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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

RIN 0560–AH38

Grains and Similarly Handled Commodities-Marketing Assistance Loans and Loan Deficiency Payments for the 2006 Through 2007 Crop Years; Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing the Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) Program of the Commodity Credit Corporation (CCC). These amendments affect regulations governing: (1) Beneficial interest with respect to eligible commodities delivered to facilities other than licensed warehouses, such as feedlots, ethanol plants, wool pools, and other facilities determined by CCC to be the end user of the commodity; (2) the announcement of the adjusted world price (AWP) for rice; (3) CCC lien searches and the fees necessary to record and file liens on marketing assistance loans; (4) the liability of a producer who improperly disposes of pledged loan collateral for a CCC farm-stored loan; (5) producers' responsibilities for requesting loan deficiency payments; and (6) general eligibility requirements for cotton pledged as collateral for a marketing assistance loan.

DATES: *Effective Date:* This rule is effective June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Kimberly Graham, Program Manager, Marketing Assistance Loans and LDP Programs, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; telephone (202) 720–9154; facsimile (202) 690–1536; e-mail: *Kimberly.Graham@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Since the enactment of the Agricultural Act of 1949, the major activity of CCC has been the administration and implementation of nonrecourse loans to producers of major agricultural commodities. Generally, Congress established loan rates for certain commodities on a per unit basis, e.g. $1.95 per bushel for corn or $.52 per pound of upland cotton for the 2004 through 2007 crop years. Under a nonrecourse loan provisions, the producer may satisfy the loan obligation through forfeiture to CCC of the commodity pledged as collateral for the loan. Thus, if the per unit market price of the commodity was less than the Congressionally established loan rate, the producer could satisfy the loan obligation by delivery of the pledged commodity to CCC. Since the inception of nonrecourse loans, producers could only pledge as collateral for securing the nonrecourse loan commodities that were not subject to liens. If such liens existed on the commodity pledged as collateral, lien waivers were required to be obtained from all lien holders to ensure CCC's interest was fully protected. Also, since the inception of these loans, in order to make certain that the benefits of these loans go to the producers and no other party, CCC made nonrecourse loans to only those producers that maintain ''beneficial interest'' in the commodity at the time the loan is made and maintain beneficial interest throughout the loan period.

Beneficial interest has been viewed by CCC as consisting of three attributes which include:

- Title;
- Risk of loss; and
- Control.

Accordingly, at the time the producer requested a loan from CCC, through the earlier of loan repayment or loan maturity, the producer must own the commodity, have all risk in the commodity (if there is a loss in either the quantity or quality of the commodity), and retain all decision making and rights to the movement and disposition of the commodity. This key component of the CCC loan program is recognized by Congress as evidenced in sections 1204(f) and 1307(d)(2) of the 2002 Act. Related to this concept is that commodities that are purchased, substituted for another commodity of the same type, bartered, or processed, or altered from it's natural form may not be pledged as collateral for CCC loans. This concept is embodied in section 1201(b) of the 2002 Act, which limits the availability of CCC marketing assistance loans to the ''quantity of a loan commodity produced on the farm.''

Since 1949, commodities pledged as collateral for these loans could be stored on the producer's farm or in approved warehouses. Historically, approved warehouses have been warehouses that entered into storage agreements with CCC that set forth terms and conditions regarding: (1) Financial aspects of the warehouse; (2) rates that are applicable to the storage of CCC-owned inventory and CCC loan collateral; (3) handling and delivery charges with respect to these commodities; and (4) related storage issues. Most States, as well as the Department of Agriculture (USDA), have a warehouse licensing regime for the storage of agricultural commodities. An entity wishing to engage in storing these commodities must, in virtually all States, have a State or Federal license to engage in such business. These licensed entities issue warehouse receipts that evidence ownership of commingled commodities. Generally, those non-licensed entities in States with licensing programs may not store agricultural commodities on behalf of producers but are free to purchase commodities from producers. Accordingly, in such States, commercial feed lots, ethanol plants, wool pools and other entities that are the ''end users'' of the commodity are not licensed warehouses and, therefore, may not store commodities on behalf of producers. Similarly, CCC considers producers to have lost beneficial interest in the commodity upon delivery to such facilities and producers may not pledge as collateral for a CCC loan, commodities delivered to these facilities (except as provided for by the 2002 Act). In those States that do not have such a licensing regime, warehouses must still follow State laws relating to bailment

and storage. The State laws relating to bailment and storage may vary from State to State.

As a result of the accumulation of large quantities of commodities forfeitures under nonrecourse loans, in the mid-1980's Congress instituted a fundamental change to CCC loan programs when market prices are below the CCC loan rate. In addition to allowing producers the option to forfeit the commodity pledged as collateral for nonrecourse loans, producers were also allowed the opportunity to repay the nonrecourse loan at a price determined by CCC and to retain any difference between the amount of the loan made by using the established county loan rate and the repayment of the loan at the market price. These loans are referred to as ''marketing assistance loans''.

Nine-month marketing assistance loans are made available under the 2002 Act for specified commodities. Most CCC commodity loans are marketing assistance loans with the exception of nonrecourse loans made available to sugar processors. Marketing assistance loans accomplish two objectives. First, they provide producers with interim financing to continued farming operations without having to market their crop during periods of low market prices. Second, these loans facilitate the orderly marketing and distribution of commodities throughout the year. As a result of this lower repayment option, CCC takes possession of less than .4 percent of the commodities pledged as collateral for marketing assistance loans.

Eligible producers may request a marketing assistance loan on or before the final loan availability date for the applicable commodity. Eligible commodities pledged as collateral for a marketing assistance loan must be free and clear of all liens and encumbrances and no additional liens or encumbrances may be placed on the commodity after the marketing assistance loan is approved. The amount of the monetary gain that producers may obtain by repaying CCC marketing assistance loans at repayment rates below their established county loan rate can be substantial. Therefore, there is a significant incentive for a producer to obtain these loans solely for this benefit; however, both the producer and CCC incur costs in completion of the loan transaction due to costs associated with lien searches and lien filing fees as well as USDA personnel costs incurred in processing these loans. To reduce the costs associated to the delivery of this benefit, producers may simply request that a payment be made to them in an amount equal to what would be realized if the loan had been made and immediately repaid at the lower repayment rate. In return for the payment, referred to as ''loan deficiency payment (LDP), the producer agrees that the quantity of the commodity which was used in determining the payment will not be pledged as collateral for a CCC marketing assistance loan.

The LDP amount is equal to the established loan rate for the applicable loan commodity less the repayment rate multiplied by the eligible quantity of the commodity. With respect to commodities such as cotton, wheat, rice, feed grains, minor oilseeds, wool, mohair and pulse crops; section 1205 of the 2002 Act provides that these payments are made with respect to ''producers on a farm that, although eligible to obtain a marketing assistance loan under section 1201 with respect to a loan commodity in return for loan deficiency payments * * *.'' A similar provision is set forth in section 1307 of the 2002 Act for producers of peanuts. With some technical exceptions for cotton, an LDP may be made to a producer only if the commodity could otherwise serve as collateral for a CCC marketing assistance loan.

II. The 2002 Farm Security Rural and Investment Act—Legislative Mandates

The manner in which agricultural commodities are marketed and used has changed substantially since the enactment of the Agricultural Act of 1949. Changes in commodity marketing and use have been driven in part by the dramatic consolidation in farm operations since the middle 1900's. Advances in agronomics and technology, including biotechnology, have allowed producers to significantly expand the sizes of their operations and benefit from crop specialization and economies of scale. Coincident to this have been structural changes in the livestock and poultry feeding sectors and the remarkable growth in ethanol production. These changes have pushed larger and larger quantities of agricultural commodities into commercial marketing channels and away from the primary on-farm uses of the early 1900's.

Based on the U.S. Census of Agriculture, the number of U.S. farms dropped from 5.4 million in 1950 to 2.1 million in 2002.[1] Much of the loss in farm numbers, however, occurred by the mid-1970's.[2] The 1974 Census of Agriculture reported 2.3 million farms.[3] Despite the slowing decline in farm numbers, the size of farm operations continues to grow. In 1974, there were 32,752 farms with 1,000 acres or more land. In 2002, there were 176,990 farms with 1,000 acres of more land. The number of farms with 2,000 acres or more increased more than 13 fold during this time, going from only 5,862 farms in 1974 to 77,970 farms in 2002.

Accompanying this consolidation in farm numbers and growth in farm size has been a similarly dramatic consolidation in the livestock and poultry feeding sectors. Based on the U.S. Census of Agriculture, 3 out of every 4 farms had cattle and 1 out of every 2 farms had hogs in 1950. In 2002, only 1 in every 2 farms had cattle, and only 1 in every 25 had hogs. Numbers are just as dramatic for poultry. In 1950, 4 of every 5 farms had chickens or turkeys. In 2002, only 1 out of every 14 farms had chickens or turkeys. The consolidation of cattle, hog, and poultry feeding into fewer and larger capital-intensive operations has shifted feed use away from the farms where grains and oilseeds are produced. This has left grain and oilseed producers increasingly reliant on commercial grain marketing channels as outlets for their production and sources of their revenue.

Figure 1 demonstrates the significant impact these structural changes have had on the amount of grain used on the farms where it is produced. During the 1949/50 marketing year just more than half of all grain and oilseed (wheat, corn, barley, oats, rye, sorghum, rice, and soybeans) production was consumed on the same farms where it was produced. Since then, while production of these commodities has increased more than 3 fold, the amount used on the same farm where it was produced has dropped by more than one-third. The bulk of this decline in on-farm use reflects consolidation in livestock and poultry feeding and specialization in grain and oilseed farming. It also reflects the phenomenal expansion in fuel ethanol production which has grown from a negligible share of domestic corn use in the 1970's to more than 12 percent of domestic use during the 2004/05 marketing year. Less significant, but also affecting this decline in on-farm use has been the shift away from bin-run seed in the small grains and soybeans as commercial seed

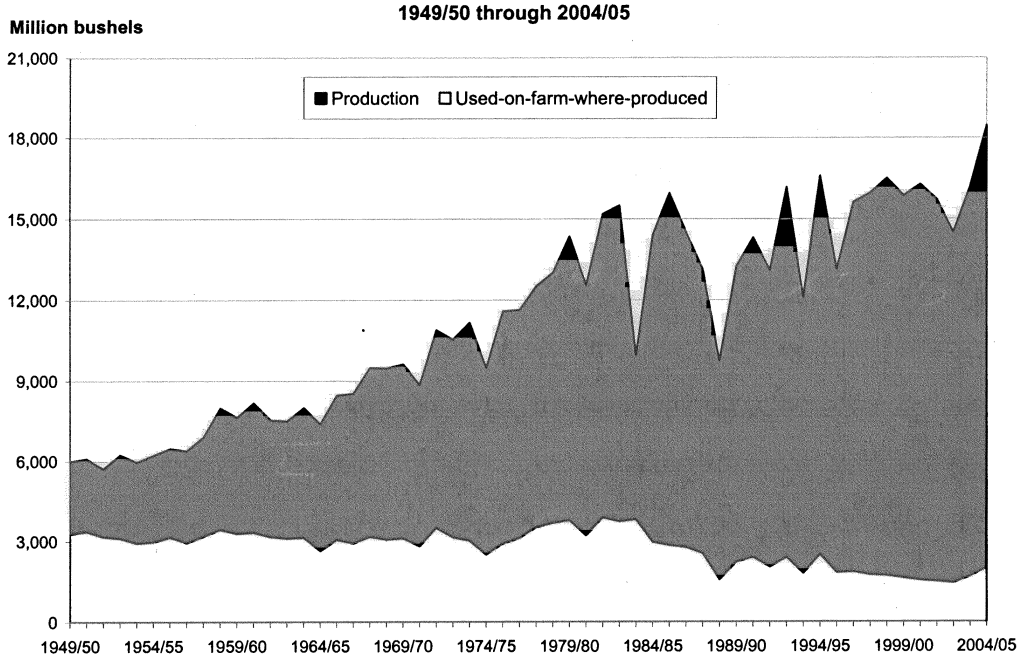
[1] U.S. Bureau of the Census, *U.S. Census of Agriculture:* 1950. Vol. II, General Report, Statistics by Subjects. U.S. Government Printing Office, Washington, DC, 1952.

[2] National Agricultural Statistics Service, *2002 Census of Agriculture.* Summary and State Data. Vol. 1, Geographic Area Series, Part 51. U.S. Department of Agriculture, Washington DC, June 2004.

[3] Bureau of the Census, *1974 Census of Agriculture.* Vol. I, Part 51, United States Summary and State Data. U.S. Department of Commerce, Washington DC, December 1977.

varieties have become ever more dominant.

Figure 1--Wheat, Feed Grain, Rice, and Soybean Production and Used-on-farm-where-produced 1949/50 through 2004/05

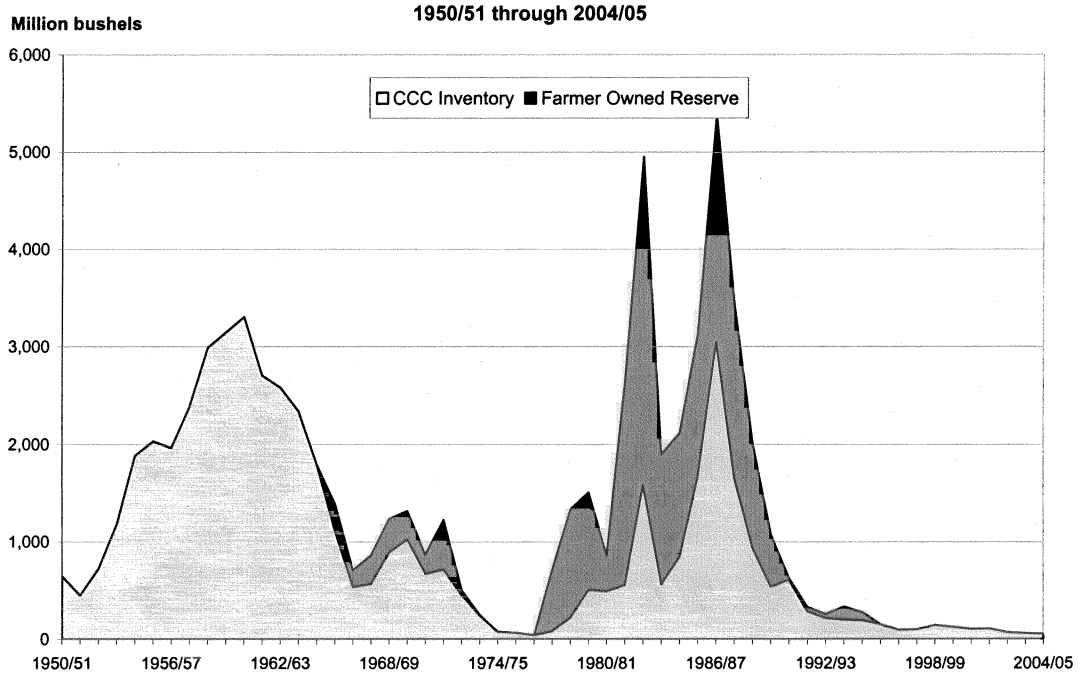


Source: Production is from USDA-NASS. Used-on-farm-where-produced for 1949-1978 is from USDA-NASS. Used-on-farm-where-produced for 1979 and later is based on analysis of USDA-ERS Agricultural Resource Management Survey data.

The decline in on-farm use has substantially increased the volume of grain moving through commercial marketing channels. In the early 1950's, 50 percent of all grain and oilseed production was sold commercially. In recent years, 90 percent of all grain and oilseed production has been sold commercially. As on-farm use has fallen since 1949/50, the volume that is marketed commercially has increased 6 fold, twice the 3 fold increase in production.

CCC nonrecourse loan provisions have been modified over the years to better reflect the needs of producers who must respond to these changes in commodity marketing and use. Particularly important in this regard has been the marketing assistance loan provisions which have given CCC tools like alternative marketing loan repayment rates and the LDP which have significantly reduced the quantity of loan collateral forfeited to CCC. With greater ability to minimize forfeitures, CCC inventories and quantities of grains and oilseeds otherwise controlled by CCC have declined dramatically since the 1980's, as shown in Figure 2.

Figure 2--Grain and Oilseed Marketing-year-end CCC Inventory and Farmer Owned Reserve 1/
1950/51 through 2004/05



1/ Includes wheat, corn, barley, oats, rye, sorghum, rice, and soybeans.
Source: USDA-Commodity Credit Corporation

Congress has recognized the impact that changing agricultural commodity markets have had on producers and CCC's ability to ensure that all producers of major commodities are eligible for marketing assistance loan benefits. Congress included special provisions in the 2002 Act to address specific situations that result in producers becoming ineligible for these benefits or to provide other assistance in lieu of such benefits. These provisions of the 2002 Act are set forth in sections 1201(c); 1204(h); 1205(a)(2),(f); 1206; 1209; and 1307(c)(2), and 1307(e)(4)(B).

Treatment of Certain Commingled Commodities

Section 1201(c) of the 2002 Act states:

> ''* * * the Secretary shall make loans to producers on a farm that would be eligible to obtain a marketing assistance loan, but for the fact the loan commodity owned by the producers on the farm commingled with loan commodities of other producers in facilities unlicensed for the storage of agricultural commodities by the Secretary or a State licensing authority, if the producers obtaining the loan agree to immediately redeem the loan collateral in accordance with section 166 of the Federal Agriculture Improvement and Reform Act of 1996 (U.S.C. 7286).''

This provision recognizes that producers who deliver a commodity to a facility where the commodity is commingled with commodities from other producers are ineligible for marketing assistance loans and loan deficiency payments if the facility is not authorized by State or Federal law to store such commodities for the benefit of producers. This provision provides a limited opportunity for producers who deliver their commodities to a facility such as a feedlot, ethanol plant, wool pool, or other facilities to receive benefits associated with the use of CCC-issued commodity certificates to acquire commodities pledged as collateral for a CCC marketing assistance loan so long as the loan making transaction and certificate exchange transaction authorized by section 166 of the Federal Agriculture Improvement and Reform Act of 1996 occur at the same time. Again, this provision takes into consideration that producers who deliver commodities to these facilities lose beneficial interest in the commodity upon delivery. Such facilities are not authorized to act as bailees with respect to the commodity and, similarly, may not issue documents presenting title to another party on behalf of the person delivering the commodity to the facility. CCC has administered this provision through the use of Form CCC–677, Farm Storage Note and Security Agreement, and has not set forth specific provisions in 7 CFR part 1421, but has utilized the regulations at 7 CFR part 1401 with respect to commodity certificate exchanges.

