above clarifying language on netting transactions. The revised page 397 Schedule is attached to this order as a part of Appendix A.

The Commission orders:

The request for rehearing filed in this proceeding by the Transmission Access Policy Study Group is hereby denied.

By the Commission.

Nora E. Donovan,

Acting Secretary.

■ In consideration of the foregoing, the Commission amends part 101, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 101 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, 7651–7651o.

■ 2. In part 101, Operation and Maintenance Expense Chart of Accounts, the list of accounts is removed and replaced with the following list of accounts:

Operation and Maintenance Expense Chart of Accounts

* * * * *

3. Regional Market Expenses

Operation

575.1 Operation Supervision
575.2 Day-ahead and real-time market administration.
575.3 Transmission rights market administration.
575.4 Capacity market administration.
575.5 Ancillary services market administration
575.6 Market monitoring and compliance
575.7 Market facilitation, monitoring and compliance services
575.8 Rents

Maintenance

576.1 Maintenance of structures and improvements
576.2 Maintenance of computer hardware
576.3 Maintenance of computer software
576.4 Maintenance of communication equipment
576.5 Maintenance of miscellaneous market operation plant

* * * * *

[FR Doc. 06–4044 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Tuesday,
May 16, 2006

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Revisions to the Civil Penalty Inflation Adjustment Rule and Tables; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2002–11483; Amendment No. 13–33]

RIN 2120–AI52

Revisions to the Civil Penalty Inflation Adjustment Rule and Tables

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule updates information in the FAA's regulations on certain civil monetary penalties authorized for violations of statutes and regulations we enforce in accordance with legislation enacted since the last update. The rule also includes references to additional and revised statutes and regulations. In addition, the rule makes inflation-based adjustments to civil penalties where indicated. Finally, it makes a technical correction to conform regulatory language on the inflation adjustment process to the provisions of the applicable statute.

DATES: This amendment becomes effective June 15, 2006.

FOR FURTHER INFORMATION CONTACT: Joyce Redos, Office of the Chief Counsel, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3137; facsimile (202) 267–5106; e-mail *joyce.redos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*); visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

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

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

Background

Applicable Statutes

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act), Public Law (Pub. L.) 101–410, as amended by the Debt Collection Improvement Act of 1996 (Collection Act), Public Law 104–134, which is codified at 28 U.S.C. 2461 note, requires Federal agencies to adjust the minimum and maximum amounts of civil monetary penalties for inflation to preserve their deterrent impact. Under those laws, each agency had to make an initial inflationary adjustment for all applicable civil monetary penalties, and make a further adjustment of the penalties at least once every 4 years.

Prior FAA Rulemakings

In 1996 (61 FR 67445; December 20, 1996), we added subpart H, Civil Monetary Penalty Inflation Adjustment, to 14 CFR part 13. We adjusted the maximum civil penalty amounts for violations of the statutes, regulations, and orders we enforce in accordance with part 13. In 1997, we made some minor corrections; that amendment was No. 13–28 (62 FR 4134). The first subpart H applied to violations that occurred on or after January 22, 1997.

In Amendment No. 13–31, issued by the Administrator on December 27, 2001, and published in the **Federal Register** on February 11, 2002 (67 FR 6364), we made our second adjustment of civil monetary penalties under the statutes described above. To the original subpart H, we added adjusted civil monetary penalties for violations that occurred on or after March 14, 2002.

Recent Statutory Changes

On December 12, 2003, the President signed into law the ''Vision 100—Century of Aviation Reauthorization Act,'' Public Law 108–176 (Vision 100). Vision 100 made several changes to the FAA's authority to assess civil penalties. Vision 100:

1. Reset several of the FAA's civil monetary penalty amounts for some violators.

2. Increased certain maximum civil monetary penalties in 49 U.S.C. 46301.

3. Revised portions of section 46301 to create specific maximum civil monetary penalty amounts for individuals and small business concerns.

4. Redesignated portions of section 46301; e.g., section 46301(a)(5) was redesignated as section 46301(a)(3).

5. Added a new, mandatory civil penalty, 49 U.S.C. 46319, for permanent closure of an airport without providing the FAA sufficient notice.

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144. Title VII of SAFETEA–LU, the Hazardous Materials Safety and Security Reauthorization Act of 2005, revised paragraph (a)(1) of 49 U.S.C. 5123 generally to increase to $50,000 the maximum civil penalty for a violation of 49 U.S.C. chapter 51, or a regulation, order, special permit, or approval issued thereunder. However, Title VII created an exception to that maximum by providing that, if a violation results in death, serious illness, or severe injury to any person, or substantial destruction of property, the Secretary of Transportation may increase the amount of the civil penalty for such violation to not more than $100,000.

Under Title VII of SAFETEA–LU the general minimum civil penalty for a violation of 49 U.S.C. chapter 51, or a regulation, order, special permit, or approval issued thereunder was set at $250; however, the minimum civil penalty for a hazardous materials training violation was increased to $450.

This Rulemaking

In light of the statutory changes made by Vision 100 and SAFETEA–LU, we are making a variety of changes to 14 CFR part 13, subpart H, which describes the civil penalty inflation adjustment process and the civil penalties that apply to various violations.

Subpart H incorporates a Table One, which specifies the maximum and minimum civil penalty amounts that apply to violations under 49 U.S.C. chapter 463 and 49 U.S.C. 47531 that occurred prior to December 12, 2003, and to violations under 49 U.S.C. chapter 51 that occurred prior to August 10, 2005. Table One also includes references to certain sections that were not included in the previous rulemakings on part 13, subpart H. Sections 47528 through 47530 of Title 49 prohibit the operation of certain aircraft when those aircraft do not comply with the Stage 3 noise levels (see 14 CFR part 91, subpart I). Section 47531 of Title 49 provides that a person violating one of those statutory provisions is subject to the same civil penalty amounts and procedures under chapter 463 as a person violating section 44701(a) or (b), or any of sections 44702–44716. We are also adding reference to section 46301(a)(5) (redesignated as section 46301(a)(3) by Vision 100), which pertains to the penalty for diversion of aviation revenues.

For ease of using the tables, the column ''Civil monetary penalty description,'' contains abbreviated descriptions and therefore may not be all inclusive of the types of violations covered. For example, although 49 U.S.C. 46318 is described as ''interference with cabin or flight crew,'' violations of this section can also involve assaults on passengers. It is necessary to read fully the United States Code provisions cited in the first column of the tables to understand the extent of violations that are subject to the various civil penalties listed in the tables.

Table Two specifies the new amounts of civil monetary penalties set or reset in Vision 100, which apply to violations that occur on or after December 12, 2003, as well as some inflation adjustments that are discussed below.

Vision 100 provided for a general civil penalty of $25,000, maximum, for a violation of most of the sections in Title 49 that we enforce, including the regulations promulgated or orders issued under authority of those sections. (49 U.S.C. 46301(a)(1)(A) and (B).) (Note that Section 46301 does not address violations of the hazardous materials provisions under 49 U.S.C. chapter 51, and the $25,000 maximum civil penalty does not apply to such violations.) Section 46301(a)(1) provides for a maximum penalty of $1,100 for violations by an individual or small business concern.

However, Vision 100 also contained a new paragraph (a)(5) in section 46301, which sets a maximum civil penalty amount of $10,000 for individuals and small business concerns for violations of statutory provisions listed in paragraph (a)(5)(A)(i), or a regulation prescribed or order issued under those statutory provisions. Paragraph (a)(5)(A) provides an exception for ''an airman serving as an airman;'' the maximum penalty for such individuals is $1,100. While section 46301(a)(1)(A) contains a number of provisions not included in section 46301(a)(5)(A)(i), the provisions cited in (a)(5)(A)(i) almost completely overlap with the provisions cited in section 46301(a)(1)(A) that are enforced by the FAA. (An example of a difference is that section 46301(a)(1)(A) includes 49 U.S.C. 44718(a), while section 46301(a)(5)(A)(i) does not.) The result is that there are only two types of exceptions to the $10,000 statutory civil penalty liability for individuals and small businesses: First, if the alleged violator is an airman serving as an airman; and second, if the basis for the violated provision is cited in section 46301(a)(1)(A), but not cited in section 46301(a)(5)(A) (e.g., 49 U.S.C. 44718(a)).

The changes due to the new language in sections 46301(a)(1) and (5)(A), and described above, are laid out in the following table, and also reflected in Table Two:

Alleged violator	Is the violated provision cited in 49 U.S.C. 46301(a)(1)?	Is the violated provision also cited in 49 U.S.C. 46301(a)(5)(A)?	What is the maximum penalty amount?
Person not an individual or small business concern	Yes	Yes	$25,000
Person not an individual or small business concern	Yes	No	25,000
Airman serving as an airman	Yes	Yes	1,100
Airman serving as an airman	Yes	No	1,100
Individual not an airman serving as airman	Yes	Yes	10,000
Individual not an airman serving as airman	Yes	No	1,100
Small business concern	Yes	Yes	10,000
Small business concern	Yes	No	1,100

Based on a new inflation adjustment, discussed below, the $10,000 maximum penalties listed in this table will become $11,000. This adjustment is reflected in Table 2.

Section 46301(a)(5)(B) lists maximum civil penalties for specific types of violations by individuals and small business concerns; an airman acting as an airman is not afforded a lower maximum penalty under these provisions. The covered violations include those under 49 U.S.C. 46301(a)(1) related to the transportation of hazardous materials (Title 14 of the CFR), registration or recordation under 49 U.S.C. chapter 441, the limitation in 49 U.S.C. 44718(d) on construction or establishment of landfills, and the prohibition in 49 U.S.C. 44725 on unsafe disposal of life-limited aircraft parts. As set by Congress in Vision 100, the maximum penalty for violations of these provisions occurring on or after December 12, 2003 until [insert effective date of rule] is $10,000. Based on a new inflation adjustment, discussed below, for a violation occurring after the effective date of the rule, the maximum penalty is $11,000.

We are adding a reference to section 46319, which provides for a mandatory civil penalty for each public agency that permanently closes an airport listed in the national plan of integrated airports without providing the notification required by that section. When the provision became effective on December 12, 2003, the penalty was $10,000 per day. Based on a new inflation adjustment, as of [insert date of the day after the effective date], the penalty is $11,000 per day.

Table Two also includes citations to the sections not previously included in previous rulemakings in part 13, subpart H, i.e., 49 U.S.C. 47528 through 47530, 47531, and 46301(a)(3), formerly section 46301(a)(5).

Vision 100 did not change section 46301(b); that section still specifies a

civil penalty not to exceed $2,000 for tampering with, disabling, or destroying a lavatory smoke alarm device on an aircraft providing air transportation or intrastate air transportation. In the 1997 inflation adjustment, we increased that maximum to $2,200. Table Two lists that previously adjusted maximum.

We are adding a Table Three to reflect the current maximum and minimum civil penalties under 49 U.S.C. 5123(a) for a violation of one of the hazardous materials transportation laws, or a regulation, order, special permit, or approval issued thereunder. The maximum civil penalty generally is $50,000 for each violation on or after August 10, 2005. We are also including the maximum civil penalty amount of $100,000 for a hazardous materials violation where the result is death, serious illness or severe injury to a person, or substantial destruction of property. That maximum will also apply only to a violation on or after August 10, 2005.

In Table Three, we are leaving the minimum civil monetary penalty under 49 U.S.C. 5123(a) for a violation at $250, except as provided for a training violation. Because the Congress specifically chose to increase the minimum penalty for a training violation, but did not do so for any other hazmat violation, we have concluded that the minimum penalty has been ''reset'' to $250. The $450 minimum civil penalty applies only to a hazmat training violation on or after August 10, 2005.

Civil Penalty Inflation Adjustment

Method of Calculation

Under the rules in part 13, subpart H, which implemented the requirements of the Adjustment Act, as amended by the Collection Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty or range of minimum and maximum civil penalty by the ''cost-of-living adjustment'' (COLA). Each such increase is rounded off, as described in section 13.305(a) of part 13. Section 5(b) of the Adjustment Act and section 13.305(b) define the ''cost-of-living adjustment'' as ''the percentage (if any) for each civil monetary penalty by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such civil penalty was last set or adjusted pursuant to law.''

Thus, for this rulemaking, we looked at the increase (if any) of the CPI of June, 2005 over the CPI's of June of the calendar years for each of the last penalty settings or adjustments. We calculated the percentage of each increase, multiplied the corresponding last set or adjusted penalty by the percentage increase, applied the appropriate rounding-off number, and added each rounded number to the last set or adjusted penalty. If an increase was rounded to zero, the last set or adjusted penalty remained the same.

The CPI for June, 2005 (the month of June of the calendar year preceding these adjustments) was 194.5. The CPI for the month of June of the calendar years in which the amount of each civil monetary penalty was last set or adjusted varies, depending on the particular provision. They are as follows: 160.3 for June 1997; 172.4 for June 2000; and 183.7 for June 2003.

Section 13.305(a) of the FAA's regulations describes the rounding-off numbers. An increase determined under section 13.305(a) is rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000;

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

Finally, regardless of the rounding formula, an initial adjustment to a penalty is limited to 10 percent. With respect to the 10 percent limitation, this rule also amends 14 CFR 13.305(c) by deleting the last sentence in that paragraph and revising the remainder of the paragraph to conform to the actual language of section 6 to 28 U.S.C. 2461 note. The last sentence of 14 CFR 13.305(c) incorrectly states, ''[t]his limitation applies only to the initial adjustment, effective on January 21, 1997.'' Section 6 of the statute is not limited to the initial adjustment made on that particular date; it applies as well to the initial adjustment made to a civil penalty provision enacted after January 21, 1997, e.g., 49 U.S.C. 46318.