Good Faith Exception to Beneficial Interest

Section 1204(f) of the 2002 Act provides relief to those producers of 2001 crops of commodities for which marketing assistance loans were obtained but had lost beneficial interest in the commodity prior to the repayment of the loan. This relief was further restricted to those producers who acted in good faith, but had nonetheless not complied with program regulations, and provided that the producer be allowed to receive program benefits as of the date beneficial interest was lost. Since this provision was viewed to be self-enacting and applicable for only the 2001 crop year, the regulations at 7 CFR part 1421 do not contain any references to these sections of the 2002 Act.

Unshorn Lamb Pelts, Hay and Silage

Section 1205(a)(2) of the 2002 Act states:

> Non-graded wool in the form of unshorn lamb pelts and hay and silage derived from a loan commodity are not eligible for a marketing assistance loan under section 1201. However, effective for the 2002 through 2007 crop years, the Secretary may make loan deficiency payments available under this section to producers on a farm that produce unshorn lamb pelts or hay and silage derived from a loan commodity.

Section 1205(b) sets forth the rates to be used in making these payments. This provision takes into account that some

producers of a commodity that could be used to obtain a marketing assistance loan, but for the manner in which it was processed by the producer, could still be used to obtain a loan deficiency payment. The need for this provision is best understood by looking at corn that is used as silage. Corn that is harvested in a ''whole kernel'' form may be pledged as collateral for a marketing assistance loan and in the event the loan is not repaid at the end of nine months, CCC can take possession of the corn, which will, assuming proper care has been taken during the nine months, be in the same condition as when the loan was made. But, in the case of silage, the entire corn stalk is harvested and the stalk and the corn kernel are intermingled and chopped, which renders the corn worthless to CCC in the event of forfeiture; however, the corn silage is merchantable mostly for feeding purposes. Therefore, producers may obtain a loan deficiency payment by submitting a request for benefits using either form CCC–633 LDP, or CCC–709 for silage and hay; and CCC–633 Pelt or CCC–709 Pelt for unshorn lamb pelts, and the regulations at 7 CFR 1421.200(c) and (d).

Special Loan Deficiency Payment Rules for 2002 Crop Year Commodities

Sections 1205(f) and 1307(c)(2) of the 2002 Act provide special rules for the 2002 crops of wool, mohair, honey, dry peas, lentils, small chickpeas; and peanuts, respectively, in recognition of the extension in the 2002 Act of marketing loan and loan deficiency payment benefits to producers of these commodities who may have lost beneficial interest in the commodity prior to the issuance of regulations used in the administration of these programs. These provisions are reflected in 7 CFR 1421.6(b) and (c).

Grazing Payments in Lieu of Loan Deficiency Payments

Section 1206 of the 2002 Act provides that a producer of the 2002 through 2007 crops of wheat, barley, and oats who is otherwise eligible to receive a loan deficiency payment for such a crop but, instead of harvesting the commodity ''elects to use acreage planted to the wheat, barley, or oats for the grazing of livestock'' (and producers of triticale) to receive a payment based upon the loan deficiency payment rate in effect for such commodity (with respect to triticale, since there is no such rate, the wheat payment rate is used) on the date the producer signs an agreement with CCC to participate in this special program. Again, this provision is intended to provide assistance to producers without altering their normal production patterns, and is carried out by CCC through the use of Form CCC–633, Grazing, and the regulations at 7 CFR 1421.300 though 307.

Recourse Loans for High Moisture Corn and Grain Sorghum and Seed Cotton

Section 1209 of the 2002 Act provides that CCC will make available recourse loans to producers of 2002 through 2007 crops of high moisture corn and grain sorghum. Similar to corn harvested as silage, corn and grain sorghum harvested with a high moisture content are not suitable for delivery to CCC in the event of a forfeiture of a marketing assistance loan. Commodities with a high moisture content deteriorate in condition quickly and have never been accepted by CCC in satisfaction of a nonrecourse loan. However, the harvesting of corn and grain sorghum in such a state is a normal production practice, and under section 1209 producers of these crops may receive low interest nine-month recourse loans from CCC. Such commodities may not be pledged as collateral for a marketing assistance loan, and thus, also are not eligible for a loan deficiency payment. The regulations used to administer this provision are found at 7 CFR 1421.115 and CFR 1427, Subpart D, for seed cotton recourse loans. The loan agreements are Forms CCC–677, Farm Storage Note and Security Agreement and CCC–881, for cotton seed loans.

III. Major Changes

In administering Title I of the 2002 Act for marketing assistance loans and loan deficiency payments, CCC has decided to amend 7 CFR parts 1421 and 1427 to account for the evolution of marketing patterns in those commodities subject to these regulations, and remove necessary burdens on producers of such commodities to obtain a marketing assistance loan or loan deficiency payment. Similar amendments are made in 7 CFR part 1427 to clarify determinations of whether a producer maintains beneficial interest in cotton tendered for a nonrecourse loan and for liquidated damages assessed when there is a breach of the CCC loan agreement or loan deficiency payment agreement.

In order to: (1) Enhance the manner in which marketing assistance loans and loan deficiency payments are made to producers by CCC; (2) provide greater clarity with respect to the manner in which the marketing assistance loan and loan deficiency payment provisions of the 2002 Act are set forth in program regulations; and (3) reduce unnecessary regulatory burdens on producers, the following revisions are made in 7 CFR parts 1421 and 1427.

A. Rice Adjusted World Price Announcement Time (1421.10 Market Rates)

Loan rates for farm-stored rice, or rice for which the grade and milling yield are not determined, are based on state average grade and milling qualities for the prior five years. The warehouse-stored rice loan rates are based on class, quality, and milling yield determinations obtained from a grading and milling sample of the individual lot of rice. The national average rough rice loan rate is used to determine farm-stored loan proceeds in States other than the six major rice-producing States. Grade and quality factor discounts apply when rice is delivered to CCC upon loan maturity. CCC announces the rice adjusted world price (AWP) every Tuesday at 3 p.m. eastern standard time (EST). The AWP is used to determine the applicable repayment and LDP rates. If Tuesday is a Federal holiday or is not a Government workday, the AWP announcement is made on the next workday. Because the AWP is announced in the middle of a workday, marketing assistance loan repayments and loan deficiency payment requests are not accepted on Tuesday between 2 p.m. and 3 p.m. EST. This window of time is commonly referred to as the ''dead hour''. Marketing assistance loan repayments and loan deficiency payment requests received on Tuesday before 2 p.m. EST are based on the rate in effect before the 3 p.m. EST announced AWP. All marketing assistance loan repayments and loan deficiency payment requests received after 3 p.m. EST are based on the AWP announced on that Tuesday. This rule changes the AWP announcement time for rice to on or after 7 a.m. EST each Wednesday. The announced AWP will be effective upon announcement thus eliminating the ''dead hour'' requirement. As a result, 7 CFR part 1421.10(c)(5)(i) is revised and 1421.10(c)(6) deleted.

B. Handling Payments and Collections (1421.13)

7 CFR 1421.13 sets forth the policy of CCC in handling the issuance of marketing assistance loans and loan deficiency payments of $9.99 or less and the collection of debts arising from such loans and payments in amounts of $9.99 or less. This rule deletes this section since CCC routinely issues payments and loans regardless of amounts and CCC debt collection policies are already set forth at 7 CFR part 1403.

C. Liens and Filing of Security Interest and Financing Statements (1421.104)

Lien searches are conducted by CCC when a producer requests a marketing assistance loan. These searches are conducted to ensure that CCC will be able to obtain clear title to any commodity forfeited to CCC in satisfaction of a marketing assistance loan. Currently, CCC is responsible for the costs associated with conducting the lien search and the filing fees for the applicable financing statements. CCC surveyed FSA offices in all 50 States regarding the costs and it was determined that the average cost, per loan, to conduct a lien search and file a financing statement was approximately $17.00. Due to the major budget constraints facing the Department of Agriculture, a review was undertaken concerning policies regarding lien searches and the filing of financing statements to determine if these costs could be reduced. CCC conducted a comprehensive review of its loan-making actions and determined that in crop year 2003 only 112 of 37,246 farm-stored loans with a principal amount of $25,000 or less were satisfied by forfeiture of the loan collateral to CCC. (0.3%). Approximately, $633,182 was expended to file lien searches and record financing statements for those loans. Results of the review also indicated that the settlements and forfeitures have been very minimal over several crop years in comparison to the number of marketing assistance loans disbursed. Accordingly, this rule amends 7 CFR 1421.104 and 1427.12 to provide that CCC will conduct lien searches for all loans types greater than $25,000 and file financing statements only for farm-stored marketing assistance loan disbursements of $25,000 or more. CCC believes this will reduce costs without increasing CCC's risk of forfeitures. CCC may, however, conduct lien searches and file financing statements for loan disbursements less than $25,000 when there is reason to believe that CCC's interest will not be protected.

D. Personal Liability of the Producer (1421.109)

The terms of the marketing assistance loan agreements include provisions that obligate the producer to undertake certain actions. One of the more important provisions of the loan agreement is the requirement that the producer agrees to not remove or dispose of any quantity of commodity that is pledged as collateral for a CCC farm-stored loan without prior written approval from CCC. Such violations are referred to as ''unauthorized removal'' and ''unauthorized disposition.'' When the producer is determined to have committed a violation, the FSA County Committee, on behalf of CCC, must make a determination as to whether the producer acted in ''good faith'' in moving or disposing of the loan collateral in violation of the loan agreement. If the FSA County Committee determines the producer acted in ''good faith,'' a producer with two or fewer violations must repay the marketing assistance loan quantity involved in the violation at the lesser of principal plus interest, or the applicable announced alternative repayment rate in effect on the date the violation occurred, plus liquidated damages in an amount equal to 10 percent of the loan rate. CCC has found it very difficult to determine the exact date in which a violation may have occurred. Therefore, this rule amends 7 CFR 1421.109 to provide that the producer must repay the marketing assistance loan quantity involved in the violation based on the repayment rate in effect on the date the violation was discovered by CCC. If CCC determines that there had been an unauthorized removal or disposition of loan collateral after the loan had been repaid, such action will be considered a violation for purposes of future administration of this provision. With respect to instances in which a producer has committed two such violations, CCC has also determined that liquidated damages in an amount equal to 25 percent of the loan rate is excessive and this rule will reduce this amount to 10 percent.

E. Loan Deficiency Payments (1421.200; 1427.23)

Loan deficiency payments made under 7 CFR parts 1421 and 1427 are currently requested by producers by using: (1) Form CCC–709 Field Direct LDP; (2) Form CCC–633 LDP; (3) CCC–633 Pelt; (4) CCC–709 Pelt; (5) Cotton AA; and through the online CCC eLDP process. Each crop year, numerous producers fail to submit an applicable loan deficiency payment request for program benefits before beneficial interest is lost in the commodity. Producers and other members of the agricultural industry have attributed the loss of benefits to the use of multiple forms to obtain the same benefit and the lack of understanding about beneficial interest. In an effort to simplify this process, CCC recently issued a new form, Form CCC–633 EZ, Loan Deficiency Payment (LDP) Agreement and Request, for use in the 2005 and subsequent crop years. The CCC–633 EZ is a two part form consisting of an agreement which is page 1 of the CCC–633 EZ and a request for benefits which is either page 2, 3, or 4, depending on the requested commodity. Form CCC–633 EZ, Page 1 allows the producer to indicate their intentions to receive loan deficiency payments at a time well in advance of the time that they could inadvertently lose beneficial interest. The CCC–633 EZ, Page 1, Agreement, must be filed in the applicable FSA Service Center before loss of beneficial interest. A producer may submit the CCC–633 EZ, Page 1, Agreement, prior to the harvest, shearing or slaughter of the commodity (but not before the applicable crop year) throughout any time during the marketing assistance loan availability period. The request for LDP benefits page must be submitted before the applicable final loan availability date; however, the request for benefit (pages 2, 3 or 4) can be submitted either before or after loss of beneficial interest. This form became available for the 2005 crop year. Accordingly, this rule amends 7 CFR 1421.200 and 1427.23 to set forth policies associated with the use of the new CCC–633 EZ form.

F. Loan Deficiency Payment Rates

In order to more accurately reflect variations in market prices for the same commodity that reflect the geographic location of a producer's farm, CCC has historically established loan rates on a county-by-county basis for many commodities. This creates a situation where a crop may be produced in a county but is stored or marketed in a different county with a different loan rate. Section 7 CFR 1421.201 is revised to clarify that, in those instances where a commodity is stored in a county other than where the commodity was produced, the loan deficiency payment rate will be the rate for the county where the commodity is stored or marketed.

G. Beneficial Interest

As noted in the background discussion in this preamble, the concept of ''beneficial interest'' is a core feature of the CCC nonrecourse loan programs since 1949, is embodied in the 2002 Act, and consists of three parts: Title to the commodity must be with the producer; control of the commodity must remain with the producer; and the producer must retain risk of loss in the commodity in the event of its destruction. For many years, this provision was readily applied as the commodities subject to 7 CFR parts 1421 and 1427 were either used as feed by a producer on the producer's farm or delivered to a warehouse for sale or storage. The sale would be a simple

transaction in which cash, or a check, would be received by the producer based upon the market price of the commodity upon the date of sale or delivery to the warehouse.

Over time, different marketing arrangements have emerged that impact the manner in which CCC administers these programs. One significant change made in the marketing assistance and loan deficiency payment programs occurred in the early 1990's as a result of litigation arising out of the bankruptcy of a major cotton merchant. Prior to this case, CCC had allowed producers who had sold their ''equity interest'' in their cotton to a merchant to still obtain a nonrecourse loan from CCC. Under this arrangement, the merchant tendered to the producer a nominal payment that allowed the merchant, at its option, the right to purchase from the producer cotton pledged as collateral for a CCC nonrecourse loan at anytime prior to the maturity of the loan. In order to effectuate the sale, the producer, or the merchant as agent of the producer, had to first redeem the loan collateral. If the loan was not repaid by the maturity date, CCC took possession of the cotton in satisfaction of the loan.

In the case that influences this change, a large cotton merchant had obtained ''equities'' from a significant number of cotton producers and had obtained financing from several financial institutions to fund its operations. Unable to fulfill its obligations, the merchant filed for bankruptcy and its creditors asserted, in essence, that their liens extended to all property rights of the merchants, including the ''equities'' purchased by the merchant, and that this interest extended to the cotton even after the maturity of the CCC loan. As a result of court opinions in this matter, which held that this interest did extend beyond the maturity of the loan, CCC amended the regulations in 7 CFR parts 1421 and 1427 to ensure that this practice did not impact its ability, in the event of a forfeiture of the commodity at maturity, to obtain clear title to the commodity. This change is set forth in 7 CFR 1421.6(a)(2)(i) and 1427.5(e)(2)(i) and allows a producer to enter into an option to purchase contract with a buyer so that the producer can enter into marketing contracts prior to the harvest of their crop. The key feature of these provisions is that the option to purchase must terminate the earlier of: (1) Maturity of the loan that is secured by the commodity; (2) the date CCC claims title; or (3) such other date that is provided for in the option.

Since the adoption of these provisions in 7 CFR 1421.6 and 1427.5, CCC has not incurred losses similar to those that previously occurred. During the past 15 years, changes have occurred in marketing practices in which producers are able to develop marketing strategies to reduce their risks and to maximize their returns in the market. For example, there has been a significant increase in the use of contracts, commonly referred to as deferred price contracts and price later contracts, which allow producers the opportunity to identify their buyers and establish a sales price prior to harvest. Generally, such a contract does not deprive the producer of the ability to obtain a marketing assistance loan or a loan deficiency payment so long as payment for the transaction does not occur before the loan is repaid or the LDP is requested. Existing regulations are not clear on how CCC views these contracts. This rule is not intended to restrict in any manner the ability of a producer to obtain nonrecourse loans or loan deficiency payments, but are made solely to provide greater transparency in the operation of these programs. Also, in the context of this review, CCC has concluded that there are virtually no situations in which a producer has risk of loss in a commodity but does not have control; in other words, if a producer has control of the commodity, there is some risk of loss. Thus, to simplify these determinations, 7 CFR 1421.6 and 1427.5 are amended to remove references to risk of loss and to clarify actions a producer may take in the marketing of a commodity prior to the maturity of CCC loan, or a request for a loan deficiency payment, and still retain title to and control of a commodity.

Section 1001, ''Definitions'' of the 2002 Act specifically provides that

> ''* * * In determining whether a grower of a hybrid seed is a producer, the Secretary shall not take into consideration the existence of a hybrid seed contract and shall ensure that program requirements do not adversely affect the ability of the grower to receive a payment under this title.

Similarly, there is a growing number of situations in which the owners of genetically-modified seed and other similar specialty seeds retain title to the seed after delivery of the seed to a producer for planting by the producer. These situations are due in large part to the need for the owner of the seed to retain title to the seed in order for such owner to protect its patent rights to the seed variety involved in the transaction. At harvest, there are various scenarios that may ensue with respect to the actions that a producer may exercise with the commodity produced from these seeds. In some cases the owner takes possession of the commodity at harvest while in other instances the commodity remains with the producer for some period of time and the owner may elect to take all or just a portion of the production. Also, in some cases the owner has right of ''first rejection'' when the producer intends to market the crop. While CCC has attempted to treat these various situations in such a manner so as to allow the producer to obtain a marketing assistance loan or loan deficiency payment with respect to such contractual situations, existing regulations do not set forth with clarity the manner in which CCC views the use of these contracts. Accordingly, 7 CFR parts 1421 and 1427 are modified to make clear that these types of contracts do not deprive a producer of these benefits so long as no payment has been received under the contract prior to the request for the marketing assistance loan or loan deficiency payment and so long as the commodity has not been delivered to another party under the contract.

H. Application of Regulations to Certain Situations

To provide producers and purchasers of commodities with a clearer understanding of CCC's policies, 7 CFR 1421.13 is also revised by setting forth provisions for making eligibility determinations in certain marketing situations. CCC believes that this will be especially beneficial in the administration of sections 1201(c) and 1205(a)(2) of the 2002 Act as they are applied to the delivery of feed grains to facilities such as feedlots, dairies, ethanol plants, and other locations where commodities are delivered by producers to facilities not authorized to issue warehouse receipts.

I. Typographical Error Correction

Section 1421.10 is also amended to correct a typographical error. Section 1421.10(b) and (c) were intended to set forth statutory criteria that are used in establishing loan repayment rates for specified commodities but, as currently published, such provisions inadvertently omit a portion of the relevant provisions of the 2002 Act.