Results of Calculations for Inflation Adjustment

In preparing this revision to subpart H, we reviewed all the civil monetary penalty provisions in the FAA's statutes and applied the inflation adjustment and rounding-off formulae described above. We concluded that one provision not reset by Congress in Vision 100 or SAFETEA–LU is ready to be adjusted, i.e., 49 U.S.C. 46318 from a maximum penalty of $25,000 to $27,500. In addition, several provisions reset in Vision 100 are subject to adjustment. These provisions are 49 U.S.C. 46301(a)(5)(A), 46301(a)(5)(B)(i–iv), and 49 U.S.C. 46319. These are being raised from a maximum of $10,000 to $11,000. None of the provisions affected by SAFETEA–LU are ready to be adjusted.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

Good Cause

I find good cause exists under 5 U.S.C. 553(b)(3)(B) of the Administrative Procedures Act for adoption of this final rule without prior notice and comment. This rule effectuates the intent of the Federal Civil Penalties Inflation Adjustment Act to allow for regular adjustment, for inflation, of civil monetary penalties and to maintain the deterrent effect of civil monetary penalties and promote compliance with the law. The inflation adjustments to penalties under this rule apply a formula mandated by Congress. It would not be in the public interest to delay these adjustments in order to receive public comment. In any event, such delay would not allow the FAA to develop any basis to change the method or application of the mandatory inflation adjustments.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. In this rule, we have adopted civil monetary penalty limits as set forth in legislation. We have not made any other adjustments to the limits on civil penalties we prosecute.

Thus, whatever economic impact this regulation has is due solely to legislation enacted by the Congress, which determined that the benefits of the changes described in this rule justify the costs. Thus, this is not a ''significant regulatory action'' as defined in the Order, and we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulations justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact, the above-specified analyses are not required. DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Since this final rule only identifies the increase in penalties as required by the Debt Collection Improvement Act of 1996, the impact of this rulemaking is minimal.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply identifies the civil monetary penalties for violations of the statutory and regulatory provisions we enforce. The penalty amounts are those specified by statute or called for under the inflation adjustment statutes, and the information in this rule is required by the Debt Collection Improvement Act of 1996. Consequently, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires us to consider international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, we have assessed the potential effect of this final rule to be negligible. This rule only summarizes civil monetary penalties, established by legislation, for violations of safety provisions that apply equally to domestic and foreign entities; therefore, we have determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action would not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. Since this final rule only identifies the increase in penalties as required by the Debt Collection Improvement Act of 1996, it does not contain such a mandate. The requirements of Title II do not apply.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the final rule?

Please send your comments to the address specified in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation,

Investigations, Law enforcement, Penalties.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 13 of Title 14, Code of Federal Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 44718, 44725, 46101–46110, 46301–46316, 46318, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

■ 2. Amend § 13.305 by revising paragraphs (c) and (d) to read as follows:

§ 13.305 Cost of living adjustments of civil monetary penalties.

* * * * *

(c) *Limitation on initial adjustment.* The initial adjustment of a civil monetary penalty under this subpart does not exceed 10 percent of the civil penalty amount.

(d) *Inflation adjustment.* Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are adjusted for inflation as follows: Minimum and Maximum Civil Penalties-Adjusted for Inflation.

TABLE 1.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS BEFORE DECEMBER 12, 2003, AND FOR HAZARDOUS MATERIALS VIOLATIONS BEFORE AUGUST 10, 2005

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law
49 U.S.C. 5123(a)	Violation of hazardous materials transportation law, regulation, or order.	$250 per violation, last set 1990.	Same	$30,000 per violation, adjusted 3/13/02.
49 U.S.C. 46301(a)(1)	Violation under 49 U.S.C. 46301(a)(1)	N/A	N/A	$1,100 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(2)	Violation under 49 U.S.C. 46301(a)(2)(A) or (B) by a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(A)	Violation under 49 U.S.C. 46301(a)(1) related to the transportation of hazardous materials.	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(B)	Violation related to the registration or recordation under 49 U.S.C. chapter 441 of an aircraft not used to provide air transportation.	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(C)	Violation of 49 U.S.C. 44718(d) relating to limitation on construction or establishment of landfills.	N/A	N/A	$10,000 per violation, set 10/9/1996.
49 U.S.C. 46301(a)(3)(D)	Violation of 49 U.S.C. 44725 relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	$10,000, set 4/5/2000.
49 U.S.C. 46301(a)(5)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device	N/A	N/A	$2,200, adjusted 1/21/1997.
49 U.S.C. 46302(a)	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	$11,000, adjusted 1/21/1997.
49 U.S.C. 46303	Carrying a concealed dangerous weapon [1]	N/A	N/A	$11,000, adjusted 1/21/1997.
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	N/A	$25,000, set 4/5/2000.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, or regulation prescribed under those sections, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1) and (a)(2), above.

[1] The FAA prosecutes violations under this section that occurred before February 17, 2002.

TABLE 2.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS OCCURRING ON OR AFTER DECEMBER 12, 2003

United States Code citation	Civil monetary penalty description	Minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or maximum penalty amount
49 U.S.C. 46301(a)(1)	Violation by person other than individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	$25,000 per violation, reset 12/12/2003	No change.
49 U.S.C. 46301(a)(1)	Violation by airman serving as airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	$1,100 per violation, reset 12/12/2003	No change.
49 U.S.C. 46301(a)(1)	Violation by individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 46301(a)(5)).	N/A	$1,100 per violation, reset 12/12/2003	No change.
49 U.S.C. 46301(a)(3)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	No change.
49 U.S.C. 46301(a)(5)(A).	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	$10,000 per violation, reset 12/12/2003	$11,000 per violation.[1]
49 U.S.C. 46301(a)(5)(B)(i).	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1) related to the transportation of hazardous materials.	N/A	$10,000 per violation, reset 12/12/2003	$11,000 per violation.[1]
49 U.S.C. 46301(a)(5)(B)(ii).	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	$10,000 per violation, reset 12/12/2003	$11,000 per violation.[1]
49 U.S.C. 46301(a)(5)(B)(iii).	Violation by an individual or small business concern of 49 U.S.C. 44718(d) relating to limitation on construction or establishment of landfills.	N/A	$10,000 per violation, reset 12/12/2003	$11,000 per violation.[1]
49 U.S.C. 46301(a)(5)(B)(iv).	Violation by an individual or small business concern of 49 U.S.C. 44725 relating to the safe disposal of life-limited aircraft parts.	N/A	$10,000 per violation, reset 12/12/2003	$11,000 per violation.[1]
49 U.S.C. 46301(b)	Tampering with a smoke alarm device	N/A	$2,200 per violation, adjusted 1/21/1997	No change.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	$11,000 per violation, adjusted 1/21/1997.	No change.
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	$25,000 per violation, set 4/5/2000	$27,500 per violation.[2]
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	$10,000 per day, set 12/12/2003	$11,000 per day.[1]
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, or regulation prescribed or order issued under those sections, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	See 49 U.S.C. 46301(a)(1) and (a)(5)(A), above.	No change.

[1] The maximum penalty for a violation from 12/12/2003 until 5/16/2006 is $10,000.
[2] The maximum penalty for a violation from 4/5/2000 until 5/16/2006 is $25,000.

TABLE 3.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR HAZARDOUS MATERIALS VIOLATIONS OCCURRING ON OR AFTER AUGUST 10, 2005

United States Code citation	Civil monetary penalty description	Minimum penalty amount	Maximum penalty amount
49 U.S.C. 5123(a):			
Subparagraph (1)	Violation of hazardous materials transportation law, regulation, order, special permit or approval—general.	$250 per violation, reset 8/10/2005.	$50,000 per violation, set 8/10/2005.
Subparagraph (2)	Violation of hazardous materials transportation law, regulation, order, special permit or approval—results in death, serious illness, severe injury, or substantial property destruction.	$250 per violation, reset 8/10/2005.	$100,000 per violation, set 8/10/2005.

TABLE 3.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR HAZARDOUS MATERIALS VIOLATIONS OCCURRING ON OR AFTER AUGUST 10, 2005—Continued

United States Code citation	Civil monetary penalty description	Minimum penalty amount	Maximum penalty amount
Subparagraph (3)	Violation of hazardous materials transportation law, regulation, order, special permit or approval—training violation.	$450 per violation, set 8/10/2005.	$50,000 per violation, set 8/10/2005.

Issued in Washington, DC, on April 25, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–4524 Filed 5–15–06; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
May 16, 2006

Part IV

Department of Education

Office of Innovation and Improvement; Overview Information; Charter School Program (CSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Charter School Program (CSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282N.

Dates:

Applications Available: May 16, 2006.

Deadline for Transmittal of Applications: June 30, 2006.

Deadline for Intergovernmental Review: August 29, 2006.

Eligible Applicants: State educational agencies (SEAs) and local educational agencies (LEAs) in States with a State statute specifically authorizing the establishment of charter schools, and public and private non-profit organizations. Eligible applicants may also apply as a group or consortium.

Estimated Available Funds: $6,900,000.

Estimated Range of Awards: $500,000–$1,500,000 per year.

Estimated Average Size of Awards: $1,150,000 per year.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. Section 5205 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7221d), authorizes the Secretary to award grants under the CSP to carry out national activities.

For FY 2006, the Department is holding a grant competition for national activities projects listed in section 5205(a) of the ESEA. Grants for national activities projects under the CSP are highly competitive. Applicants should make a well-reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed project and of the approach the project would take to addressing those problems or issues.

Priority: Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2006 this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

The applicant proposes a project that enhances and expands a State's capacity to support high-quality charter schools in one or more geographic areas, particularly urban and rural areas, in which a large proportion or number of public schools has been identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA. The proposed project demonstrates research and effective practices in building charter school capacity through (1) the alignment of curriculum models with State content standards to enable all students to meet challenging expectations for improving student academic performance; (2) the creation and dissemination of models for high-quality authorized public chartering agencies; (3) the improvement in the academic performance of African-American students, Hispanic students, students with disabilities, English language learners, or children from low-income families; (4) the recruitment, training, ongoing professional development, and retention of highly qualified teachers, including highly qualified mid-career professionals and recent college graduates who have not majored in education, as teachers in high-need charter schools as defined in section 2304(d)(3) of the ESEA; (5) the dissemination of models and best practices for chartering ''restructured schools'' under Title I, Part A of the ESEA; or (6) the identification and replication of high-performing charter schools in high-need communities as defined in section 2151(e)(9)(B) of the ESEA.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to institutions of higher education.

Note: The regulations in 34 CFR part 99 apply only to an educational agency or institution.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,900,000.

Estimated Range of Awards: $500,000–$1,500,000 per year.

Estimated Average Size of Awards: $1,150,000 per year.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

III. Eligibility Information

1. *Eligible Applicants:* SEAs and LEAs in States with a State statute specifically authorizing the establishment of charter schools, and public and private non-profit organizations. Eligible applicants may also apply as a group or consortium.

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:* Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5970. Telephone: (202) 260–1882 or by e-mail: *dean.kern@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 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 in this section.

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. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 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.

3. *Submission Dates and Times:*

Applications Available: May 16, 2006.

Deadline for Transmittal of Applications: June 30, 2006.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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. We do not consider an application that does not address the application requirements, selection criteria, and other required information outlined in the application package.

Deadline for Intergovernmental Review: August 29, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* An eligible applicant receiving a grant under this program may use the grant funds only for—

(a) *Access to Federal Funds.* Disseminating information to charter schools about Federal funds that they are eligible to receive and Federal programs in which they may be eligible to participate and providing technical assistance to charter schools in applying for Federal education funds that are allocated by formula.

(b) *Research.* Conducting evaluations or studies on various issues concerning charter schools, such as student achievement, teacher qualifications and retention, and the demographic makeup (e.g., age, race, gender, disability, limited English proficiency, and previous public or private school enrollment) of charter school students.

(c) *Technical Assistance and Planning.* Assisting States and charter school developers with all aspects of planning, design, and implementing a charter school. Some areas in which newly created charter schools face challenges include program design, curriculum development, defining the school's mission, hiring staff, drafting charter applications, student recruitment and admissions, public relations and community involvement, governance, acquiring equipment and services, budget and finances, facilities, assessment and accountability, parental involvement, serving students with disabilities, and collaborating with other entities to provide high-quality instruction and services.

(d) *Best or Promising Practices.* Disseminating information on best or promising practices in charter schools to other public schools, including charter schools.

(e) *Facilities.* Collecting and disseminating information about programs and financial resources available to charter schools for facilities, including information about successful programs and how charter schools can access private capital.

We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Charter School Program, CFDA Number 84.282N must be submitted electronically using 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Charter School Program 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:

• 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 submission 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 program 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must 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. 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 Technical Issues with the Grants.gov System: 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5970. Fax: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.282N, 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 84.282N, 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.282N, 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 in 34 CFR 75.210 and are as follows.

In evaluating an application, the Secretary considers the following criteria:

(1) *Need for project* (10 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(2) *Significance* (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers—

(a) The national significance of the proposed project.

(b) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(3) *Quality of the project design* (20 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(4) *Quality of project personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of the project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors —

(a) The qualifications, including relevant training and experience, of the project director or principal investigator.

(b) The qualifications, including relevant training and experience of project consultants or subcontractors.