J. Substitute and Purchase Commodities

In 7 CFR part 1421 provisions are added to section 1421.5 to clarify that substituted and purchased commodities are ineligible for marketing assistance loans and loan deficiency payments.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be not significant and has not been reviewed by the Office of Management Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule will preempt State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program 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 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State. Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The changes in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. The regulation is available at FSA's Price Support Division internet site at *http://www.fsa.usda.gov/dafp/psd*. Applications may be submitted at the FSA county offices, by mail or by FAX. Loan Deficiency Payments may be submitted electronically at *http://www.fsa.usda.gov/dafp/psd*.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects

7 CFR Part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1427

Agricultural commodities, Cotton, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR parts 1421 and 1427 are amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

■ 1. The authority citation for part 1421 is revised to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart A—General

■ 2. Amend § 1421.1 by adding paragraph (e) to read as follows:

§ 1421.1 Applicability.

* * * * *

(e) The information collection requirements contained in this regulation (7 CFR part 1421) have been approved by the Office of Management and Budget under provisions if 44 U.S.C. chapter 35 and have been assigned OMB Numbers 0560–0009 and 0560–0036.

■ 3. Amend § 1421.5 by adding paragraph (f) to read as follows:

§ 1421.5 Eligible commodities.

* * * * *

(f) A commodity that is purchased, substituted, or acquired by sale, gift, exchange of an existing harvested, sheared, or slaughtered commodity, or through any other transaction is ineligible to be pledged as collateral for a marketing assistance loan; in addition a loan deficiency payment shall not be made with respect to such commodities.

■ 4. Section 1421.6 is revised to read as follows:

§ 1421.6 Beneficial interest.

(a) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or is requested for a loan deficiency payment. For the purposes of this part, the term ''beneficial interest'' refers to a determination by CCC that a person has the requisite title to and control of the commodity that is tendered to CCC as collateral for a marketing assistance loan or is the commodity that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in a commodity is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(b) Except as provided in paragraph (e) of this section, when requesting a marketing assistance loan for a loan commodity, in order to have beneficial interest in the commodity tendered as collateral for the loan, a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted (with respect to wool and mohair from time of shearing) through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the commodity from the time of planting (for wool and mohair from the time of shearing) through the maturity date of the loan. To have control of the commodity, such person must have complete decision-making authority regarding whether the commodity will be tendered as collateral for a loan, when the loan will be repaid, or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the commodity will be maintained during the term of the loan;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse approved in accordance with § 1421.103(c). Delivery of the commodity to a location other than to such an approved warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, or other facilities as determined by CCC will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been approved by CCC under § 1421.103(c).

(c) Except as provided in paragraph (e) of this section, when requesting a loan deficiency payment for a loan commodity, in order to have beneficial interest in the commodity a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted, with respect to wool and mohair from the time of shearing, or from the time of slaughter for unshorn pelts, through the date the producer has elected to determine the loan deficiency payment rate;

(3) Have control of the commodity. For control such person must have complete decisionmaking authority regarding whether a loan deficiency payment will be requested with respect to the commodity; when the loan deficiency rate will be selected; and where the commodity will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse approved in accordance with § 1421.103(c). Delivery of the commodity to a location other than to an approved warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, or unapproved storage facility, will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been approved by CCC under § 1421.103(c).

(d) Notwithstanding any provision of paragraphs (b) and (c) of this section and § 1421.5(f), in order to facilitate handling situations involving the death of a producer, CCC will consider an estate, heirs of the deceased producer, and a person to whom title to a commodity has passed by virtue of State law upon the death of the producer to have beneficial interest in a commodity produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(e) Notwithstanding any provision of paragraphs (b) and (c) of this section and § 1421.5(f), a person who purchases or otherwise acquires a commodity from a producer under any circumstances does not obtain beneficial interest to the commodity whether such purchase or acquisition is made prior to the harvest of the crop or after harvest; however, CCC will consider a person to have beneficial interest in a commodity if, prior to harvest, such person has obtained title to the growing commodity at the same time that such person obtained full title to the land on which such crop was growing;

(f) If marketing assistance loans and loan deficiency payments are made available to producers through an approved cooperative marketing association in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved cooperative marketing association or its member approved cooperative marketing association, except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved cooperative marketing association shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

(g) A producer will lose beneficial interest in a commodity if the producer receives any payment from any person under any contractual arrangement with respect to a commodity if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the commodity or control of the commodity prior to or after harvest, shearing, or slaughter unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the commodity and such option contains the following language:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the commodity and beneficial interest in the commodity as specified in 7 CFR 1421.6 shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such commodity;

(2) The date CCC claims title to such commodity; or

(3) Such other date as provided in this option.

(h) Inclusion in a contract of one or more of the following types of provisions will not result in the loss of beneficial interest in a commodity:

(1) A provision that allows the producer to select the sales price of the commodity at the time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred price contract or a price later contract; or

(2) A provision in contract between the producer and a warehouse approved in accordance with § 1421.103(c) for the storage of CCC loan collateral that provides the producer with no more than 15 days from the date of physical delivery of the commodity to the warehouse to elect whether the commodity is to be stored on behalf of the producer or is to be considered transferred to the warehouse, for example, a contract normally referred to as an open storage contract.

(i) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities, and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan and a loan deficiency payment may be made with respect to such production if, at the time of the request for such a loan or payment, the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

■ 5. Amend § 1421.10 by revising paragraphs (b)(2), (c)(2), and (c)(5) to read as follows, and removing paragraph (c)(6):

§ 1421.10 Market rates.

* * * * *

(b) * * *

(2) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the market prices at appropriate U.S. markets as determined by CCC, to: Minimize loan forfeitures of such commodities; minimize the Federal Government-owned inventory of such commodities; minimize the storage costs incurred by the Federal Government; allow such commodities produced in the United States to be marketed freely and competitively domestically and internationally; and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries. The alternative repayment rate may be adjusted to reflect quality and location for each crop of a commodity as follows:

* * * * *

(c) * * *

(2) To the extent practicable, CCC shall determine and announce periodically an alternative repayment rate for peanuts, wool, and mohair to: Minimize loan forfeitures of such commodities; minimize the Federal Government-owned inventory of such commodities; minimize the storage costs incurred by the Federal Government; allow such commodities produced in the United States to be marketed freely and competitively domestically and internationally; and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

* * * * *

(5) The adjusted world price for each class of rice, loan rate basis, shall be determined by CCC and announced, to the extent practicable, on or after 7 a.m. Eastern Standard Time each Wednesday or more frequently as determined necessary by CCC, continuing through the later of:

(i) The last Wednesday of July 2007; or

(ii) The last Wednesday of the latest month the 2007-crop rice loans mature, or

(iii) In the event that Wednesday is a non-workday, the determination will be made on the next work day, on or after 7 a.m. Eastern Standard Time.

■ 6. Revise § 1421.13 to read as follows:

§ 1421.13 Special marketing assistance loans and loan deficiency payments.

(a) Commodities stored in an unapproved storage facility may be pledged as collateral for a marketing assistance loan if the producer:

(1) Makes a request for the marketing assistance loan and obtains the commodity certificate to immediately exchange for the requested loan collateral at the same time at the county office that, under part 718 of this title, is responsible for administering the programs for the farm on which the commodity was produced.

(2) Submits the marketing assistance loan request and the commodity certificate exchange before or on the date of delivery to the unapproved facility.

(b)(1) Eligible producers of unshorn pelts produced from live sheep and hay and silage derived from an eligible loan commodity as provided in § 1421.5 are eligible to request unshorn pelt, hay, and silage quantities for a loan deficiency payment under subpart C of this part.

(2) Unshorn pelts, hay, and silage derived from an eligible loan commodity is not eligible to be pledged as collateral to obtain a marketing assistance loan under subpart B of this part.

Subpart B—Marketing Assistance Loans

■ 7. Amend § 1421.104 by revising paragraph (a) to read as follows:

§ 1421.104 Marketing assistance loan making.

(a)(1) CCC will conduct lien searches with respect to all commodities pledged as collateral for marketing assistance loan disbursements in amounts greater than $25,000 and perfect its security interest in such commodity as provided for under State law. With respect to marketing assistance loan disbursements of $25,000 or less, CCC may conduct a lien search when it is determined that CCC's interest is at risk and perfect its security interest in such commodity as provided for under State law. In all instances, if a producer has violated the provisions of this part in the crop year preceding the crop year in which the marketing assistance loan is being requested, CCC will conduct a lien search with respect to all commodities pledged as collateral for a marketing assistance loan and perfect its security interest in such commodity as provided for under State law.

(2) The cost for terminating the financing statement for marketing assistance loans disbursed under paragraph (a)(1) of this section before the end of the term shall be paid by the producer.

(3) If there are any liens or encumbrances on the commodity pledged as collateral for a marketing assistance loan made under this part, waivers that fully protect CCC's interest must be obtained even though the liens or encumbrances are satisfied from loan proceeds disbursed under this part. No additional liens or encumbrances shall be placed on the commodity after such a loan is approved.

* * * * *

■ 8. Amend § 1421.109 by revising paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 1421.109 Personal liability of the producer.

* * * * *

(d) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(e) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as a result of unauthorized

removal or disposition, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the marketing assistance loan which is commensurate to such quantity of the commodity. In the case of these violations, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages shall be assessed according to paragraph (d) of this section and the commodity involved in the violation must be redeemed at the lesser of:

(i) The rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement; or

(ii) The alternative repayment rate in effect on the date of the determination is issued by CCC that a violation has occurred, plus 15 percent of the original loan rate as provided on the note and security agreement.

(2) Did not act in good faith when the violation was committed, liquidated damages shall be assessed in accordance with paragraph (d) of this section, and administrative actions shall be taken in accordance with paragraph (h) of this section. The loan must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(f) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as result of an incorrect certification, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the marketing assistance loan which is commensurate to such quantity of the commodity. In the case of an incorrect certification, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages shall be assessed according to paragraph (d) of this section, and the commodity involved in the violation must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(2) Did not act in good faith about the violation, liquidated damages shall be assessed in accordance with paragraph (d) of this section and administrative actions shall be taken in accordance with paragraph (h) of this section. The loan must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(g) If the producer fails to pay such amount within 30 days from the date of notification of violations as provided in paragraphs (e)(1) and (f)(1) of this section, the producer must immediately repay the marketing assistance loan at the rate at which the loan was disbursed plus interest, and any other charges assessed under the note and security agreement.

(h) For violations subject to paragraphs (e)(2) and (f)(2) of this section, the producer must immediately repay the marketing assistance loan at the rate at which the loan was disbursed plus interest, and any other charges assessed under the note and security agreement. If the loan has already been repaid, any market gain previously realized on the loan, plus interest, must be refunded to CCC.

* * * * *

■ 9. Amend § 1421.112 by revising paragraph (a)(3) to read as follows:

§ 1421.112 Loan settlement.

(a) * * *

(3) If CCC sells the commodity described in paragraph (a)(1) and (a)(2)of this section in settlement of the marketing assistance loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. If CCC sells any commodity obtained by delivery or forfeiture under a non-recourse marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the commodity and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the commodity to CCC.

* * * * *

Subpart C—Loan Deficiency Payments

■ 10. Amend § 1421.200 by revising paragraph (c) to read as follows:

§ 1421.200 Applicability.

* * * * *

(c)(1) A producer must submit a completed request for a loan deficiency payment agreement and request form on or before the date beneficial interest is lost in the commodity and before the final loan availability date for the commodity. Producers must, on a form prescribed by CCC, indicate their intentions, in which the producer also agrees to the terms and conditions of the loan deficiency payment program, to receive a loan deficiency payment and submit the prescribed form to the FSA Service Center on or before beneficial interest is lost in such quantity. A producer may not obtain loan deficiency payment benefits, if the applicable form is not received in the FSA Service Center on or before beneficial interest is lost in the requested commodity.

(2) With respect to a request for a loan deficiency payment for unshorn pelts, a completed request for such a payment must be submitted on or before the earlier of the date of slaughter of the lamb or the loss of beneficial interest in the lamb or the unshorn pelt produced from the lamb. In addition, the lamb must have been owned for not less than 30 days prior to the date such application is filed with CCC and must have been slaughtered for personal use, or sold for slaughter and slaughtered within 10 calendar days after the sale.

* * * * *

■ 11. Amend § 1421.201 by revising paragraph (b) to read as follows:

§ 1421.201 Loan deficiency payment rate.

* * * * *

(b) The loan deficiency payment rate will be:

(1) For 2005 and preceding crop years, for loan deficiency payment other than field direct loan deficiency payments, the rate in effect in the county where the commodity is stored as of the day the producer submits to the FSA county service center a completed request for payments;

(2) For 2005 and preceding crop years, for field direct loan deficiency payments, the rate in effect for the county in which the farm is administratively located for CCC program purposes as of the date the commodity was delivered to a processor, buyer warehouse, cooperative marketing association, or similar entity.

(3) For 2006 and subsequent crop years, the loan deficiency payment rate in effect in the county where the commodity was marketed or stored on the date:

(i) The request for benefits is received in the FSA Service Center, if the producer retains beneficial interest in the quantity on that date.

(ii) Beneficial interest was lost, as determined by CCC and as provided in §§ 1421.6 and 1421.13, if on the date the request for benefits was received in the FSA Service Center the producer no longer has beneficial interest in the requested quantity.

* * * * *

■ 12. Amend § 1421.203 by revising paragraphs (a)(1), (b), and (c), deleting paragraph (d), and renumbering paragraphs (e) through (j) as paragraphs

(d) through (i), respectively. Revised paragraph (a)(1), (b) and (c) read as follows:

§ 1421.203 Personal liability of the producer.

(a) * * *

(1) When signing the Loan Deficiency Payment Agreement and Request, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation, that CCC will rely upon in determining a loan deficiency payment; and

* * * * *

(b) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the loan deficiency payment.

(c) If CCC determines that the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed in accordance with paragraph (b) of this section and the producer must repay the loan deficiency payment applicable to the loan deficiency quantity involved in the violation and charges, plus interest applicable to the amount repaid. If the producer fails to pay such amount within 30 days from the date of notification the producer must repay the entire loan deficiency payment and charges plus interest.

(2) Did not act in good faith when the violation was committed, liquidated damages will be assessed in accordance with paragraph (b) of this section and the producer shall repay the entire loan deficiency payment and charges plus interest.

* * * * *

PART 1427—COTTON

■ 13. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931–7939; and 15 U.S.C. 714b and 714c.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

■ 14. Amend § 1427.5 by re-designating paragraphs (g) and (h) as paragraphs (m) and (n), respectively; revising paragraphs (e) and (f), and adding new paragraphs (g) through (l), to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(e) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the cotton that is tendered to CCC for a marketing assistance loan or loan deficiency payment. For the purposes of this part, the term ''beneficial interest'' refers to a determination by CCC that a person has the requisite title to and control of cotton that is tendered to CCC as collateral for a marketing assistance loan or is the cotton that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in cotton is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(f) Except as provided in paragraph (h) of this section, when requesting a marketing assistance loan, in order to have beneficial interest in the cotton tendered as collateral for the loan, a person must:

(1) Be the producer of the cotton as determined in accordance with § 1427.4;

(2) Have had ownership of the cotton from the time it was planted through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the cotton from the time of planting through the maturity date of the loan. To have control of the cotton, such person must have complete decision making authority regarding whether the cotton will be tendered as collateral for a loan, when the loan will be repaid or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the cotton will be maintained during the term of the loan; and

(4) Not have received any payment from any party with respect to the cotton.

(g) Except as provided in paragraph (h) of this section, when requesting a loan deficiency payment, in order to have beneficial interest in the cotton a person must:

(1) Be the producer of the cotton as determined in accordance with § 1427.4;

(2) Have had ownership of the cotton from the time it was planted through the date the producer has elected to determine the loan deficiency payment rate; and

(3) Have control of the cotton from the time of planting through the date the producer has elected to determine the loan deficiency payment rate. To have control of the cotton, such person must have complete decision making authority regarding whether a loan deficiency payment will be requested with respect to the cotton; when the loan deficiency rate will be selected; and where the cotton will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) Not have received any payment from any party with respect to the cotton; and

(5) If the cotton has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the cotton to a warehouse approved in accordance with § 1427.10. Delivery of the cotton to a location other than to such an approved warehouse will result in the loss of beneficial interest in the cotton on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day regardless of any other action or agreement between the entity where the cotton was delivered and the producer, unless such an entity has been approved by CCC under § 1427.10.

(h) Notwithstanding paragraphs (f) and (g) of this section, in order to facilitate the handling of situations involving the death of a producer, CCC will consider an estate and a person to whom title to cotton has passed by virtue of State law upon the death of the producer to have beneficial interest in the cotton produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(i) Notwithstanding paragraphs (f) and (g) of this section, a person who purchases or otherwise acquires cotton from a producer under any circumstances does not obtain beneficial interest to the cotton whether such purchase or acquisition is made prior to the harvest of the crop or after harvest except in one instance. CCC will consider a person to have beneficial interest in cotton if, prior to harvest, such person has obtained title to the growing cotton at the same time that such person obtained full title to the land on which such crop was growing;

(j) A producer will lose beneficial interest in cotton if the producer receives any payment from any person under any contractual arrangement with respect to cotton if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the cotton or control of the cotton prior to or after harvest unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the cotton and such option contains the following provision:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the cotton and beneficial interest in the cotton as specified in 7 CFR 1427.5 shall remain

with the producer until the buyer exercises this option to purchase the cotton. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such cotton;

(2) The date CCC claims title to such cotton; or

(3) Such other date as provided in this option.

(k) Absent other provisions causing the producer to lose beneficial interest in the cotton, inclusion in a contract of a provision that allows the producer to select the sales price of the cotton at the time the contract is entered into or at a later date, a contract normally referred to as a deferred price contract or a price later contract, will not result in the loss of beneficial interest in the cotton.

(l) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan and a loan deficiency payment may be made with respect to such production if at the time of the request for such a loan or payment the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

* * * * *

■ 15. Amend § 1427.18 by revising paragraphs (e) and (f) to read as follows:

§ 1427.18 Liability of the producer.

* * * * *

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of their requests for a loan or any applicable form required by CCC, liquidated damages shall be assessed on the quantity involved in the violation. Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(f) When it has been determined that a violation of the terms and conditions of a loan deficiency application has occurred, CCC will determine the quantity of the cotton involved with respect to such violation and assess liquidated damages by multiplying the quantity of cotton involved in the violation by 10 percent of the marketing assistance loan rate.

* * * * *

■ 16. Amend § 1427.21 by adding a new paragraph (e) to read as follows:

§ 1427.21 Settlement.

* * * * *

(e) If CCC sells the commodity described in paragraph (a) of this section in settlement of the recourse loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. When CCC sells any cotton obtained by forfeiture under a marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the cotton and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the cotton to CCC.