(5) *Quality of the management plan* (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(6) *Quality of the project evaluation* (30 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will 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. For specific requirements on grantee reporting, please go to the ED Performance Report Form 524B at *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set three performance measures to measure progress toward this goal: (1) The number of States, including the District of Columbia and Puerto Rico, with charter school laws, (2) the number of charter schools in operation around the Nation, and (3) the percentage of charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contact

For Further Information Contact: Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5961. Telephone: (202) 260–1882 or by e-mail: *dean.kern@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 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: May 11, 2006.

Christopher J. Doherty,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 06–4575 Filed 5–15–06; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
March 16, 2006

Part V

Office of Management and Budget

North American Industry Classification System—Revision for 2007; Notice

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System—Revision for 2007

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of final decisions.

SUMMARY: Under 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) is announcing its final decisions for adoption of the North American Industry Classification System (NAICS) revisions for 2007 as recommended by the Economic Classification Policy Committee (ECPC) in OMB's notice for solicitation of comments published in Part IV of the March 11, 2005, **Federal Register** (70 FR 12390–12399). In addition, responding to comments received on the ECPC recommendations, OMB is adopting a classification change for Real Estate Investment Trusts (REITs) that was not part of the ECPC's recommendations. After additional consultation with the National Association of Real Estate Investment Trusts, the agencies participating in the ECPC, and other interested agencies, NAICS 525390, Real Estate Investment Trusts, will be deleted from the classification and portions will be reclassified as follows: (1) Equity REITs will be classified in the Real Estate Subsector in NAICS Industry Group 5311, Lessors of Real Estate, under individual national industries based on the content of the portfolio of real estate operated by a particular REIT; and (2) Mortgage REITs will remain classified in the Finance Sector but will be moved from NAICS 525930 to NAICS 525990, Other Financial Vehicles. More details of this decision are presented in the **SUPPLEMENTARY INFORMATION** section below. In addition to this change, the title of NAICS industry 561422, ''Telemarketing Bureaus'', is changed to ''Telemarketing Bureaus and Other Contact Centers'' to more accurately reflect the content of the industry. There is no content change; the title is simply revised to reflect the actual activities undertaken and the various technologies used.

In the March 11, 2005, notice, OMB's Economic Classification Policy Committee recommended a revision of the industry classification system to modify the structure and detail for telecommunications industries based on changes that have occurred and are anticipated to occur in the future. The ECPC also recommended the creation of a new national industry for biotechnology research and development to reflect the growing importance of this activity in the economy. Additional changes were recommended to more adequately align the activities of producers in agriculture; manufacturing; and professional, technical, and scientific services.

DATES: *Effective Date:* Federal statistical establishment data published for reference years beginning on or after January 1, 2007, should be published using the 2007 NAICS United States Codes. Publication of a 2007 NAICS United States Manual or supplement is planned for January 2007.

ADDRESSES: You should send correspondence about the adoption and implementation of the 2007 NAICS as shown in the March 11, 2005, **Federal Register** notice, and modified by Attachments 1 and 2 of this notice, to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, telephone number: (202) 395–3093, fax number: (202) 395–7245. All comments submitted in response to this notice will be made available to the public, including by posting them on OMB's Web site. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. You may send comments via e-mail to *naics@omb.eop.gov* with subject NAICS07. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

You should address inquiries about the content of industries or requests for electronic copies of the 2007 NAICS tables to: John Murphy, Assistant Division Chief for Classification Activities, Service Sector Statistics Division, Bureau of the Census, Room 2641–3, Washington, DC 20233, telephone number: (301) 763–5172, fax number: (301) 457–1343, or by e-mail: *John.Burns.Murphy@census.gov.*

Electronic Availability and Comments

This document and the March 11, 2005, **Federal Register** notice are available on the Internet from the Census Bureau's Web site via WWW browser at *http://www.census.gov/naics.* This WWW page also contains previous NAICS **Federal Register** notices and related documents.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, 10201 New Executive Office Building, Washington, DC 20503, e-mail address: *pbugg@omb.eop.gov* with subject NAICS07, telephone number: (202) 395–3095, fax number: (202) 395–7245. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: The March 11, 2005, **Federal Register** notice (1) summarized the background for the proposed revisions to NAICS 2007 in Part I; (2) contained a summary of public comments in Part II; (3) detailed the structure changes agreed upon by the three countries in Part III; and (4) provided a comprehensive listing of changes for national industries and their links to NAICS 2002 industries in Part IV.

In response to the ECPC recommendations in the March 11, 2005, **Federal Register,** the National Association of Real Estate Investment Trusts (NAREIT) submitted comments to OMB requesting reconsideration of the ECPC recommendation regarding the classification of REITs. In response, the ECPC met on several occasions with other interested agencies, including representatives from the Department of the Treasury's Office of Tax Analysis, the Federal Reserve Board, and the Statistics of Income Division at the Internal Revenue Service to discuss the possible change in classification for REITs. OMB and the Bureau of Economic Analysis also met with representatives from NAREIT to discuss their request. Taking all of the information into account, OMB decided to change the classification of REITs.

OMB's final decisions regarding revision of NAICS for 2007 are to adopt the proposal contained in the March 11, 2005, **Federal Register**, with the one change to the classification of REITs. Attachments 1 and 2 show the corrected lines for Tables 1 and 2 in the March 11, 2005, **Federal Register** notice based on this change. In addition to this change, the title of NAICS industry 561422, ''Telemarketing Bureaus,'' is changed to ''Telemarketing Bureaus and Other Contact Centers'' to more accurately reflect the content of the industry. There is no content change; the title is simply revised to reflect the actual activities undertaken and the various technologies used.

After taking into consideration other comments submitted in direct response to the March 11, 2005, **Federal Register** notice, as well as benefits and costs, and after consultation with the Economic Classification Policy Committee, Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI) and Statistics Canada, OMB made no other changes to the scope and

substance of the ECPC's recommendations outlined in the March 11, 2005, **Federal Register** notice. The other comments that were received supported proposed changes, suggested changes that would be incompatible with the production-based foundation of NAICS, or suggested changes that would be incompatible with proposals that were accepted.

NAICS was jointly developed by Canada, Mexico, and the United States. For the 2007 revision the three countries focused on updating telecommunications, while recognizing significant new activities such as biotechnology research and development, and minor content changes to more adequately reflect the production function orientation of NAICS.

TABLE 1.—NAICS UNITED STATES 2007 MATCHED TO NAICS UNITED STATES 2002

2007 NAICS code	2007 NAICS and U.S. description	Status code	2002 NAICS code	2002 NAICS description
531110	Lessors of Residential Buildings and Dwellings	R	531110	Lessors of Residential Buildings and Dwellings.
			*525930	Real Estate Investment Trusts—hybrid or equity REITs primarily leasing residential Buildings and Dwellings.
531120	Lessors of Nonresidential Buildings (except Miniwarehouses).	R	531120	Lessors of Nonresidential Buildings (except Miniwarehouses) .
			*525930	Real Estate Investment Trusts—hybrid or equity REITs primarily leasing nonresidential buildings.
531130	Lessors of Miniwarehouses and Self-Storage Units.	R	531130	Lessors of Miniwarehouses and Self-Storage Units .
			*525930	Real Estate Investment Trusts—hybrid or equity REITs primarily leasing miniwarehouses and self-storage units.
531190	Lessors of Other Real Estate Property	R	531190	Lessors of Other Real Estate Property .
			*525930	Real Estate Investment Trusts—hybrid or equity REITs primarily leasing other real estate property.
525990	Other Financial Vehicles	R	525990	Other Financial Vehicles.
			*525930	Real Estate Investment Trusts—hybrid or mortgage REITs primarily underwriting or investing in mortgages.

*—Part of 2002 industry, R—NAICS 2002 industry code reused with different content, N—new NAICS industry for 2007, E—existing industry with no changes.

TABLE 2.—NAICS UNITED STATES 2002 MATCHED TO NAICS UNITED STATES 2007

2002 NAICS code	2002 NAICS and U.S description	Status code	2007 NAICS code	2007 NAICS description
525930	Real Estate Investment Trusts.			
	Hybrid or equity REITs primarily leasing residential buildings and dwellings.	pt.	531110	Lessors of Residential Buildings and Dwellings.
	Hybrid or equity REITS primarily leasing nonresidential buildings.	pt.	531120	Lessors of Nonresidential Buildings (except Miniwarehouses).
	Hybrid or equity REITs primarily leasing miniwarehouses or self-storage units.	pt.	531130	Lessors of Miniwarehouses and Self-Storage Units.
	Hybrid or equity REITS primarily leasing other real estate property.	pt.	531190	Lessors of Other Real Estate Property .
	Hybrid or mortgage REITs primarily underwriting or investing in mortgages.	pt.	525990	Other Financial Vehicles.

pt.—Part of NAICS United States 2007 industry.

Donald R. Arbuckle,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E6–7414 Filed 5–15–06; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Tuesday,
May 16, 2006

Part VI

Office of Management and Budget

Standard Occupational Classification—Revision for 2010; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standard Occupational Classification—Revision for 2010

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of solicitation of comments.

SUMMARY: Under 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) announces the review of the 2000 SOC for possible revision in 2010 and solicits public comment on: (1) The Standard Occupational Classification (SOC) Classification Principles, (2) corrections to the 2000 SOC Manual, (3) the intention to retain the current SOC Major Group structure, (4) changes to the existing detailed occupations, and (5) new detailed ccupations to be added to the 2010 SOC. Details about these topics may be found in the **SUPPLEMENTARY INFORMATION** section below. As indicated in the 2000 SOC Manual, OMB established a Standard Occupational Classification Policy Committee (SOCPC) to maintain the current SOC to ensure that it remains applicable to the world of work. The SOCPC welcomes comments related to any aspect of occupational classification, the 2000 SOC, or the revision process. The review and revision of the SOC for 2010 is intended to be completed by the end of 2008.

DATES: *Effective Date:* To ensure consideration by the SOC Policy Committee, all comments must be received in writing on or before July 17, 2006.

ADDRESSES: Please send all comments to: Standard Occupational Classification Revision Policy Committee, U.S. Bureau of Labor Statistics, Suite 2135, 2 Massachusetts Avenue, NE., Washington, DC 20212. Telephone number: (202) 691–6500, fax number: (202) 691–6444. All comments submitted in response to this notice will be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Comments may be submitted electronically to *soc@bls.gov*. Inquiries concerning the definitions of particular occupations and requests for electronic copies of the SOC structure should be made to the address listed above.

Electronic availability. This document is available on the Internet from the Bureau of Labor Statistics via World Wide Web (WWW) browser and e-mail. To obtain this document via WWW browser, connect to *http://www.bls.gov/soc* then select ''Standard Occupational Classification Documents.'' To obtain this document via e-mail or to submit comments, send a message to *soc@bls.gov*. Comments received at this address by July 17, 2006 will be included as part of the official record.

Availability of comment materials. All comments received will be available to the public at the Bureau of Labor Statistics during normal business hours, 8:15 a.m. to 4:45 p.m., in Suite 2135, 2 Massachusetts Avenue, NE., Washington DC 20212. Please call BLS at (202) 691–6500 to make an appointment if you wish to view the comments received in response to this notice.

FOR FURTHER INFORMATION CONTACT: Anne Louise Marshall, U.S. Bureau of Labor Statistics, Suite 2135, 2 Massachusetts Avenue, NE., Washington, DC 20212; e-mail *marshall.anne@bls.gov*; telephone (202) 691–5054.

SUPPLEMENTARY INFORMATION:

History of the 2000 SOC Revision

The 2000 Standard Occupational Classification (SOC), which replaced the 1980 SOC, was developed in response to a growing need for a universal occupational classification system. Such a classification system allows government agencies and private industry to produce comparable data. Users of occupational data include government program managers, industrial and labor relations practitioners, job seekers, employers wishing to set salary scales or locate an establishment, and educational institutions—including teachers, guidance counselors, and students exploring careers and identifying career education and training alternatives.

The SOC is designed to reflect the current occupational structure of the United States; it classifies all occupations in which work is performed for pay or profit. The 2000 SOC covers all jobs in the national economy, including occupations in the public, private, and military sectors.

The 2000 SOC is the result of a cooperative effort by all Federal agencies that use occupational classification systems to maximize the usefulness of occupational information collected by the Federal Government and is the result of four years of research by the SOC Revision Policy Committee (SOCRPC) and work groups composed of members from more than fifteen government agencies.

In 1994, the Office of Management and Budget formed the SOCRPC with members from: the Department of Labor's Bureau of Labor Statistics and Employment and Training Administration, the Department of Commerce's Census Bureau, the Department of Defense's Defense Manpower Data Center, the Department of Education, the Office of Personnel Management, and the Office of Management and Budget, as well as participants from the Departments of Agriculture, Health and Human Services, and Transportation, and the National Science Foundation and the Equal Employment Opportunity Commission.

The SOC Revision Policy Committee was charged with identifying the major statistical uses of occupational classifications and creating a classification system that reflected the current occupational structure in the United States. The SOCRPC used the Bureau of Labor Statistics' Occupational Employment Statistics (OES) classification system as the starting point for the new SOC framework. To carry out the bulk of the revision effort, the committee created six work groups to examine occupations in the following areas: Administrative and Clerical Occupations; Natural Science, Law, Health, Education, and Arts Occupations; Services and Sales Occupations; Construction, Extraction, and Transportation Occupations; Mechanical and Production Occupations; and Military Occupations. The work groups were charged with ensuring that the occupations under their consideration conformed to the classification principles adopted by the SOCRPC.