■ 17. Amend § 1427.23 by revising paragraph (a)(3) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

(a) * * *

(3) A producer must submit a completed request for a loan deficiency payment for a quantity of eligible cotton under § 1427.5(a) on or before the date beneficial interest is lost in the commodity and before the final loan availability date for the commodity. Producers must, on a form prescribed by CCC, indicate their intentions to receive a loan deficiency payment and submit the prescribe form to the FSA Service Center on or before beneficial interest is lost in such quantity. A producer may not file such a form after beneficial interest is lost.

* * * * *

Signed in Washington, DC, on May 10, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–5078 Filed 6–5–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22358; Directorate Identifier 2005–NE–20–AD; Amendment 39–14632; AD 2006–12–07]

RIN 2120–AA64

Airworthiness Directives; Engine Components Inc. (ECi) Reciprocating Engine Cylinder Assemblies

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain Engine Components Inc. (ECi) cylinder assemblies, part number (P/N) AEL65102 series ''Classic Cast'', installed. That AD currently requires replacing these ECi cylinder assemblies. This AD requires the same actions, but replaces the ''Engine Models'' Table 1 and ''Engines Installed On, But Not Limited To'' Table 2 with corrected tables. Also, this AD corrects the casting part number. This AD results from reports of applicability errors found in AD 2005–26–10. We are issuing this AD to prevent loss of engine power due to cracks in the cylinder assemblies and possible engine failure caused by separation of a cylinder head.

DATES: This AD becomes effective July 11, 2006.

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

FOR FURTHER INFORMATION CONTACT: Peter Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; telephone (817) 222–5145; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Lycoming Engines models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain ECi cylinder assemblies, P/N AEL65102 series ''Classic Cast'', installed. We published the proposed AD in the **Federal Register** on February 24, 2006 (71 FR 9480). That action proposed to require the same actions as AD 2005–26–10, but would replace the

''Engine Models'' Table 1 and ''Engines Installed On, But Not Limited To'' Table 2 with corrected tables. Also, that action proposed to correct the casting part number.

Examining the AD Docket

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

Comments

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

Request To Change All References to Casting P/N AEL65099

One commenter requests that we change all references to casting P/N AEL65099 to read ''casting head markings EC 65099–REV–1'' to more accurately describe the actual markings. We agree, and made the reference changes in the AD.

Request To Explain Another Set of Numbers on the Cylinder

The same commenter requests that we explain that the set of numbers appearing on the cylinder below and to the left of the SN, in the form of ''12345–67'' is not used for determining applicability. We agree, and have added a statement to point this out in the AD.

Update to Related Information

Under paragraph (k), Related Information, we updated the reference to ECi Service Bulletin No. 05–08, Revision 1, dated December 29, 2005, to Revision 2, dated February 28, 2006.

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

We estimate that 7,557 ECi cylinder assemblies are installed on Lycoming engines in the United States. We estimate that it will take about two workhours per engine to perform the aircraft inspections of the cylinder assemblies for applicability, and that the average labor rate is $65 per workhour. From the Lycoming Engines ''Removal and Installation Labor Allowance Guidebook'', dated May 2000, the complete cylinder replacement for a four cylinder engine takes 12 hours, while the complete cylinder replacement for a six cylinder engine takes 16 hours. Required parts will cost about $1,000 per cylinder assembly. Based on these figures, we estimate that the total cost of the AD to U.S. operators to be $9,152,140. ECi indicated that they might give operators and repair stations credit for returned cylinder assemblies toward the purchase of new ECi cylinder assemblies.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14431 (70 FR 76385, December 27, 2005), and by adding a new airworthiness directive, Amendment 39–14632, to read as follows:

2006–12–07 Engine Components Incorporated (ECi): Amendment 39–14632. Docket No. FAA–2005–22358; Directorate Identifier 2005–NE–20–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 11, 2006.

Affected ADs

(b) This AD supersedes 2005–26–10, Amendment 39–14431.

Applicability

(c) This AD applies to Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, parallel valve, reciprocating engines:

(1) Specified in Table 1 of this AD; and

(2) With ECi cylinder assemblies, part number (P/N) AEL65102 series ''Classic Cast'', having casting head markings EC 65099–REV–1; and

(3) With serial numbers (SNs) 1 through 9879 (SN may have an ''L'' prefix for a long reach spark plug), (sold from January 1997 to September 2001) installed.

(4) The set of numbers appearing on the cylinder, below and to the left of the SN, in the form of ''12345–67'' is not used for determining applicability.

TABLE 1.—ENGINE MODELS

Cylinder head part No.	Installed on engine models
AEL65102–NST04	O–320–A1B, A2B, A2C, A2D, A3A, A3B, B2B, B2C, B2D, B2E, B3B, B3C, C2B, C2C, C3B, C3C, D1A, D1AD, D1B, D1C, D1D, D1F, D2A, D2B, D2C, D2F, D2G, D2H, D2J, D3G, E1A, E1B, E1C, E1F, E1J, E2A, E2B, E2C, E2D, E2E, E2F, E2G, E2H, E3D, E3H.
	IO–320–A1A, A2A, B1A, B1B, B1C, B1D, B1E, B2A, D1A, D1AD, D1B, D1C, E1A, E1B, E2A, E2B.
	AEIO–320–D1B, D2B, E1A, E1B, E2A, E2B.
	AIO–320–A1A, A1B, A2A, A2B, B1B, C1B.
	LIO–320–B1A.
AEL65102–NST05	IO–320–C1A, C1B, C1F, F1A.
	LIO–320–C1A.
AEL65102–NST06	O–320–A1A, A2A, A2B, A2C, A3A, A3B, A3C, E1A, E1B, E2A, E2C, (also, an O–320 model with no suffix).
	IO–320–A1A, A2A.
AEL65102–NST07	IO–320–B1A, B1B.
	LIO–320–B1A.
AEL65102–NST08	O–320–B1A, B1B, B2A, B2B, B3A, B3B, B3C, C1A, C1B, C2A, C2B, C3A, C3B, C3C, D1A, D1B, D2A, D2B, D2C.
AEL65102–NST10	O–360–A1A, A1C, A1D, A2A, A2E, A3A, A3D, A4A, B1A, B1B, B2A, B2B, C1A, C1C, C1G, C2A, C2B, C2C, C2D, D1A, D2A, D2B.
	IO–360–B1A, B1B, B1C.
	HO–360–A1A, B1A, B1B.
	HIO–360–B1A, B1B.
	AEIO–360–B1B.
	O–540–A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B1A5, B1B5, B1D5, B2A5, B2B5, B2C5, B2C5D, B4A5, B4B5, B4B5D, D1A5, E1A, E4A5, E4B5, E4C5, F1A5, F1B5, G1A5, G2A5.
	IO–540–C1B5, C1C5, C2C, C4B5, C4B5D, C4C5, D4A5, D4B5, N1A5, N1A5D.
AEL65102–NST12	O–360–A1A, A1AD, A1D, A1F, A1F6, A1F6D, A1G, A1G6, A1G6D, A1H, A1H6, A1J, A1LD, A1P, A2A, A2D, A2F, A2G, A2H, A3A, A3AD, A3D, A4A, A4AD, A4D, A4G, A4J, A4JD, A4K, A4M, A4N, A4P, A5AD, B1A, B2C, C1A, C1C, C1E, C1F, C1G, C2A, C2B, C2C, C2D, C2E, C4F, C4P, D2A, F1A6, G1A6.
	HO–360–C1A.
	LO–360–A1G6D, A1H6.
	HIO–360–B1A, B1B, G1A.
	LTO–360–A1A6D.
	TO–360–A1A6D.
	IO–360–B1B, B1BD, B1D, B1E, B1F, B1F6, B1G6, B2E, B2F, B2F6, B4A, E1A, L2A, M1A, M1B.
	AEIO–360–B1B, B1D, B1E, B1F, B1F6, B1G6, B1H, B2F, B2F6, B4A, H1A, H1B.
	O–540–A4D5, B2B5, B2C5, B2C5D, B4B5, B4B5D, E4A5, E4B5, E4B5D, E4C5, G1A5, G1A5D, G2A5, H1A5, H1A5D, H1B5, H1B5D, H2A5, H2A5D, H2B5D.
	IO–540–C4B5, C4B5D, C4D5, C4D5D, D4A5, D4B5, D4C5, N1A5, N1A5D, T4A5D, T4B5, T4B5D, T4C5D, V4A5, V4A5D.
	AEIO–540–D4A5, D4B5, D4C5, D4D5.
AEL65102–NST26	IO–540–J4A5, R1A5.
	TIO–540–C1A, E1A, G1A, H1A.
AEL65102–NST38	IO–360–F1A.
	TIO–540–AA1AD, AB1AD, AB1BD, AF1A, AG1A, AK1A, C1A, C1AD, K1AD.
	LTIO–540–K1AD.
AEL65102–NST43	O–360–J2A.
	O–540–F1B5, J1A5D, J1B5D, J1C5D, J1D5D, J2A5D, J2B5D, J2C5D, J2D5D, J3A5, J3A5D, J3C5D.
	IO–540–AB1A5, W1A5, W1A5D, W3A5D.
AEL65102–NST44	O–540–L3C5D.

For information, the subject engines are installed on, but not limited to, the aircraft listed in the following Table 2:

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO

O–320–A1A	Piper Aircraft: Tri-Pacer (PA–22 "150", PA–22S "150"), Apache (PA–23), Pawnee (PA–25).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Mooney Aircraft: Mark (20A).
	Dinfia: Ranquel (1A–46).
	Simmering-Graz Pauker: Flamingo (SGP–M–222).
	Aviamilano: Scricciolo (P–19).
	Vos Helicopter Co.: Spring Bok.
O–320–A1B	Piper Aircraft: Tri-Pacer (PA–22 "150", PA–22S "150"), Apache (PA–23).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	S.O.C.A.T.A.: Horizon (Gardan).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

O–320–A2A	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Agriculture (PA–18A ''150'') Super Cub (PA–18 ''150''), Caribbean (PA–22 ''150''), Pawnee (PA–25).
	Intermountain Mfg. Co.: Call Air Texas (A–5, A–5T).
	Lake Aircraft: Colonial (C–1).
	Rawdon Bros.: Rawdon (T–1, T–15, T–15D).
	Shinn Engineering: Shinn (2150–A).
	Dinfia: Ranquel (1A–46).
	Neiva: (1PD–5802).
	Sud: Gardan-Horizon (GY–80).
	LaVerda: Falco (F8L Series II, America).
	Malmo: Vipan (MF1–10).
	Kingsford Smith: Autocrat (SCRM–153).
	Aero Commander: 100.
O–320–A2B	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Cherokee (PA–28 ''150''), Super Cub (PA–18 ''150'').
	Champion Aircraft: Challenger (7GCA, 7GCB, 7KC), Citabria (7GCAA, 7GCRC), Agriculture (7GCBA).
	Beagle: Pup (150).
	Artic: Interstate S1B2.
	Robinson: R–22.
	Varga: Kachina 2150A.
O–320–A2C	Robinson: R–22.
	Cicare: Cicare AG.
	Bellanca Aircraft: Citabria 150 (7GCAA), Citabria 150S (7GCBC).
O–320–A2D	Piper Aircraft: Apache (PA–23).
O–320–A3A	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Corben-Fettes: Globe Special (Globe GC–1B).
O–320–A3B	Piper Aircraft: Apache (PA–23).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Teal II: TSC (1A2).
O–320–B1A	Piper Aircraft: Apache (PA–23 ''160'').
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Malmo: Vipan (MF1–10).
O–320–B1B	Piper Aircraft: Apache (PA–23 ''160'').
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B)
O–320–B2A	Piper Aircraft: Tri-Pacer (PA–22 ''160'', PA–22S ''160'').
O–320–B2B	Piper Aircraft: Tri-Pacer (PA–22 ''160'', PA–22S ''160'').
	Beagle: Airedale (D5–160).
	Fuji-Heavy Industries: Fuji (F–200).
	Uirapuru: Aerotec 122.
O–320–B2C	Robinson: R–22.
O–320–B2D	Maule: MX–7–160.
O–320–B2E	Lycon.
O–320–B3A	Piper Aircraft: Apache (PA–23 ''160'').
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O–320–B3B	Piper Aircraft: Apache (PA–23 ''160'').
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Sud: Gardan (GY80–160).
O–320–C1A	Piper Aircraft: Apache (PA–23 ''160'').
	Riley Aircraft: Rayjay (Apache).
O–320–C1B	Piper Aircraft: Apache (PA–23 ''160'').
O–320–C3A	Piper Aircraft: Apache (PA–23 ''160'').
O–320–C3B	Piper Aircraft: Apache (PA–23 ''160'').
O–320–D1A	Sud: Gardan (GY–80).
	Gyroflug: Speed Cancard.
	Grob: G115.
O–320–D1F	Slingsby: T67 Firefly.
O–320–D2A	Piper Aircraft: Cherokee (PA–28S ''160'').
	Robin: Major (DR400–140B), Chevalier (DR–360), (R–3140).
	S.O.C.A.T.A.: Tampico TB9.
	Slingsby: T67C Firefly.
	Daetwyler: MD–3–160.
	Nash Aircraft Ltd.: Petrel.
	Aviolight: P66D Delta.
	General Avia: Pinguino.
O–320–D2B	Beech Aircraft: Musketeer (M–23).
	Piper Aircraft: Cherokee (PA–28 ''160'').
O–320–D2J	Cessna Aircraft: Skyhawk 172.
O–320–D3G	Piper Aircraft: Warrior II, Cadet (PA–28–161).
O–320–E1A	Grob: G115.
O–320–E1C	M.B.B. (Messerschmitt-Boelkow-Blohm): Monsun (BO–209–B).
O–320–E1F	M.B.B.: Monsun (BO–209–B).
O–320–E2A	Piper Aircraft: Cherokee (PA–28 ''140'', PA–28 ''150'').
	Robin: Major (DR–340), Sitar, Bagheera (GY–100–135).
	S.O.C.A.T.A.: Super Rallye (MS–886), Rallye Commodore (MS–892).
	Siai-Marchetti: (S–202).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

	F.F.A.: Bravo (AS–202/15).
	Partenavia: Oscar (P66B), Bucker (131 APM).
	Aeromot: Paulistina P–56.
	Pezetel: Koliber 150.
O–320–E2C	Beech Aircraft: Musketeer III (M–23III).
	M.B.B.: Monsun (BO–209–B).
O–320–E2D	Cessna Aircraft: Cardinal (172–I, 177).
O–320–E2F	M.B.B.: Monsun (BO–209–B), Wassmer Pacific (WA–51).
O–320–E2G	American Aviation Corp.: Traveler.
O–320–E3D	Piper Aircraft: Cherokee (140).
	Beech Aircraft: Sport.
IO–320–B2A	Piper Aircraft: Twin Comanche (PA–30).
IO–320–B1C	Hi. Shear: Wing.
IO–320–B1D	Ted Smith Aircraft: Aerostar.
IO–320–C1A	Piper Aircraft: Twin Comanche (PA–30 Turbo).
IO–320–D1A	M.B.B.: Monsun (BO–209–C).
IO–320–D1B	M.B.B.: Monsun (BO–209–C).
IO–320–E1A	M.B.B.: Monsun (BO–209–C).
IO–320–E1B	Bellanca Aircraft.
IO–320–E2A	Champion Aircraft: Citabria.
IO–320–E2B	Bellanca Aircraft.
IO–320–F1A	CAAR Engineering: Carr Midget.
LIO–320–B1A	Piper Aircraft: Twin Comanche (PA–39).
LIO–320–C1A	Piper Aircraft: Twin Comanche (PA–39).
AIO–320–B1B	M.B.B.: Monsun (BO–209–C).
AEIO–320–D1B	Slingsby: T67M Firefly.
AEIO–320–D2B	Hundustan Aeronautics Ltd.: HT–2.
AEIO–320–E1A	Bellanca Aircraft.
	Champion Aircraft.
AEIO–320–E1B	Bellanca Aircraft.
	Champion Aircraft: Decathalon (8KCAB–CS).
AEIO–320–E2B	Bellanca Aircraft.
	Champion Aircraft: Decathalon (8KCAB).
O–320–A1A	Riley Aircraft: Riley Twin.
O–360–A1A	Beech Aircraft: Travel Air (95, B–95).
	Piper Aircraft: Comanche (PA–24).
	Intermountain Mfg. Co.: Call Air (A–6).
	Lake Aircraft: Colonial (C–2, LA–4, 4A or 4P).
	Doyn Aircraft: Doyn-Cessna (170B, 172, 172A, 172B).
	Mooney Aircraft: Mark "20B" (M–20B).
	Earl Horton: Pawnee (Piper PA–25).
	Dinfia: Ranquel (1A–51).
	Neiva: (1PD–5901).
	Regente: (N–591).
	Wassmer: Super 4 (WA–50A), Sancy (WA–40), Baladou (WA–40), Pariou (WA–40).
	Sud: Gardan (GY–180).
	Bolkow: (207).
	Partenavia: Oscar (P–66).
	Siai-Marchetti: (S–205).
	Procaer: Picchio (F–15–A).
	S.A.A.B.: Safir (91–D).
	Malmo: Vipan (MF–10B).
	Aero Boero: AB–180.
	Beagle: Airedale (A–109).
	DeHavilland: Drover (DHA–3MK3).
	Kingsford-Smith: Bushmaster (J5–6).
	Aero Engine Service Ltd.: Victa (R–2).
O–360–A1AD	S.O.C.A.T.A.: Tabago TB–10.
O–360–A1D	Piper Aircraft: Comanche (PA–24).
	Lake Aircraft: Colonial (LA–4, 4A or 4P).
	Doyn Aircraft: Doyn-Beech (Beech 95).
	Mooney Aircraft: Master "21" (M–20E), Mark "20B", "20D", (M20B, M20C), Mooney Statesman (M–20G).
	Dinfia: Querandi (1A–45).
	Wassmer: (WA–50).
	Malmo: Vipan (MF1–10).
	Cessna Aircraft: Skyhawk.
	Doyn Aircraft: Doyn-Piper (PA–23 "160").
O–360–A1F6	Cessna Aircraft: Cardinal.
O–360–A1F6D	Cessna Aircraft: Cardinal 177.
	Teal III: TSC (1A3).
O–360–A1G6	Aero Commander.
O–360–A1G6D	Beech Aircraft: Duchess 76.
O–360–A1H6	Piper Aircraft: Seminole (PA–44).
O–360–A1LD	Wassmer: Europa WA–52.

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

O–360–A1P	Aviat: Husky.
O–360–A2A	Center Est Aeronautique: Regente (DR–253).
	S.O.C.A.T.A.: Rallye Commodore (MS–893).
	Societe Aeronautique Normande: Mousquetaire (D–140).
	Bolkow: Klemm (K1–107C).
	Partenavia: Oscar (P–66).
	Beagle: Husky (D5–180) (J1–U).
O–360–A2D	Piper Aircraft: Comanche (PA–24), Cherokee "C" (PA–28 "180").
	Mooney Aircraft: Master "21" (M–20D), Mark "21" (M–20E).
O–360–A2E	Std. Helicopter.
O–360–A2F	Aero Commander: Lark (100).
	Cessna Aircraft: Cardinal.
O–360–A2G	Beech Aircraft: Sport.
O–360–A3A	C.A.A.R.P.S.A.N.: (M–23III).
	Societe Aeronautique Normande: Jodel (D–140C).
	Robin: Regent (DR400/180), Remorqueur (DR400/180R). R–3170.
	S.O.C.A.T.A.: Rallye 180GT, Sportavia Sportsman (RS–180).
	Norman Aeroplace Co.: NAC–1 Freelance.
	Nash Aircraft Ltd.: Petrel.
O–360–A3AD	S.O.C.A.T.A.: TB–10.
	Robin: Aiglon (R–1180T).
O–360–A4A	Piper Aircraft: Cherokee "D" (PA–28 "180").
O–360–A4D	Varga: Kachina.
O–360–A4G	Beech Aircraft: Musketeer Custom III.
O–360–A4K	Grumman American: Tiger.
	Beech Aircraft: Sundowner 180.
O–360–A4M	Piper Aircraft: Archer II (PA–28 "18").
	Valmet: PIK–23.
O–360–A4N	Cessna Aircraft: 172 (Optional).
O–360–A4P	Penn Yan: Super Cub Conversion.
O–360–A5AD	C. Itoh and Co.: Fuji FA–200.
O–360–B2C	Seabird Aviation: SB7L.
O–360–C1A	Intermountain Mfg. Co.: Call Air (A–6).
O–360–C1E	Bellanca Aircraft: Scout (8GCBC–CS).
O–360–C1F	Maule: Star Rocket MX–7–180.
O–360–C1G	Christen: Husky (A–1).
O–360–C2B	Hughes Tool Co.: (269A).
O–360–C2D	Hughes Tool Co.: (269A).
O–360–C2E	Hughes Tool Co.: (YHO–2HU) Military.
	Bellanca Aircraft: Scout (8GCBC FP).
O–360–C4F	Maule: MX–7–180A.
O–360–C4P	Penn Yan: Super Cub Conversion.
O–360–F1A6	Cessna Aircraft: Cutlass RG.
O–360–J2A	Robinson: R22.
IO–360–B1A	Beech Aircraft: Travel-Air (B–95A).
	Doyn Aircraft: Doyn-Piper (PA–23 "200").
IO–360–B1B	Beech Aircraft: Travel-Air (B–95B).
	Doyn Aircraft: Doyn-Piper (PA–23 "200").
	Fuji: (FA–200).
IO–360–B1D	United Consultants: See-Bee.
IO–360–B1E	Piper Aircraft: Arrow (PA–28 "180R").
IO–360–B1F	Utva: 75.
IO–360–B2E	C.A.A.R.P. C.A.P. (10).
IO–360–B1F6	Great Lakes: Trainer.
IO–360–B1G6	American Blimp: Spector 42.
IO–360–B2F6	Great Lakes: Trainer.
LO–360–A1G6D	Beech Aircraft: Duchess.
LO–360–A1H6	Piper Aircraft: Seminole (PA–44).
IO–360–E1A	T.R. Smith Aircraft: Aerostar.
IO–360–L2A	Cessna Aircraft: Skyhawk C–172.
IO–360–M1A	Diamond Aircraft: DA–40.
IO–360–M1B	Vans Aircraft: RV6, RV7, RV8
	Lancair: 360.
AEIO–360–B1F	F.F.A.: Bravo (200).
	Grob: G115/Sport-Acro.
AEIO–360–B1G6	Great Lakes.
AEIO–360–B2F	Mundry: CAP–10.
AEIO–360–B4A	Pitts: S–1S.
AEIO–360–H1A	Bellanca Aircraft: Super Decathalon (8KCAB–180).
AEIO–360–H1B	American Champion: Super Decathalon.
VO–360–A1A	Brantly Hynes Helicopter: (B–2).
VO–360–A1B	Brantly Hynes Helicopter: (B–2, B2–A). Military (YHO–3BR).
VO–360–B1A	Brantly Hynes Helicopter: (B–2, B2–A).
IVO–360–A1A	Brantly Hynes Helicopter: (B2–B).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

HO–360–B1A	Hughes Tool Co.: (269A).
HO–360–B1B	Hughes Tool Co.: (269A).
HO–360–C1A	Schweizer: (300C).
HIO–360–B1A	Hughes Tool Co.: Military (269–A–1) (TH–55A).
HIO–360–B1B	Hughes Tool Co.: (269A).
HIO–360–G1A	Schweizer: (CB).
O–540–A1A	Rhein-Flugzeugbau: (RF–1).
O–540–A1A5	Piper Aircraft: Comanche (PA–24 ''180'').
	Helio: Military (H–250).
	Yoeman Aviation: (YA–1).
O–540–A1B5	Piper Aircraft: Aztec (PA–23 ''250''), Comanche (PA–24 ''250'').
O–540–A1C5	Piper Aircraft: Comanche (PA–24 ''250'').
O–540–A1D	Found Bros.: (FBA–2C).
	Dornier: (DO–28–B1).
O–540–A1D5	Piper Aircraft: Aztec (PA–23 ''250''), Comanche (PA–24 ''250''), Military Aztec (U–11A).
	Dornier: (DO–28).
O–540–A2B	Aero Commander: (500).
	Mid-States Mfg. Co.: Twin Courier (H–500), (U–5).
O–540–A3D5	Piper Aircraft: Navy Aztec (PA–23 ''250'').
O–540–B1A5	Piper Aircraft: Apache (PA–23 ''235'').
O–540–B1B5	Piper Aircraft: Comanche (PA–24 ''250'').
	Doyn Aircraft: Doyn-Piper (PA–24 ''250'').
O–540–B1D5	Wassmer: (WA–421).
O–540–B2B5	Piper Aircraft: Pawnee (PA–25 ''235''), Cherokee (PA –28 ''235''), Aztec (PA–23 ''235'').
	Intermountain Mfg. Co.: Call Air (A–9).
	Rawdon Bros.: Rawdon (T–1).
	S.O.C.A.T.A.: Rallye 235CA.
O–540–B2C5	Piper Aircraft: Pawnee (PA–25 ''235'').
O–540–B4B5	Piper Aircraft: Cherokee (PA–28 ''235'').
	Embraer: Corioca (EMB–710).
	S.O.C.A.T.A.: Rallye 235GT, Rallye 235C
	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
O–540–E4A5	Piper Aircraft: Comanche (PA–24 ''260'').
	Aviamilano: Flamingo (F–250).
	Siai-Marchetti: (SF–260), (SF–208).
O–540–E4B5	Britten-Norman: (BN–2).
	Piper Aircraft: Cherokee Six (PA–32 ''260'').
O–540–E4C5	Pilatus Britten-Norman: Islander (BN–2A–26), Islander (BN–2A–27), Islander II (BN–2B–26), Islander (BN–2A–21),Trislander (BN–2A–Mark III–2).
O–540–F1B5	Omega Aircraft: (BS–12D1).
	Robinson: (R–44).
O–540–G1A5	Piper Aircraft: Pawnee (PA–25 ''260'').
O–540–H1B5D	Aero Boero: 260.
O–540–H2A5	Embraer: Impanema ''AG''.
	Gippsland: GA–200.
O–540–H2B5D	Aero Boero: 260.
O–540–J1A5D	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
O–540–J3A5	Robin: R–3000/235.
O–540–J3A5D	Piper Aircraft: Dakota (PA–28–236).
O–540–J3C5D	Cessna Aircraft: Skylane RG.
O–540–L3C5D	Cessna Aircraft: TR–182, Turbo Skylane RG.
O–540–C1B5	Piper Aircraft: Aztec B (PA–23 ''250''), Comanche (PA–24 ''250'').
IO–540–C1C5	Riley Aircraft: Turbo-Rocket.
IO–540–C4B5	Piper Aircraft: Aztec C (PA–23 ''250''), Aztec F.
	Wassmer: (WA–421).
	Avions Pierre Robin: (HR100/250).
	Bellanca Aircraft: Aries T–250.
	Aerofab: Renegade 250.
IO–540–C4D5	S.O.C.A.T.A.: TB–20.
IO–540–C4D5D	S.O.C.A.T.A.: Trinidad TB–20.
IO–540–D4A5	Piper Aircraft: Comanche (PA–24 ''260'').
	Siai-Marchetti: (SF–260).
IO–540–D4B5	Cerva: (CE–43 Guepard).
IO–540–J4A5	Piper Aircraft: Aztec (PA–23 ''250'').
IO–540–R1A5	Piper Aircraft: Comanche (PA–24).
IO–540–T4A5D	General Aviation: Model 114.
IO–540–T4B5	Commander: 114B.
IO–540–T4B5D	Rockwell: 114.
IO–540–T4C5D	Lake Aircraft: Seawolf.
IO–540–V4A5	Maule: MT–7–260, M–7–260.
	Aircraft Manufacturing Factory.
IO–540–V4A5D	Brooklands: Scoutmaster.
IO–540–W1A5	Maule: MX–7–235, MT–7–235, M7–235.
IO–540–W1A5D	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

IO–540–W3A5D	Schweizer: Power Glider.
AEIO–540–D4A5	Christen: Pitts (S–2S), (S–2B).
	Siai-Marchetti: SF–260.
	H.A.L.: HPT–32.
	Slingsby: Firefly T3A.
AEIO–540–D4B5	Moravan: Zlin-50L.
	H.A.L.: HPT–32.
AEIO–540–D4D5	Burkhart Grob: Grob G, 115T Aero.
TIO–540–C1A	Piper Aircraft: Turbo Aztec (PA–23–250).
TIO–540–K1AD	Piper Aircraft.
TIO–540–AA1AD	Aerofab Inc.: Turbo Renegade (270).
TIO–540–AB1AD	S.O.C.A.T.A.: Trinidad TC TB–21.
TIO–540–AB1BD	Schweizer.
TIO–540–AF1A	Mooney Aircraft: "TLS" M20M.
TIO–540–AG1A	Commander Aircraft: 114TC.
TIO–540–AK1A	Cessna Aircraft: Turbo Skylane T182T.
LTIO–540–K1AD	Piper Aircraft.

Unsafe Condition

(d) This AD results from reports of applicability errors found in AD 2005–26–10. We are issuing this AD to prevent loss of engine power due to cracks in the cylinder assemblies and possible engine failure caused by separation of a cylinder head.

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.

Engines Not Overhauled or Repaired Since New

(f) If your engine has not been overhauled or had any major repair since new, no further action is required.

Engines Overhauled or Repaired Since New

(g) If your engine was overhauled or repaired since new, do the following:

(1) Determine if ECi cylinder assemblies, P/N AEL65102 series ''Classic Cast'', having casting head markings EC 65099–REV–1 and SNs 1 through 9879 (SN may have an ''L'' prefix for a long reach spark plug) are installed on your engine, as follows:

(i) Inspect the engine log books and maintenance records for reference to the subject ECi cylinder assemblies.

(ii) If the engine log books and maintenance records did not record the P/N and SN of the cylinder assemblies, visually inspect the cylinder assemblies and verify the P/N and SN of the cylinder assemblies.

(2) If the cylinder assemblies are not ECi, P/N AEL65102 series ''Classic Cast'', having casting head markings EC 65099–REV–1, no further action is required.

(3) If any cylinder assembly is an ECi P/N AEL65102 series ''Classic Cast'', having casting head markings EC 65099–REV–1 and a SN 1 through 9879 (SN may have an ''L'' prefix for a long reach spark plug), do the following:

(i) If the cylinder assembly has fewer than 800 operating hours-in-service (HIS) on the effective date of this AD, replace the cylinder assembly at no later than 800 operating HIS. No action is required until the operating HIS reaches 800 hours.

(ii) If the cylinder assembly has 800 operating HIS or more on the effective date of this AD, replace the cylinder assembly within 60 operating HIS after the effective date of this AD.

Definition of a Replacement Cylinder Assembly

(h) For the purpose of this AD, a replacement cylinder assembly is defined as follows:

(1) A serviceable cylinder assembly made by Lycoming Engines.

(2) A serviceable FAA-approved, Parts Manufacturer Approval cylinder assembly from another manufacturer.

(3) A serviceable ECi cylinder assembly, P/N AEL65102 series, ''Titan'', having casting P/N AEL85099.

(4) A serviceable ECi cylinder assembly, P/N AEL65102 series ''Classic Cast'', having casting head markings EC 65099–REV–1, that has a SN 9880 or higher (SN may have an ''L'' prefix for a long reach spark plug).

Prohibition of Cylinder Assemblies, P/N AEL65102 Series ''Classic Cast'', Having Casting Head Markings EC 65099–REV–1 and SNs 1 Through 9879

(i) After the effective date of this AD, do not install any ECi cylinder assembly, P/N AEL65102, having casting head markings EC 65099–REV–1 that has a SN 1 through 9879 (SN may have an ''L'' prefix for a long reach spark plug), onto any engine.

Alternative Methods of Compliance

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

Related Information

(k) ECi Service Bulletin No. 05–08, Revision 2, dated February 28, 2006, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on May 31, 2006.

Thomas A. Boudreau,

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

[FR Doc. 06–5127 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24966; Directorate Identifier 2006–NM–049–AD; Amendment 39–14629; AD 2006–12–04]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Model DHC–7 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 Viking Air Limited Model DHC–7 airplanes. This AD requires revising the FAA-approved Airworthiness Limitations section of the airplane maintenance manual to prohibit operation of the airplane past its designed life limit for the primary structure, which is 80,000 total flight cycles. This AD also requires contacting the FAA for approval of analysis that substantiates that the airplane is safe to continue operation beyond the designed life limit. This AD results from a report that the designed life limit for the primary structure for the affected airplanes is 80,000 total flight cycles. We are issuing this AD to prevent continued operation of an airplane beyond its designed life limit for the primary structure, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective June 21, 2006.

We must receive comments on this AD by August 7, 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: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Viking Air Limited Model DHC–7 airplanes. TCCA advises that the designed life limit for the primary structure for the affected airplanes is 80,000 total flight cycles. TCCA states that the operator's approved maintenance schedule should be revised to prohibit operators from flying the airplane after it reaches its design goal, unless the operator complies with further inspections and/or modifications. Continued operation of an airplane beyond its designed life limit for the primary structure, if not corrected, could result in reduced structural integrity of the airplane.

TCAA issued Canadian airworthiness directive CF–2005–36, dated September 28, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in Canada and is 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. Pursuant to this bilateral airworthiness agreement, the TCCA has kept the FAA informed of the situation described above. We have examined the TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD, which would require revising the Airworthiness Limitations section of the Bombardier DHC–7 Dash 7 maintenance manual and the Dash 7 Series 150 maintenance manual to prohibit operation of the airplane past its designed life limit for the primary structure, which is 80,000 total flight cycles. This AD also requires contacting the FAA for approval to continue operation beyond the designed life limit.

Differences Between This AD and the Canadian Airworthiness Directive

The Canadian airworthiness directive specifies that operators should ground airplanes that have reached the designed life limit until operators provide data to substantiate compliance with Canadian Airworthiness Regulation CAR 511.34. This AD requires that operators contact the FAA to substantiate continued safe operation beyond the designed life limit of 80,000 total flight cycles.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required AMM revision will take about 1 work hour per airplane at an average labor rate of $80 per work hour. Based on these figures, the cost of the AMM revision for U.S. operators will be $80 per airplane. We recognize that this AD may impose certain additional operational costs. However, we cannot calculate those costs because we cannot predict the extent of any necessary repairs to ensure the continued airworthiness of the affected airplanes.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

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–2006–24966; Directorate Identifier 2006–NM–049–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):

2006–12–04 Viking Air Limited (Formerly Bombardier, Inc.): Amendment 39–14629. Docket No. FAA–2006–24966; Directorate Identifier 2006–NM–049–AD.

Effective Date

(a) This AD becomes effective June 21, 2006.

Affected ADs

(b) None

Applicability

(c) This AD applies to Viking Air Limited Model DHC–7–1, DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 airplanes, certificated in any category; except airplanes having serial numbers 3 through 10 inclusive, 12 through 14 inclusive, and 16 through 27 inclusive.

Unsafe Condition

(d) This AD results from a report that the designed life limit for the primary structure for the affected airplanes is 80,000 total flight cycles. We are issuing this AD to prevent continued operation of an airplane beyond its designed life limit for the primary structure, which could result in reduced structural integrity of the airplane.

Compliance

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

Airworthiness Limitations Revision

(f) Within 30 days after the effective date of this AD: Revise the FAA-approved Airworthiness Limitations section (ALS) of the Bombardier DHC–7 Dash 7 maintenance manual and the Dash 7 Series 150 maintenance manual to state the following (this may be done by inserting a copy of this AD into the ALS). Thereafter, maintain the airplane in accordance with the limitations specified in these maintenance manual revisions:

''Do not operate the airplane beyond 80,000 total flight cycles.''

(g) When the statement specified in paragraph (f) of this AD has been included in the general revisions of the ALS, the general revisions may be incorporated into the ALS and the copy of the AD may be removed from the ALS.

(h) The airworthiness limitation specified in paragraph (f) of this AD may be removed from the maintenance manuals specified in paragraph (f) of this AD after the Manager, New York Aircraft Certification Office (ACO), FAA, approves analysis that substantiates continued safe operation beyond the designed life limit of 80,000 total flight cycles.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Canadian airworthiness directive CF–2005–36, dated September 28, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) None.

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5119 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection, 200 Milligram/Milliliter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to correct the indications for use for the 200 milligram (mg)/milliliter (mL) strength of oxytetracycline injectable solution used in beef cattle for the treatment and control of various bacterial diseases. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective June 6, 2006.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that the April 1, 2005, edition of Title 21 parts 500 to 599 of the Code of Federal Regulations (CFR) does not accurately reflect the approved indications for use for the 200 mg/mL strength of oxytetracycline injectable solution. Certain indications of use for the 300 mg/mL strength of oxytetracycline injectable solution appear to have been included as an error in the section for the 200 mg/mL strength solution during reformatting (69 FR 31878, June 8, 2004). At this time, FDA is amending the regulations in 21 CFR 522.1660a to reflect the correct approved indications for use. This action is being taken to improve the accuracy of the regulations.

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 in 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 part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1660a [Amended]

■ 2. In § 522.1660a, remove paragraphs (e)(1)(i)(D) and (e)(1)(i)(E).