In carrying out their charge, the work groups and the SOCRPC carefully considered all proposals received in response to **Federal Register** notices issued by OMB and the committee. **Federal Register** notices requested comments on the uses of occupational data; the existing 1980 SOC classification principles, purpose and scope, and conceptual options; the SOCRPC's proposed revision process; the composition of detailed occupations; the hierarchical structure and numbering system; and the update procedures.

Review of the 2000 SOC and Request for Comments

The Office of Management and Budget has requested the Standard Occupational Classification Policy Committee to review the 2000 SOC for possible revision by 2010. The SOCPC solicits and welcomes comments related to any aspect of occupational

classification, especially comments concerning:

- The Revised Classification Principles for the 2010 SOC proposed by the SOCPC,
- The SOCPC's intention to retain the 2000 SOC Major Group Structure,
- Public proposals for corrections and changes to the existing detailed occupations, and
- Public proposals for new detailed occupations to be added to the 2010 SOC.

Each of these topics is discussed in turn below.

The Revised Principles for the 2010 SOC Proposed by the SOCPC

The SOCPC proposes the following revised principles, which are based in large part on those that governed the 2000 SOC:

1. The Classification covers all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises by family members who are not directly compensated. It excludes occupations unique to volunteers. Each occupation is assigned to only one occupational category at the lowest level of the classification.

2. Occupations are classified based on work performed and on required skills, education, and training.

3. Supervisors of professional and related occupations (Major Groups 13–0000 through 29–0000) usually have a background similar to that of the workers they supervise, and therefore are classified with the workers they supervise. Likewise, supervisors of service occupations; sales and office occupations; natural resources occupations; construction and maintenance occupations; and production, transportation, and material moving occupations (Major Groups 31–0000 through 53–0000), who spend 20 percent or more of their time performing work similar to the workers they supervise, are classified with the workers they supervise.

4. First-line supervisors/managers of workers in Major Groups 31–0000 through 53–0000, who spend more than 80 percent of their time performing supervisory activities, are classified separately in the appropriate supervisor category because their work activities are distinct from those of the workers they supervise.

5. Workers primarily engaged in planning and directing will be classified in management occupations in Major Group 11–0000.

6. Apprentices and trainees should be classified with the occupations for which they are being trained, while helpers and aides should be classified separately.

7. If an occupation is not included as a distinct detailed occupation in the structure, it is classified in the appropriate residual occupation. Residual occupations contain all occupations within a major, minor or broad group that are not classified separately.

8. When workers may be classified in more than one occupation, they should be classified in the occupation that requires the highest level of skill. If there is no measurable difference in skill requirements, workers are included in the occupation in which they spend the most time.

9. For a detailed occupation to be included in the SOC, either the Bureau of Labor Statistics or the Census Bureau must be able to collect data on that occupation.

10. Data collection and reporting agencies should classify workers at the most detailed SOC level possible. Different agencies may use different levels of classification and aggregation, depending on their ability to collect data and on the requirements of users.

Please note that in addition to inserting two new principles (numbered 5 and 9) and providing some clarifying language, the SOCPC has removed ''credentials'' from the list of classification criteria for Principle 2 due to the complexity, variability, and frequency of change in credential requirements. In particular:

(1) There are many different types of credentials that apply to occupations—State occupational licensing, Federal occupational licensing, private sector occupational certifications, as well as certifications of particular skill sets that may apply to multiple occupations, such as certification in facility with a certain type of software, equipment, or safety or regulatory procedures.

(2) Credentialing requirements vary not only from State to State, but may also vary by locality, by industry size class, or by firm.

(3) There is no current data collection mechanism to obtain comprehensive information on occupational credentialing and keep it updated; therefore, it is not feasible to adequately factor in credentialing requirements when classifying or defining an occupation.

(4) As technology and other requirements change, credentials change over time more rapidly than other variables and these changes could not be reflected in a classification that is to remain stable over a 5 to 10 year period—as attested to by the hundreds of Information Technology certifications that have come into existence during the last 5 to 10 years—the period during which the 2000 SOC was developed and put into use.

The SOCPC invites comments on its proposed revised principles for the 2010 SOC.

The SOCPC's Intention To Retain the 2000 SOC Major Group Structure

The 2000 SOC classifies workers at four levels of aggregation: (1) Major Group; (2) Minor Group; (3) Broad Occupation; and (4) Detailed Occupation. All occupations are clustered into one of the following 23 Major Groups:

11–0000 Management Occupations
13–0000 Business and Financial Operations Occupations
15–0000 Computer and Mathematical Occupations
17–0000 Architecture and Engineering Occupations
19–0000 Life, Physical, and Social Science Occupations
21–0000 Community and Social Services Occupations
23–0000 Legal Occupations
25–0000 Education, Training, and Library Occupations
27–0000 Arts, Design, Entertainment, Sports, and Media Occupations
29–0000 Healthcare Practitioners and Technical Occupations
31–0000 Healthcare Support Occupations
33–0000 Protective Service Occupations
35–0000 Food Preparation and Serving Related Occupations
37–0000 Building and Grounds Cleaning and Maintenance Occupations
39–0000 Personal Care and Service Occupations
41–0000 Sales and Related Occupations
43–0000 Office and Administrative Support Occupations
45–0000 Farming, Fishing, and Forestry Occupations
47–0000 Construction and Extraction Occupations
49–0000 Installation, Maintenance, and Repair Occupations
51–0000 Production Occupations
53–0000 Transportation and Material Moving Occupations
55–0000 Military Specific Occupations

In order to ensure consistency and the potential to satisfy a strong user mandate for time series continuity in occupational employment and wage data, the SOCPC proposes that no changes be made to the current Major Groups as denoted in the 2000 SOC Manual. The SOCPC invites comments

on the proposed decision not to entertain changes to the current Major Groups.

Public Proposals for Corrections and Changes to the Existing Detailed Occupations

Generally, the definitions in the SOC contain the minimum description needed to let users know which workers would be classified in a particular occupation. The SOCPC invites comments on corrections concerning typographical or definitional errors and changes to the existing detailed occupations. Suggested changes to existing detailed occupations may address the occupational title, definition, or Illustrative Examples. The SOCPC will also accept comments on the possibility of combining some titles into one occupation group and separating new titles from existing groups.

Public Proposals for New Detailed Occupations to be Added to the 2010 SOC

Changes in the economy, technology, and the workplace may warrant additional detailed occupations in the SOC. Changes to the list of detailed occupations should be guided by principles established by the SOC Policy Committee, and, in the interest of maintaining the usefulness of the SOC system, should be easily cross-walked to the 2000 SOC. The SOCPC invites proposals for new detailed occupations to be added to the 2010 SOC. Proposals that include a detailed description of the occupation together with an estimate of employment and address the ability to collect data on this occupation are welcomed as well as comments indicating how suggested changes will better reflect the current occupational structure in the U.S. economy.