Dated: May 25, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–8694 Filed 6–5–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9265]

RIN 1545–BF48

Guidance Under Section 7874 Regarding Expatriated Entities and Their Foreign Parents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 7874 of the Internal Revenue Code (Code) relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B) of the Code. The text of these temporary regulations also serves as the text of the proposed regulations (REG–112994–06) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective June 6, 2006.

Applicability Dates: For dates of applicability, *see* § 1.7874–2T(j).

FOR FURTHER INFORMATION CONTACT: Milton Cahn, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Section 7874—Overview

This document contains temporary amendments to 26 CFR part 1 under section 7874 of the Internal Revenue Code (Code). Section 7874 provides rules for expatriated entities and their surrogate foreign corporations. An expatriated entity is defined in section 7874(a)(2)(A) as a domestic corporation or partnership with respect to which a foreign corporation is a surrogate foreign corporation, and also as any U.S. person related (within the meaning of section 267(b) or 707(b)(1)) to such domestic corporation or partnership.

A foreign corporation is treated as a surrogate foreign corporation under section 7874(a)(2)(B), if, pursuant to a plan or a series of related transactions: (i) The foreign corporation directly or indirectly acquires substantially all the properties held directly or indirectly by a domestic corporation, or substantially all the properties constituting a trade or business of a domestic partnership; (ii) after the acquisition at least 60 percent of the stock (by vote or value) of the foreign corporation is held by (in the case of an acquisition with respect to a domestic corporation) former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or (in the case of an acquisition with respect to a domestic partnership) by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership (ownership percentage test); and (iii) the expanded affiliated group that includes the foreign corporation (EAG) does not have business activities in the foreign country in which the foreign corporation was created or organized that are substantial when compared to the total business activities of the EAG. Section 7874(c)(1) defines the term *expanded affiliated group* as an affiliated group defined in section 1504(a) but without regard to the exclusion of foreign corporations in section 1504(b)(3) and with a reduction of the 80 percent ownership threshold of section 1504(a) to a more-than-50 percent ownership threshold.

The tax treatment of expatriated entities and surrogate foreign corporations varies depending on the level of owner continuity. If the percentage of stock (by vote or value) in the surrogate foreign corporation held by former owners of the domestic entity, by reason of holding an interest in the domestic entity, is 80 percent or more, the surrogate foreign corporation is treated as a domestic corporation for all purposes of the Code. If such ownership percentage is 60 percent or more (but less than 80 percent), the surrogate foreign corporation is treated as a foreign corporation but certain income or gain required to be recognized by the expatriated entity under section 304, 311(b), 367, 1001, or any other applicable provision with respect to the transfer of property (other than inventory or similar property) or the license of property cannot be offset by net operating losses or credits (other than credits allowed under section 901). These measures generally apply from the first date properties are acquired pursuant to the plan through the end of the 10-year period following the completion of the acquisition.

Section 7874(c)(4) provides that transfers of properties or liabilities (including by contribution or distribution) are disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of the section.

The IRS and Treasury Department have broad authority to issue regulations under section 7874. Section 7874(c)(6) authorizes the Secretary of the Treasury to prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and to treat stock as not stock. In addition, under section 7874(g) the Secretary of the Treasury is authorized to provide regulations needed to carry out the section. Those regulations could include guidance providing adjustments to the application of the section as are necessary to prevent the avoidance of the section, including avoidance through the use of related persons, pass-through or other non-corporate entities, or other intermediaries.

The legislative history of section 7874 indicates that the section was intended to apply to so-called inversion transactions in which a U.S. parent corporation of a multinational corporate group is replaced by a foreign entity. *See* H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess., at 568 (Oct. 7, 2004). The Senate Finance Committee stated its belief ''that inversion transactions resulting in a minimal presence in a foreign country of incorporation are a means of avoiding U.S. tax and should be curtailed.'' S. Rep. No. 108–192, 108th Cong., 1st Sess., at 142 (Nov. 7, 2003). In particular, Congress believed that such transactions permit corporations and other entities to

continue to conduct business in the same manner as they did prior to the inversion, but with the result that the group that includes the inverted entity avoids U.S. tax on foreign operations and may engage in earnings-stripping techniques to avoid U.S. tax on U.S. operations. *See* S. Rep. No. 108–192, at 142 (Nov. 7, 2003); *see also* Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress, at 343 (May 2005).

The IRS and Treasury Department have issued temporary and proposed regulations under section 7874 relating to the application of section 7874(c)(2) (affiliated-owned stock rule), under which stock held by members of the expanded affiliate group that includes the acquiring foreign corporation (EAG) is not taken into account for purposes of the ownership percentage test of section 7874(a)(2)(B)(ii). *See* TD 9238, 2006–6 I.R.B. 408 (Feb. 6, 2006). Those regulations ensure that the affiliated-owned stock rule cannot be used to avoid the application of section 7874, through the use of hook stock or otherwise, to situations where that provision should apply. In addition, those regulations ensure that this test does not apply to certain transactions that are properly viewed as outside the scope of section 7874.

B. Temporary and Proposed Regulations

The temporary and proposed regulations provide guidance on the determination of whether a foreign entity is treated as a surrogate foreign corporation under section 7874(a)(2)(B) of the Code. In particular, the regulations address the indirect acquisition of properties, stock held by reason of holding an interest in a domestic entity, the substantial business activities of an EAG, prevention of the avoidance of section 7874 in certain circumstances, and certain effects of being treated as a domestic corporation under section 7874(b).

1. Indirect Acquisition of Properties

Section 7874 does not apply unless a foreign entity completes a direct or indirect acquisition of defined properties. The legislative history of the section indicates that Congress intended the acquisition of stock in a corporation to be considered an indirect acquisition of the properties held directly or indirectly by the corporation. *See* H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess., at 573 (Oct. 7, 2004) (''U.S. corporation becomes a subsidiary of a foreign incorporated entity or otherwise transfers substantially all of its properties''). The IRS and Treasury Department believe that guidance regarding the indirect acquisition of properties held directly or indirectly by a domestic corporation is needed to refine further the parameters of the provision's scope.

The statute also applies to indirect acquisitions of properties constituting a trade or business of a domestic partnership. The IRS and Treasury Department are considering guidance regarding the application of this part of the statute, but are not issuing any such guidance at this time.

2. Stock Held by Reason of Holding an Interest in the Domestic Entity

Section 7874 requires a determination of the amount of stock in the acquiring foreign entity that is held by former shareholders or partners of the domestic corporation or partnership ''by reason of'' their holding stock or a partnership interest in the domestic entity. The IRS and Treasury Department believe that guidance is needed as to how this determination is made in certain circumstances.

3. Substantial Business Activities of the EAG

Section 7874 does not apply if the EAG has business activities in the foreign country in which, or under the laws of which, the acquiring foreign entity was created or organized that are substantial when compared to the total business activities of the EAG. The IRS and Treasury Department believe that Congress was concerned about transactions where the new foreign parent entity is incorporated in a country in which the EAG does not have a bona fide business presence that is meaningful in the context of the group's overall business. *See* S. Rep. No. 108–192, 108th Cong., 2d Sess., at 142 (Nov. 7, 2003) (''The Committee believes that inversion transactions resulting in minimal presence in a foreign country of incorporation are a means of avoiding U.S. tax and should be curtailed.''). The IRS and Treasury Department believe that guidance is necessary to ensure proper application of the substantial-business-activities rule.

4. Preventing Avoidance of the Purposes of the Section

(i). Publicly Traded Foreign Partnership as Acquiring Entity

The IRS and Treasury Department are aware of recent transactions in which taxpayers have attempted to avoid the application of section 7874 through the use of a foreign partnership. These transactions involve the acquisition of substantially all the properties of a domestic corporation or partnership by a foreign entity that is considered a foreign partnership for U.S. federal income tax purposes, despite the fact that interests in the entity are (or will be) publicly traded on a securities exchange. Although a partnership is a flow-through entity for Federal income tax purposes, the substitution of a foreign partnership for a domestic corporation as the parent entity of a multinational group can create many of the same opportunities for U.S. tax avoidance that Congress sought to curtail by enacting section 7874 (namely, removal of foreign operations from U.S. taxing jurisdiction and the use of earnings-stripping techniques to reduce U.S. tax on income from domestic operations). Section 7874(g) is intended to provide authority to address these types of issues.

Under section 7704 of the Code, a publicly traded partnership is generally treated as a corporation for all purposes of the Code. Section 7704(c), however, generally provides an exception from corporate treatment if 90 percent or more of the partnership's gross income for a taxable year consists of passive income such as dividends. This exception does not apply on a look-through basis in the case of payments from related parties, so the exception can be satisfied even if the underlying earnings from which the income is paid are not passive in nature. The legislative history of section 7704 indicates that the rationale for this exception was to preserve flow-through tax treatment where a partnership simply holds investments that the partners could have independently acquired, as opposed to business activities that would normally be conducted in corporate form and taxed at the entity level. *See* H.R. Rep. 100–391 (Oct. 26, 1987) at 1066–1067. In the case of a foreign eligible entity that acquires directly or indirectly substantially all the properties of a domestic corporation, or substantially all the properties constituting a trade or business of a domestic partnership, the rationale for the exception provided by section 7704(c) does not clearly apply.

The IRS and Treasury Department believe it is appropriate to exercise their regulatory authority under section 7874(g) to make adjustments to the application of the section to prevent avoidance of the purpose of the section through the use of certain non-corporate entities. In the absence of regulations making a relevant adjustment to the application of the section, a publicly traded foreign partnership that is not treated as a corporation under section 7704 arguably might not be treated as a surrogate foreign corporation under

section 7874(a)(2)(B) on the grounds that the entity is considered a partnership rather than a corporation for Federal income tax purposes. The IRS and Treasury Department believe that it is contrary to the broad anti-abuse purposes of section 7874 for the provisions to be avoided in circumstances raising the same type of earnings stripping and other concerns simply by substituting a partnership for a corporation as the acquiring entity (often through the ease of a check the box election). To ensure that the purposes of section 7874 are not avoided in this manner, the regulations provide that a publicly traded foreign partnership that is not treated as a corporation under section 7704 will be treated as a foreign corporation for purposes of applying section 7874(a)(2)(B) to determine whether the acquiring foreign entity is a surrogate foreign corporation.

(ii). Options and Similar Interests

The IRS and Treasury Department are also concerned that taxpayers may attempt to avoid the purposes of section 7874 through the use of options and similar interests related to stock of the foreign acquirer. Congress foresaw the possibility of this type of avoidance and provided a specific grant of regulatory authority in this regard in section 7874(c)(6). The IRS and Treasury Department believe it is appropriate to exercise that authority at this time.

5. Effects of Section 7874(b)

Under section 7874(b), a foreign corporation is treated for purposes of the Code as a domestic corporation if it would be a surrogate foreign corporation if the continuing ownership threshold of section 7874(a)(2)(B)(ii) were 80 percent rather than 60 percent. This ''domestication'' rule gives rise to certain issues relating to the application of other provisions of the Code. The IRS and Treasury Department believe that guidance on these issues is necessary to avoid uncertainty.

Explanation of Provisions

A. Indirect Acquisition of Properties Held by a Domestic Corporation

Commentators requested that specific guidance be provided regarding the application of section 7874 to acquisitions of stock, to clarify that such acquisitions are indirect acquisitions of the properties held by the corporation whose stock is acquired.

To this end, section 1.7874–2T(b) of the regulations provides that, for purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of stock in a domestic corporation is considered to be an indirect acquisition of a proportionate amount of the properties held directly or indirectly by the domestic corporation. Further, the regulations provide that an acquisition by a foreign corporation of an interest in a partnership that holds stock in a domestic corporation is considered an indirect acquisition of a proportionate amount of the properties held directly or indirectly by the domestic corporation.

The regulations also provide that a foreign corporation's acquisition of stock in a second foreign corporation is not considered an indirect acquisition by the first foreign corporation of any properties held by a domestic corporation or domestic partnership owned wholly or partly by the second foreign corporation. The IRS and Treasury Department believe that it was not Congress's intent for section 7874 to apply to indirect acquisitions by foreign corporations of domestic entities that were already owned by a foreign corporation before the acquisition. *See* H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess., at 568 (Oct. 7, 2004).

Finally, the regulations provide that, in acquisitions in which a corporation (either domestic or foreign) which is under the control of a foreign corporation acquires the stock or assets of a domestic corporation in exchange for stock of the controlling foreign corporation, such foreign corporation will be considered to have made the acquisition of a proportionate amount of the domestic corporation's stock or assets.

B. Stock Held by Reason of Holding an Interest in the Domestic Entity

Section 1.7874–2T(c) of the regulations provides that, for purposes of section 7874(a)(2)(B)(ii), stock of the acquiring foreign entity that is received in exchange for stock of a domestic corporation, or in exchange for a capital or profits interest in a domestic partnership, is considered to be stock held by reason of holding stock in the domestic corporation or holding the interest in the domestic partnership, as the case may be. Moreover, the regulations provide that, where, in the same transaction or series of related transactions, other property is also contributed to the foreign entity in exchange for its stock, the amount of stock held by a former shareholder of the domestic corporation or former partner of the domestic partnership for section 7874 purposes is determined on the basis of the relative value of the property in exchange for which the foreign entity's stock was issued. This rule is subject to the potential application of section 7874(c)(4), which requires that transfers be disregarded if they occur as part of a plan to avoid the purposes of section 7874.

The regulations also provide, for purposes of clarity, that the terms *former shareholders* and *former partners* mean any persons who held an ownership interest in the domestic entity before the acquisition, regardless of whether they continue to hold such an interest in the domestic entity after the acquisition.

C. Substantial Business Activities in the Foreign Country of Incorporation

The regulations provide both an all-facts-and-circumstances test and a bright-line safe harbor test of whether an EAG has substantial business activities in the acquiring foreign entity's country of incorporation when compared to the total business activities of the EAG. The IRS and Treasury Department believe that this dual approach appropriately provides taxpayers with the certainty of an objective and clear safe harbor, while preserving the ability of a taxpayer to conclude, in a case that is not within the scope of the safe harbor, that section 7874 is not applicable to a foreign entity's acquisition of the stock or assets of a domestic entity where, after the acquisition, the group has a meaningful and bona fide business presence in the relevant foreign country. This dual approach was also recommended by a commentator.

1. Facts and Circumstances Test

Section 1.7874–2T(d)(1) of the regulations provides, as a general rule, that the determination of whether the EAG has substantial business activities in the relevant foreign country, when compared to the total business activities of the EAG, will be based on an analysis of all the facts and circumstances of each case. The regulations set forth a non-exclusive list of factors to be considered in the analysis. The weight given to any factor will depend on the particular circumstances. The listed factors include, among other factors, the EAG's local employee headcount and payroll, property, and sales; the EAG's historical presence in the foreign country; its management activities in the country; and the strategic importance to the EAG as a whole of the business activities in that country.

The regulations state that the presence or absence of any factor, or any particular number of factors, in the list is not determinative, and that there is no minimum percentage of the group's total employee headcount, payroll, assets, or sales that must be shown to be in the

foreign country. Nevertheless, the determination of substantiality for this purpose must be made on the basis of a comparison to the total activities of the EAG, and the factors in the list must be evaluated accordingly.

Congress intended to prevent taxpayers from avoiding section 7874 through tax-motivated transfers of properties or liabilities, by providing in section 7874(c)(4) that such transfers shall be disregarded. Therefore, in analyzing the facts and circumstances to determine whether an EAG's business activities in the relevant foreign country are substantial within the meaning of the statute, it is necessary to disregard any assets, liabilities or activities in the foreign country that were transferred pursuant to a plan a principal purpose of which was to avoid section 7874.

The regulations also provide that certain factors are not to be given weight in making the determination under the facts and circumstances test. These factors include any assets that are temporarily located in the foreign country for the purpose of avoiding the purposes of section 7874.

Although the list of factors to be disregarded does not include passive assets, the IRS and Treasury Department believe that the statutory phrase ''business activities'' ordinarily does not include passive investment activities and related income and assets. Investment assets may include intangible assets that have significant value but are not being exploited by any member of the EAG in the course of active business activities. In contrast, intangibles that are used in the course of active business operations by EAG members will normally be accorded due weight by the IRS in the application of the all-facts-and-circumstances test. In order to preserve a wide breadth for the all-facts-and-circumstances rule, investment assets and income have not been included in the list of factors to be given no weight, but it is expected that such passive assets and income normally would not be given any significant weight.

2. Safe Harbor Test

Section 1.7874–2T(d)(2) of the regulations sets forth an alternative, safe harbor test for determining whether, after the acquisition, an EAG has substantial business activities in the relevant foreign country, when compared to the total business activities of the EAG. The safe harbor test will only be satisfied by an EAG that has a substantial and bona fide business presence in the relevant foreign country. The IRS and Treasury Department intend, however, that even if the EAG does not satisfy the safe harbor test, it still may satisfy the facts and circumstances test of § 1.7874–2T(d)(1). This safe harbor test is consistent with the approach suggested by a commentator.

The safe harbor test is satisfied if the EAG satisfies three conditions, relating to employees, assets, and sales. Under section 7874, the determination of whether an EAG's business activities in the relevant foreign country are substantial when compared to the total business activities of the EAG is to be made ''after the acquisition.'' Given the practical difficulty of measuring the various business factors on dates other than the periodic dates during the year as of which an EAG's management accounts are prepared, the regulations provide for the determination of group employees, assets, and sales during a twelve month testing period ending on the last day of the monthly or quarterly accounting period in which the completion of the acquisition occurs. Moreover, the determination of facts existing on that day for purposes of the safe harbor rule is subject to the application of section 7874(c)(4), under which any transfer is disregarded if made pursuant to a plan a principal purpose of which is to avoid the purposes of section 7874.

The first condition of the safe harbor rule is that, after the acquisition, the group employees based in the foreign country account for at least 10 percent (by headcount and compensation) of total group employees.

The term *group employee* is defined as a common law employee of one or more group members on a full time basis throughout the twelve-month testing period. An employee is considered to be based in a country only if the employee spent more time providing services in such country than in any other country throughout such twelve-month period.

The second condition is that, after the acquisition, the total value of the group assets located in the foreign country represents at least 10 percent of the total value of all group assets.

The term *group assets* is defined as tangible property used or held for use in the active conduct of a trade or business by a group member. An item of tangible personal property is considered to be located in a country only if such item was physically present in such country for more time than in any other country during the twelve-month testing period. Value is determined on a gross basis (that is, without reduction for liabilities) after the acquisition. Group assets acquired or transferred as part of a plan a principal purpose of which is to avoid the application of section 7874 are disregarded.