The SOCPC recognizes a difference between a job and an occupation. Workers in an establishment perform a combination of tasks that is largely dependent on factors such as the establishment's industry, what tasks other workers in the establishment are performing, and the employment size of the establishment. This combination of tasks makes up an individual worker's job. The exact group of tasks is often, but not always, unique to that worker. Almost every job, however, is similar to a number of other jobs.

Occupational classification schemes examine and organize the millions of jobs in the economy into occupations based upon their similarities as determined by the scheme's classification principles (see above: ''The Revised Principles for the 2010 SOC Proposed by the SOCPC''). The schemes define the content of the individual occupations. Thus, an occupational definition is a collective description of a number of similar individual jobs performed, with minor variations, in different establishments. An example of a job is ''Producer Price Index supervisory economist'' while the occupation would be ''Economist.'' The job ''NBA player'' is specific to a relatively small group, while ''Athletes and Sports Competitors'' is an occupation. When reviewing and evaluating individual proposals, the SOCPC will consider the degree to which a proposed addition relates to an occupation rather than a job.

The review and revision of the SOC for 2010 is intended to be completed by the end of 2008.

Donald R. Arbuckle,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E6–7415 Filed 5–15–06; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Tuesday,
May 16, 2006

Part VII

The President

Proclamation 8015—Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Policies or Actions That Threaten the Transition to Democracy in Belarus

Executive Order 13403—Amendments to Executive Orders 11030, 13279, 13339, 13381, and 13389, and Revocation of Executive Order 13011

Federal Register
Vol. 71, No. 94
Tuesday, May 16, 2006

Presidential Documents

Title 3—

The President

Proclamation 8015 of May 12, 2006

Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Policies or Actions That Threaten the Transition to Democracy in Belarus

By the President of the United States of America

A Proclamation

In light of the importance to the United States of fostering democratic institutions in Belarus in order to help the Belarusian people achieve their aspirations for democracy and to help complete the transformation to a Europe whole, free, and at peace and given the suppression of human rights and democracy in Belarus, the fraud perpetrated during the recent Belarusian presidential campaign and election, the detention of peaceful protesters in Belarus, the persistent acts of corruption by Belarusian government officials in the performance of public functions, and the continued failure of Alyaksandr Lukashenka, Belarusian government officials, and others to support the rule of law, human rights commitments, and other principles of high priority to the United States, I have determined that it is in the interest of the United States to take all available measures to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of members of the government of Alyaksandr Lukashenka and others detailed below who formulate, implement, participate in, or benefit from policies or actions, including electoral fraud, human rights abuses, and corruption, that undermine or injure democratic institutions or impede the transition to democracy in Belarus.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

Section 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Members of the government of Alyaksandr Lukashenka and other persons who formulate, implement, participate in, or benefit from policies or actions, including electoral fraud, human rights abuses, or corruption, that undermine or injure democratic institutions or impede the transition to democracy in Belarus;

(b) Persons who through their business dealings with Belarusian government officials derive significant financial benefit from policies or actions, including electoral fraud, human rights abuses, or corruption, that undermine or injure democratic institutions or impede the transition to democracy in Belarus; and (c) The spouses of persons described in paragraphs (a) and (b) above.

Sec. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

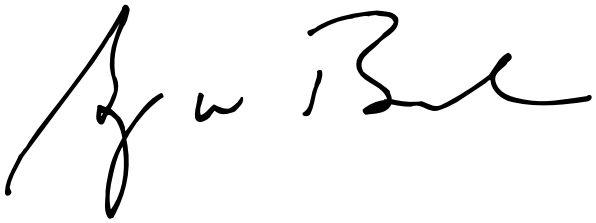
Sec. 3. Persons covered by sections 1 and 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

Sec. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 5. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may establish.

Sec. 6. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such termination by the Secretary of State shall be published in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–4651
Filed 5–15–06; 12:10 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 13403 of May 12, 2006

Amendments to Executive Orders 11030, 13279, 13339, 13381, and 13389, and Revocation of Executive Order 13011

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Executive Order 11030 of June 19, 1962, as amended, is further amended;

(a) in subsection 1(f):

(i) by striking ''typewritten'' and inserting ''prepared''

(ii) by striking ''8 x 13'' and inserting ''8.5 x 14'' and

(iii) by striking ''1 1/2'' and inserting ''1''

(b) in subsection 2(a), by striking '', with seven copies thereof,''

(c) by striking subsections 2(c) and 2 (d) and relettering subsection ''2(e)'' as ''2(c)'';

(d) in section 5, by striking ''Section 12 of the **Federal Register** Act'' and inserting in lieu thereof ''section 1511 of title 44, United States Code'' and

(e) in section 6, by striking ''Section 5(a) of the **Federal Register** Act'' and inserting in lieu thereof ''subsection 1505(a) of title 44, United States Code''.

Sec. 2. Section 1(e) of Executive Order 13279 of December 12, 2002, is amended to read as follows: ''(e) 'Specified agency heads' mean the Attorney General, the Secretaries of Agriculture, Commerce, Education, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, and Veterans Affairs, the Administrators of the Agency for International Development and the Small Business Administration, and the head of any other department or agency in the executive branch in which the President creates a Center for Faith-Based and Community Initiatives.''

Sec. 3. Section 9 of Executive Order 13339 of May 13, 2004, is amended by deleting ''2 years from the date of this order, unless renewed by the President'' and inserting in lieu thereof ''May 13, 2007, unless extended beyond that date by the President''.

Sec. 4. Section 6(b) of Executive Order 13381 of June 27, 2005, is amended by striking ''Unless extended by the President, this order shall expire'' and inserting in lieu thereof ''The provisions of this order (other than subsection 5(b) and the amendment made thereby) shall, unless extended by the President, expire''.

Sec. 5. Section 3 of Executive Order 13389 of November 1, 2005, is amended:

(a) by inserting ''and'' after the semicolon at the end of subsection (a);

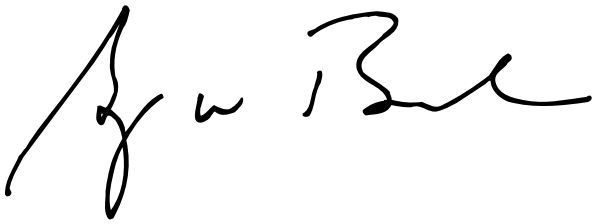
(b) by striking ''; and'' at the end of subsection 3(b) and inserting a period in lieu thereof; and

(c) by striking subsection (c).

Sec. 6. Executive Order 13011 of July 16, 1996 (Federal Information Technology), is revoked.

Sec. 7. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any

party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
May 12, 2006.

[FR Doc. 06–4652
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