The IRS and Treasury Department specifically excluded intangible assets from the definition of group assets, even though intangibles may be used in the course of active business operations. The reason for excluding intangibles is that they frequently present difficult factual issues relating to their use, value, and location. Therefore, their inclusion in the definition of group assets for purposes of the safe harbor test would introduce a significant element of uncertainty in many cases as to the application of the safe harbor rule. Given that the purpose of the safe harbor rule is to provide a clear, bright-line test, it was decided that the definition of group assets should not include intangibles. This exclusion was also suggested by a commentator.

The third condition of the safe harbor rule is that, during the twelve-month testing period, the group sales made in the foreign country accounted for at least 10 percent of total group sales.

The term *group sales* is defined as sales by group members, measured by gross receipts from such sales. Group sales are considered to be made in a particular country only if the services, goods or other property transferred by those sales are sold for use, consumption or disposition in that country. The term ''sales'' includes sales of services and of the use of property as well as sales involving the transfer of title to personal property.

Consideration was given to the use of thresholds higher than the 10 percent figure used in the safe harbor rule. However, based on comments received, the IRS and Treasury Department believe that 10 percent is a reasonable threshold.

D. Prevention of Avoidance of Section 7874

1. Acquisitions by Publicly Traded Foreign Partnerships

It has been brought to the attention of the IRS and Treasury that taxpayers are implementing structures (including partnership structures) that result in many of the same overall tax consequences as structures that Congress intended to be subject to section 7874, but are taking the position that these structures are not within the scope of section 7874. As a result, the IRS and Treasury Department have identified acquisitions by certain publicly traded foreign partnerships as a category of transactions requiring a special rule in order to prevent avoidance of the purposes of section 7874. Section 7874(g) provides broad

regulatory authority to adjust the application of the section to prevent avoidance of the purposes of the section through the use of non-corporate entities. Commentators have also agreed that this authority exists. Accordingly, § 1.7874–2T(e) provides that a publicly traded foreign partnership will be treated as a foreign corporation for purposes of applying section 7874(a)(2)(B) and § 1.7874–2T to determine whether it is a surrogate foreign corporation.

The regulations define *publicly traded foreign partnership* for purposes of this rule as any foreign partnership that would, but for the application of section 7704(c), be treated as a corporation under section 7704 of the Code at any time during the two-year period following the partnership's completion of an acquisition described in section 7874(a)(2)(B)(i). Under section 7704, a partnership is generally treated as a corporation if interests in the partnership are traded on an established securities market, or if interests in the partnership are readily tradable on a secondary market or the substantial equivalent. Section 7704(c) generally provides an exception for a publicly traded partnership where 90 percent or more of its gross income consists of qualifying income (which includes dividends from controlled subsidiaries).

If a publicly traded foreign partnership is within the scope of the regulations, the foreign partnership will be considered to be a foreign corporation, and if it meets the requirements of section 7874(c)(1), may be a member of the EAG, in determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B). For purposes of applying the substantial business activities test of section 7874(a)(2)(B)(iii), the foreign partnership will be considered to be a corporation created or organized in, or under the laws of, the foreign country in which, or under the laws of which, the foreign partnership was created or organized. Moreover, interests in the foreign partnership will be treated as stock of such foreign corporation for purposes of applying the ownership percentage test of section 7874(a)(2)(B)(ii).

If the foreign partnership is considered a surrogate foreign corporation, and the ownership percentage under section 7874(a)(2)(B)(ii) is at least 80 percent, the foreign partnership will be treated under section 7874(b) as a domestic corporation for all purposes of the Code. A conversion rule is provided in the regulations to clarify the Federal income tax consequences of the deemed change from a foreign partnership to a domestic corporation.

In contrast, if the entity is considered a surrogate foreign corporation but the ownership percentage under section 7874(a)(2)(B)(ii) is at least 60 percent but less than 80 percent, the foreign entity will be a foreign partnership for all purposes of the Code, but section 7874(a)(1) will govern the Federal income tax treatment of the expatriated entity (that is, the domestic corporation or domestic partnership whose assets were acquired directly or indirectly by the foreign partnership, and any United States person who is related under sections 267(b) or 707(b)(1)).

Finally, if the publicly traded foreign partnership is not considered to be a surrogate foreign corporation, because the ownership percentage under section 7874(a)(2)(B)(ii) is less than 60 percent, because the EAG has substantial business activities in the country in which, or under the laws of which, the foreign partnership was created or organized, or otherwise, section 7874 will not apply to the foreign partnership, or to the domestic entity, the assets of which it directly or indirectly acquired, and the foreign partnership will continue to be classified as a foreign partnership for all purposes of the Code.

Section 1.7874–2T(e) applies equally to foreign entities that are considered partnerships under both foreign law and U.S. federal income tax law, and foreign entities that are considered corporate entities under foreign law but are treated as partnerships for U.S. federal income tax purposes under Treasury regulation § 301.7701–3.

The regulations include a provision that explicitly removes from the scope of section 7874 a partnership's deemed acquisition of assets and liabilities under § 1.708–1(b)(4) upon a termination of the partnership due to change of ownership. In the absence of such a provision, section 7874 might apply to a deemed acquisition by a publicly traded foreign partnership of a domestic entity representing at least 60 percent of the value of the partnership's assets, merely because of active trading of interests in the partnership. There is no indication in the legislative history that section 7874 was intended to apply in that situation.

Comments were received by the IRS and Treasury Department regarding the consequences under section 7874 where a foreign partnership satisfies the definition of a surrogate foreign corporation when treated as a foreign corporation for definitional purposes. It was argued that, in cases of 80 percent or greater ownership of the foreign partnership by former owners of the acquired domestic entity by reason of their former ownership, the foreign partnership should not be treated as a domestic corporation, despite the language of section 7874(b), but rather should be treated as a domestic partnership. The reasons given included: (1) Because a partnership is a flow-through entity for tax purposes, the United States persons owning interests in the partnership would be taxable on the partnership's income, including subpart F income attributable to earnings-stripping transactions between domestic subsidiaries of the partnership and foreign subsidiaries; and (2) the entity classification rules of §§ 301.7701–2 and 301.7701–3 are intended to allow taxpayers to choose whether a foreign eligible entity is a corporation or partnership for Federal income tax purposes, and section 7874(b) does not impinge on that freedom of choice, but only deems a foreign corporation to be a domestic corporation.

On balance, the IRS and Treasury Department do not find these arguments determinative. Section 7874 does not focus on the taxation of the owners of the acquired domestic entity and the acquiring foreign entity, nor does the statute focus on whether such owners are United States persons or foreign persons. The section imposes tax consequences only on either the acquiring foreign entity or the acquired domestic entity (or related domestic entities). Therefore, the fact that United States persons owning interests in the acquiring partnership would be subject to United States tax on the partnership's income is not determinative of the appropriate treatment of a foreign partnership that is within the scope of section 7874(b) after application of the anti-avoidance rule of paragraph (e) of these regulations.

The argument relating to the entity classification rules has perhaps a stronger foundation. However, for the reasons mentioned above, the IRS and Treasury Department believe that the intention of Congress in enacting both section 7874 and section 7704 is carried out by a rule which treats a publicly traded foreign partnership as a domestic corporation in those circumstances in which the partnership otherwise would be within the scope of section 7874(b) if it were a corporation.

The IRS and Treasury Department recognize that the use of a foreign partnership that is not publicly traded, or the use of a domestic partnership, to acquire the properties of a domestic corporation might enable taxpayers to avoid the purposes of section 7874 in

certain cases. Comments are solicited below on whether future regulations under section 7874 or another provision of the Code should address these situations.

2. Options and Similar Interests Treated as Stock of the Foreign Acquirer

Based on the regulatory authority provided in section 7874(c)(6), § 1.7874–2T(f) of the regulations provides that options and similar interests held by a former shareholder or former partner of the expatriated entity by reason of holding stock or a partnership interest in the expatriated entity will be treated, for purposes of the ownership test of section 7874(a)(2)(B)(ii), as exercised, to the extent that the effect is to treat the foreign corporation as a surrogate foreign corporation. An interest that is similar to an option is defined for these purposes as including, without limitation, a warrant, a convertible debt instrument or other convertible instrument, a put, a stock interest subject to risk of forfeiture, and a contract to acquire or sell stock.

These rules are consistent with existing rules under section 382, which has identical statutory language, in section 382(k)(6)(B), to that of section 7874(c)(6). The IRS and Treasury Department are continuing to study whether other types of interests should also be treated as stock of the acquirer under regulations issued under the authority of section 7874(c)(6).

E. Effects of Section 7874(b)

Section 1.7874–2T(g) provides that a foreign corporation that is treated as a domestic corporation under section 7874(b) is treated, for purposes of the Code other than determining whether the foreign corporation is a surrogate foreign corporation, as converting to a domestic corporation pursuant to a reorganization described in section 368(a)(1)(F) immediately before the commencement of the acquisition. It follows that, in a case in which the foreign corporation was newly formed for the purpose of the transaction, the effect will be that it is treated as a domestic corporation from its inception. Further, § 1.7874–2T(h) provides that, if section 7874(b) applies to a surrogate foreign corporation, section 367 does not apply to any transfer of stock or other property to such entity as part of the acquisition described in section 7874(a)(2)(B)(i).

F. Effective Dates

The regulations apply to acquisitions completed on or after the date of their publication in the **Federal Register**. However, taxpayers may apply the regulations to acquisitions completed prior to such date, but must do so consistently with respect to all acquisitions within the scope of the regulations.

Request for Comments

The IRS and Treasury Department are considering issuing subsequent public guidance that addresses additional issues under section 7874. This guidance may address issues related to (1) The determination of whether there has been a direct or indirect acquisition of substantially all the properties held directly or indirectly by a domestic corporation or substantially all the properties constituting a trade or business of a domestic partnership; (2) the requirement that such acquisition be pursuant to a plan or a series of related transactions; (3) the treatment of stock sold in a public offering that is related to the acquisition; and (4) the disregard of transfers of properties or liabilities if the transfers are part of a plan a principal purpose of which is to avoid the purposes of section 7874. The IRS and Treasury Department specifically request comments regarding appropriate rules in relation to these issues arising under section 7874.

One commentator has recommended that preferred stock described in section 1504(a)(4) should be disregarded in applying the ownership percentage test of section 7874(a)(2)(B)(ii) and the special safe harbor rules of § 1.7874–1T(c). The IRS and Treasury Department are carefully considering this recommendation and solicit additional comments as to whether future guidance should include such a rule.

In addition, the IRS and Treasury Department are considering whether and how to amend § 1.367(a)–3(c), which deals with the tax consequences of a United States person's transfer of stock of a domestic corporation to a foreign acquiring corporation, as a result of the enactment of section 7874 and the promulgation of regulations thereunder. A commentator has asked for these amendments. Additional comments are requested.

Based on comments received, the IRS and Treasury Department identified inversion transactions using a publicly traded foreign partnership as the new foreign parent entity of the inverted group as a category of transactions requiring a special rule in order to prevent avoidance of the purposes of section 7874, in light of the Congressional purpose in enacting section 7704. Comments are requested as to whether other types of partnerships, such as foreign partnerships that are not publicly traded and domestic partnerships (including limited liability companies), could also be used to avoid the purposes of sections 7874 and 7704, and whether further guidance addressing such avoidance is warranted.

Effective Date

Section 1.7874–2T applies to acquisitions completed on or after June 6, 2006. Taxpayers may elect to apply the section to acquisitions completed prior to that date, but must apply it consistently to all acquisitions within its scope.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

These regulations are necessary to provide immediate guidance to prevent avoidance of section 7874 in situations where it should apply as well as to provide immediate guidance on situations where it should not apply. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f), this Treasury decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jefferson VanderWolk, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Sections 1.7874–2T is added to read as follows:

§ 1.7874–2T Surrogate foreign corporation (temporary).

(a) *Scope.* This section provides rules under section 7874(a)(2)(B) for determining whether a foreign corporation shall be treated as a surrogate foreign corporation. Paragraph (b) of this section provides rules under section 7874(a)(2)(B)(i) regarding the indirect acquisition of properties held directly or indirectly by a domestic corporation or domestic partnership. Paragraph (c) of this section provides rules under section 7874(a)(2)(B)(ii) for identifying stock of the entity held by former shareholders or partners of the domestic entity by reason of holding stock or a partnership interest in the domestic entity. Paragraph (d) of this section provides rules under section 7874(a)(2)(B)(iii) for determining whether the expanded affiliated group (as defined in section 7874(c)(1)) that includes the entity (EAG) has substantial business activities in the foreign country in which, or under the laws of which, the entity was created or organized, when compared to the total business activities of the EAG. Paragraph (e) of this section provides rules under which a publicly traded foreign partnership is treated as a foreign corporation for purposes of determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B), and rules regarding the consequences under the Code if a partnership is treated as a surrogate foreign corporation. Paragraph (f) of this section provides rules under which certain interests held by former shareholders or partners of the domestic entity are treated as stock of the foreign entity making the acquisition described in section 7874(a)(2)(B)(i). Paragraph (g) of this section provides rules relating to the change in status from a foreign corporation to a domestic corporation under section 7874(b). Paragraph (h) of this section provides that section 367 is not applicable to the transfer of assets or stock to a surrogate foreign corporation that is treated as a domestic corporation under section 7874(b).

(b) *Indirect acquisition of properties*—(1) *Acquisition of stock of a domestic corporation.* For purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of stock of a domestic corporation is considered an indirect acquisition by such foreign corporation of a proportionate amount of the properties held directly or indirectly by such domestic corporation.

(2) *Acquisition of stock of a foreign corporation.* For purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of stock of a second foreign corporation is not considered an indirect acquisition by the first foreign corporation of any properties held directly or indirectly by a domestic corporation or domestic partnership owned directly or indirectly, wholly or partly, by the second foreign corporation.

(3) *Acquisition of an interest in a partnership.* For purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of a capital or profits interest in a foreign or domestic partnership that holds stock in a domestic corporation is considered an indirect acquisition by such foreign corporation of a proportionate amount of the properties held directly or indirectly by such domestic corporation.

(4) *Acquisition of stock or assets of a domestic corporation by controlled subsidiary.* For purposes of section 7874(a)(2)(B)(i) and paragraph (b)(1) of this section, if a corporation acquires stock or assets of a domestic corporation in exchange for stock of a foreign corporation which owns directly or indirectly, after the acquisition, more than 50 percent of the stock (by vote or value) of the acquiring corporation, such foreign corporation is considered as acquiring a proportionate amount of such stock or assets of the domestic corporation.

(5) *Examples.* The application of this paragraph is illustrated by the following examples. It is assumed that all transactions in the examples occur after March 4, 2003. The examples read as follows:

Example 1. Acquisition of stock of domestic corporation.—A is a domestic corporation with 100 shares of a single class of common stock outstanding. F, a foreign corporation, acquires 25 shares of A stock from a shareholder of A. For purposes of section 7874(a)(2)(B)(i), F is considered to have made an indirect acquisition of 25% of the properties held directly or indirectly by A.

Example 2. Acquisition of stock of foreign corporation.—The facts are the same as in Example 1 except as follows: All of A's stock is held by B, a foreign corporation. C, a foreign corporation, acquires 25 shares of B stock from a shareholder of B. For purposes of section 7874(a)(2)(B)(i), C is not considered to have made an indirect acquisition of any portion of the properties held directly or indirectly by A.

Example 3. Acquisition of partnership interest.—D is a partnership which owns all of the issued and outstanding stock of E, a domestic corporation. G, a foreign corporation, acquires a 40% interest in D from a partner in D. For purposes of section 7874(a)(2)(B)(i), G is considered to have made an indirect acquisition of 40% of the properties held directly or indirectly by E.

Example 4. Acquisition by controlled corporation.—FS, a foreign corporation, is 90% owned by foreign corporation FP. Pursuant to a plan of reorganization, FS acquires all the stock of DT, a domestic corporation, in exchange for stock of FP which is exchanged with the shareholders of DT on a one-for-one basis. For purposes of section 7874(a)(2)(B)(i) and paragraph (b)(1) of this section, FP is considered to have acquired 90% of the stock of DT and thus to have made an indirect acquisition of 90% of the properties held directly or indirectly by DT. If FS had acquired substantially all the assets of DT, rather than the stock of DT, in exchange for stock of FP, FP would be considered to have acquired 90% of the assets of DT for purposes of section 7874(a)(2)(B)(i).

(c) *Stock held by former shareholders or partners by reason of holding stock or a partnership interest in the domestic entity*—(1) *General rule.* For purposes of section 7874(a)(2)(B)(ii), stock of the foreign corporation which is received by a former shareholder of the domestic corporation in exchange for stock of the domestic corporation is considered stock held by reason of holding stock in the domestic corporation. Similarly, for purposes of section 7874(a)(2)(B)(ii), stock of the foreign corporation which is received by a former partner of the domestic partnership in exchange for a capital or profits interest in the domestic partnership is considered stock held by reason of holding a capital or profits interest in the domestic partnership. Subject to section 7874(c)(4), in cases where the foreign corporation also issues stock to a former shareholder of the domestic corporation or partner of the domestic partnership in the same transaction or series of transactions in exchange for consideration other than stock in the domestic corporation or a capital or profits interest in the domestic partnership, the percentage of the foreign corporation's stock considered to be held by former shareholders of the domestic corporation or former partners of the domestic partnership by reason of holding stock in the domestic corporation or a capital or profits interest in the domestic partnership shall be determined on the basis of the relative value of the property in exchange for which the foreign corporation's stock was issued.

(2) *Former shareholders and former partners.* For purposes of this section, former shareholders of the domestic corporation are persons who held stock in the domestic corporation before the acquisition, including persons (if any) who held stock in the domestic corporation both before and after the acquisition. Former partners of the domestic partnership are persons who

held a capital or profits interest in the domestic partnership before the acquisition, including persons (if any) who held a capital or profits interest in the domestic partnership both before and after the acquisition.

(3) *Example.* The following example illustrates the application of this paragraph:

Example. Contribution of stock of domestic and foreign corporations. A holds all of the issued and outstanding common stock of DC, FC1, FC2, and FC3. DC is a domestic corporation, and FC1, FC2, and FC3 are foreign corporations. Each of DC, FC1, FC2, and FC3 has only one class of stock outstanding. DC's outstanding stock is worth $40x, FC1's outstanding stock is worth $20x, FC2's outstanding stock is worth $25x, and FC3's outstanding stock is worth $15x. In a transaction subject to section 351, A contributes the stock of DC, FC1, FC2, and FC3 to FP, a foreign corporation, in exchange for all of the issued and outstanding common stock of FP. The transaction occurs after March 4, 2003. For purposes of section 7874(a)(2)(B)(ii), A is considered to hold 40% of the stock of FP by reason of holding stock in DC.

(d) *Substantial business activities of the EAG*—(1) *General rule*—(i) *Facts and circumstances test.* Subject to paragraph (d)(2) of this section, the determination of whether, after the acquisition, the EAG has substantial business activities in the foreign country in which, or under the law of which, the acquiring foreign entity is created or organized, when compared to the total business activities of the EAG, shall be made on the basis of all of the facts and circumstances. However, the factors described in paragraph (d)(1)(iii) of this section shall not be taken into account in making the determination. For the EAG to have substantial business activities in the foreign country when compared to the total business activities of the EAG, there is no minimum percentage of its total business activities (regardless of how measured) that must be in the foreign country. It is necessary, however, for the determination of substantiality to be made on the basis of a comparison to the total business activities of the EAG, and the factors set forth in paragraph (d)(1)(ii) of this section are to be evaluated accordingly. Thus, it is possible that the business activities of an EAG in a particular country would be substantial when compared to the total business activities of such EAG, but the identical business activities of another EAG in the same country would not be substantial when compared to the total business activities of that EAG because the total business activities of the second EAG were much more extensive than the total business activities of the first EAG.

(ii) *Factors to be considered.* Relevant factors indicating that the EAG has substantial business activities in the foreign country when compared to the total business activities of the EAG include, but are not limited to, the factors set forth below. The presence or absence of any factor, or of a particular number of factors, is not determinative. Moreover, the weight given to any factor (whether or not set forth below) depends on the particular case. Relevant factors include, but are not limited to—

(A) *Historical presence.* The conduct of continuous business activities in the foreign country by EAG members prior to the acquisition;

(B) *Operational activities.* Business activities of the EAG in the foreign country occurring in the ordinary course of the active conduct of one or more trades or businesses, involving—

(*1*) Property located in the foreign country which is owned by members of the EAG;

(*2*) The performance of services by individuals in the foreign country who are employed by members of the EAG; and

(*3*) Sales to customers in the foreign country by EAG members;

(C) *Management activities.* The performance in the foreign country of substantial managerial activities by EAG members' officers and employees who are based in the foreign country;

(D) *Ownership.* A substantial degree of ownership of the EAG by investors resident in the foreign country.

(E) *Strategic factors.* The existence of business activities in the foreign country that are material to the achievement of the EAG's overall business objectives.

(iii) *Factors not to be considered.* Any assets, activities, or income attributable to a transfer or transfers disregarded under section 7874(c)(4) are not relevant factors to be considered. In addition, any assets that are temporarily located in a foreign country at any time as part of a plan a principal purpose of which is to avoid the purposes of section 7874 are not relevant factors to be considered.

(2) *Safe harbor*—(i) *Elements.* The EAG will be considered to have substantial business activities, after the acquisition, in the foreign country in which, or under the law of which, the acquiring foreign entity was created or organized, when compared to the total business activities of the EAG, if paragraphs (d)(2)(ii), (iii), and (iv) of this section apply.

(ii) *Employees.* This paragraph (d)(2)(ii) applies if, after the acquisition, the group employees based in the foreign country account for at least 10 percent (by headcount and compensation) of total group employees.

(iii) *Assets.* This paragraph (d)(2)(iii) applies if, after the acquisition, the total value of the group assets located in the foreign country is at least 10 percent of the total value of all group assets.

(iv) *Sales.* This paragraph (d)(2)(iv) applies if, during the testing period, the group sales made in the foreign country accounted for at least 10 percent of total group sales.

(3) *Definitions and application of rules.* For purposes of paragraph (d) of this section—

(i) The term *group employee* means a common law employee of one or more members of the EAG who worked full time (meaning normally 35 or more hours per week) throughout the testing period. An independent contractor performing activities on behalf of an EAG member is not a group employee. A group employee is considered to be based in a country only if the group employee spent more time providing services in such country than in any other country throughout the testing period and continues to provide services in such country immediately after the acquisition. The compensation of a group employee is determined in United States dollars and, in the case of compensation denominated in a foreign currency, translated into United States dollars using the weighted average exchange rate for the taxable year, as defined in § 1.989(b)–1.

(ii) The term *group assets* means tangible property used or held for use in the active conduct of a trade or business by a member of the EAG. An item of tangible personal property is considered to be located in a country only if such item was physically present in such country for more time than in any other country during the testing period. The total value of group assets is determined for purposes of this paragraph on the last day of the testing period, on a gross basis (that is, not reduced by liabilities), measured by either tax book value or fair market value, but not both, in United States dollars translated if necessary at the spot rate determined under the principles of § 1.988–1(d)(1), (2) and (4). Group assets do not include property located in a country by reason of a transfer, or a change of geographic location, pursuant to a plan a principal purpose of which is to avoid the application of section 7874. In addition, intangible assets are not taken into account (in either the numerator or denominator) in calculating the amount of group assets.

(iii) The term *group sales* means sales and the provision of services by members of the EAG, measured by gross receipts from such sales and services, in United States dollars (determined, in

the case of gross receipts denominated in a foreign currency, using the weighted average exchange rate for the taxable year, as defined in Treas. Reg. § 1.989(b)–1). A group sale is considered to be made in a country only if the services, goods or other property transferred by such sale are sold for use, consumption or disposition in such country.

(iv) If one or more members of the EAG own capital or profits interests in a partnership, the proportionate amount of activities, employees, assets, income and sales of such partnership are considered to be activities, employees, assets, income and sales of the member or members of the EAG. A partner's proportionate share shall be determined under the rules and principles of sections 701 through 706 and the regulations thereunder.

(v) The term *testing period* means the 12 month period ending on the last day of the EAG's monthly or quarterly management accounting period in which the acquisition is completed and the term *after the acquisition* means, for purposes of paragraphs (d)(1)(i) and (d)(2)(ii) and (iii) of this section, the last day of the testing period.

(4) *Examples.* The application of paragraph (d)(1) of this section is illustrated by the following examples of business activities of an EAG in a foreign country after an acquisition described in section 7874(a)(2)(B)(i). In each example, the acquiring foreign entity is incorporated in Country A. Paragraph (d)(2) of this section does not apply to any of the examples. The examples are not intended to allow any inferences to be drawn as to whether the presence or absence, in a particular case, of one or more facts described in an example is determinative as to whether an EAG does, or does not, have substantial business activities in the relevant foreign country when compared to the total business activities of the EAG. The examples read as follows:

Example 1. Administrative activities and some customer services.—(i) *Facts.* Group employees based in Country A regularly perform administrative, back office services for other EAG members, and regularly provide customer service globally via telephone and e-mail at a communications center located in Country A. After the acquisition, fewer than 2% of group employees are based in Country A. Less than 3% of group sales were made in Country A in the 12-month period ending on the date of the acquisition. The total value of group assets located in Country A on the date of the acquisition is approximately 2% of total group assets. None of the EAG's senior managers are based in Country A.

(ii) *Conclusion.* In light of all the facts and circumstances, after the acquisition, the EAG does not have substantial business activities in Country A when compared to the total business activities of the EAG.

Example 2. Manufacturing in foreign country.—(i) *Facts.* EAG members own and have continuously operated a manufacturing facility and warehouses in Country A for several years prior to the acquisition. The goods produced in Country A represented approximately 2% of the total value of the EAG's production of finished goods in the 12-month period ending on the date of the acquisition. Group employees based in Country A also regularly perform back office services for other EAG members. Fewer than 5% of group employees were based in Country A during the 12-month period ending after the acquisition. Less than 2% of group sales were made in Country A during the 12-month period ending after the acquisition. The total value of group assets located in Country A after the acquisition is approximately 4% of total group assets. None of the EAG's senior managers are based in Country A.

(ii) *Conclusion.* In light of all the facts and circumstances, after the acquisition, the EAG does not have substantial business activities in Country A when compared to the total business activities of the EAG.

Example 3. Financial services group; real estate in foreign country.—(i) *Facts.* The EAG's main line of business is financial services. Group employees based in Country A regularly perform back office services for other EAG members. Fewer than 5% of group employees were based in Country A during the 12-month period ending on the date of the acquisition. Less than 3% of group sales were made in Country A during the same period. However, the total value of group assets located in Country A after the acquisition is more than 10% of the value of total group assets, due to the fact that EAG members purchased a substantial amount of commercial and residential real estate in Country A during the 24 months preceding the acquisition. The management of the real estate is performed by an unrelated independent agent. Most of the EAG's senior managers are based outside Country A. The EAG's real estate portfolio in Country A was not acquired pursuant to a strategic plan for one or more of the EAG's worldwide lines of business, nor are the EAG's business activities in Country A material to the achievement of the EAG's overall business objectives.

(ii) *Conclusion.* In light of all the facts and circumstances, after the acquisition, the EAG does not have substantial business activities in Country A when compared to the total business activities of the EAG.

Example 4. Foreign group merging with larger U.S. group.—(i) *Facts.* The Country A corporation that is the parent entity in the EAG acquired a domestic corporation and its subsidiaries pursuant to a merger agreement. Before the merger, the stock of both the Country A corporation and the domestic corporation was publicly traded in their respective countries of incorporation. The two groups were competitors in the same global line of business for many years preceding the merger. The merger was prompted by a third group's attempt to obtain control of the domestic corporation and its subsidiaries without the consent of the management of the domestic corporation. After the merger, the Country A corporation is more than 60% owned by former shareholders of the domestic corporation, due to the fact that the domestic corporation was significantly more valuable than the Country A corporation. After the merger, the stock of the Country A corporation is publicly traded on stock exchanges in both Country A and the United States. Group employees based in Country A perform all of the functions involved in the EAG's overall business activities, including headquarters and senior management functions. After the merger, approximately 11% of group employees are based in Country A, the total value of group assets located in Country A is approximately 10% of the value of total group assets, and the estimated percentage of group sales that will be made in Country A during the year following the merger is approximately 7%.

(ii) *Conclusion.* In light of all the facts and circumstances, after the acquisition, the EAG has substantial business activities in Country A when compared to the total business activities of the EAG.

Example 5. Relocation of business to foreign country.—(i) *Facts.* The EAG's business involves advanced technology. The controlling shareholders of the Country A corporation that is the parent entity in the EAG, and the senior managers of the EAG, are resident in Country A. The controlling shareholders originally established DC, a domestic corporation, which established its head office in City B in the United States, where a leading institute of technology is located. Part of DC's business strategy was to hire research personnel who had been trained at the institute of technology and had settled in City B. DC hired 10 researchers who worked at DC's premises in City B. DC also established FS, a wholly owned Country A subsidiary, which hired research personnel in Country A to perform research and product development functions at FS's premises in Country A. Subsequently, the senior managers and controlling shareholders adopted a new business strategy involving the closure of the U.S. operations and the transfer of DC's business and FS's stock to FP, a new Country A corporation, with the result of centering the EAG's business in Country A. Pursuant to the new strategy, DC terminated the employment of seven researchers and the lease on its City B premises, relocated the other three researchers from City B to Country A, and transferred its remaining assets, including the stock of FS, to FP in exchange for more than 80% of the stock of FP. After the acquisition, substantially all of the group employees were based in Country A, and substantially all of the group assets were located in Country A.

(ii) *Conclusion.* In light of all the facts and circumstances, after the acquisition, the EAG has substantial business activities in Country A when compared to the total business activities of the EAG.

(e) *Acquisition by publicly traded foreign partnership*—(1) *Treatment as a*

foreign corporation. For purposes of applying section 7874(a)(2)(B) and this section, a publicly traded foreign partnership shall be treated as a foreign corporation created or organized in, or under the laws of, the foreign country in which, or under the laws of which, such partnership was created or organized, and interests in such partnership shall be treated as stock of such foreign corporation. In determining whether the publicly traded foreign partnership is a surrogate foreign corporation, the publicly traded foreign partnership will be treated as a member of the EAG, if the requirements of section 7874(c)(1) are met. If this paragraph is applicable and the provisions of section 7874(a)(2)(B) are satisfied such that the foreign entity making the acquisition is a surrogate foreign corporation to which section 7874(b) applies, the foreign entity shall be treated as a domestic corporation for purposes of the Internal Revenue Code. *See* paragraph (e)(3) of this section for the deemed treatment of the change in form from a foreign partnership to a domestic corporation. If this paragraph is applicable and the provisions of section 7874(a)(2)(B) are satisfied such that the foreign entity making the acquisition is a surrogate foreign corporation to which section 7874(b) does not apply, the foreign entity shall continue to be a foreign partnership for purposes of the Internal Revenue Code, but the tax treatment of the expatriated entity shall be governed by section 7874(a)(1). If this paragraph is applicable, but the provisions of section 7874(a)(2)(B) are not satisfied such that the foreign partnership making the acquisition is not a surrogate foreign corporation, the status of the publicly traded foreign partnership will not be affected by section 7874 or § 1.7874–2T.

(2) *Publicly traded foreign partnership.* For purposes of this section, the term *publicly traded foreign partnership* means any foreign partnership that would, but for the application of section 7704(c), be treated as a corporation under section 7704 at any time during the two-year period following the partnership's completion of an acquisition described in section 7874(a)(2)(B)(i).

(3) *Deemed treatment of change from foreign partnership to domestic corporation.* Except for purposes of determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B) and § 1.7874–2T, a foreign partnership that is treated as a domestic corporation pursuant to the application of paragraph (e)(1) of this section and the application of section 7874(b) and § 1.7874–2T shall, immediately before commencement of the acquisition, be treated as transferring all of its assets and liabilities to a newly formed domestic corporation in exchange for the stock of the domestic corporation, and distributing such stock to its partners in liquidation of their interests in the partnership. The tax treatment of the transaction shall be determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.

(4) *Disregard of deemed acquisition.* For purposes of paragraph (e)(1) of this section, a publicly traded foreign partnership's deemed acquisition of assets and liabilities under § 1.708–1(b)(4) is not a direct or indirect acquisition of properties to which section 7874(a)(2)(B)(i) could apply.

(5) *Examples.* The application of this paragraph is illustrated by the following examples. It is assumed that all transactions in the examples occur after March 4, 2003, and that any foreign partnership referred to in an example is not treated as a corporation under section 7704. The examples read as follows:

Example 1. Foreign hybrid entity; public trading of ownership interests on stock market following triangular merger.—(i) *Facts.* The stock of DP, a domestic corporation, is publicly traded on stock exchange SE. Pursuant to a plan, DP and an unrelated person form a foreign subsidiary entity, FQ, under the laws of foreign country X, transferring a minimal amount of cash to FQ in the process. DP owns 99.9% of FQ and the unrelated party owns 0.1% of FQ. FQ is a limited liability company and is a foreign eligible entity under § 301.7701–2. FQ makes an election under § 301.7701–3 to be treated as a partnership for Federal income tax purposes as of the date of its formation. FQ forms a wholly owned domestic corporation, DS, under the laws of State A. Under a merger agreement and State A law, DS merges into DP,with DP surviving the merger as a wholly owned subsidiary of FQ and the former shareholders of DP receiving ownership interests in FQ in exchange for their DP stock. On the day of the merger, the stock of DP ceases to be listed on stock exchange SE. Trading of ownership interests of FQ on stock exchange SE commences on the day after the day of the merger. FQ, however, is not treated as a corporation under section 7704, due to the application of section 7704(c). After the acquisition, the corporate group owned by FQ does not have substantial business activities in foreign country X when compared to its total business activities.

(ii) *Analysis.* FQ is a publicly traded foreign partnership under paragraph (e)(1) of this section. For purposes of determining whether FQ is a surrogate foreign corporation under section 7874(a)(2)(B), FQ is considered to be a foreign corporation rather than a foreign partnership, and ownership interests in FQ are considered to be stock of FQ. Therefore, on the basis of these facts, FQ is a surrogate foreign corporation because all of the conditions stated in section 7874(a)(2)(B) are satisfied. Because the former shareholders of DP hold more than 80% of FQ's ownership interests, FQ is treated under section 7874(b) as a domestic corporation for purposes of the Internal Revenue Code. In addition, the former shareholders of DP are treated as having received stock of domestic corporation FQ in exchange for their stock of DP.

Example 2. Substantial business activities of the EAG in the foreign country of incorporation.—(i) *Facts.* The facts are the same as in *Example 1* except that, after the acquisition, the EAG that includes FQ has substantial business activities in foreign country X when compared to the total business activities of the EAG under the criteria set forth in paragraph (d) of this section.

(ii) *Analysis.* For purposes of determining whether FQ is a surrogate foreign corporation under section 7874(a)(2)(B), FQ is considered to be a foreign corporation rather than a foreign partnership, and ownership interests in FQ are considered to be stock of FQ. On the basis of these facts, FQ is not a surrogate foreign corporation, because, after the acquisition, the EAG that includes FQ has substantial business activities in foreign country X when compared to the total business activities of the EAG. Therefore, section 7874 does not apply to the acquisition, and the status of FQ as a foreign partnership is unaffected.

Example 3. Acquisition by publicly traded foreign partnership owned by former shareholders and unrelated persons.—(i) *Facts.* The facts are the same as in Example 1 except that, at the time of the merger transaction, unrelated persons who did not own any stock of DP transfer stock of a foreign corporation to FQ in exchange for 25% of the ownership interests in FQ. Former shareholders of DP receive 75% of the ownership interests in FQ.

(ii) *Analysis.* For purposes of determining whether FQ is a surrogate foreign corporation under section 7874(a)(2)(B), FQ is considered to be a foreign corporation rather than a foreign partnership, and ownership interests in FQ are considered to be stock of FQ. Therefore, on the basis of these facts, and taking into account the provisions of section 7874(c)(4), FQ is a surrogate foreign corporation, because all of the conditions stated in section 7874(a)(2)(B) are satisfied. Because the former shareholders of DP hold less than 80% of FQ's ownership interests, FQ is not treated under section 7874(b) as a domestic corporation for purposes of the Internal Revenue Code. Rather, FQ is a foreign partnership for purposes of the

Internal Revenue Code, and section 7874(a)(1) applies in determining the Federal income tax liability of DP and any other expatriated entity (as defined in section 7874(a)(2)).

(f) *Options and similar interests treated as stock of the foreign acquiring corporation*—(1) *General rule.* For purposes of section 7874(a)(2)(B)(ii), options and interests that are similar to options held by a person by reason of holding stock in the domestic corporation or a capital or profits interest in the domestic partnership described in section 7874(a)(2)(B)(i) shall be treated as exercised. The prior sentence shall apply, however, only to the extent that the effect of such exercise is to treat the foreign entity that has made the acquisition described in section 7874(a)(2)(B)(i) as a surrogate foreign corporation under section 7874(a)(2)(B).

(2) *Interests that are similar to options.* For purposes of paragraph (f)(1) of this section, an interest that is similar to an option includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock, a put, a stock interest subject to risk of forfeiture, and a contract to acquire or sell stock.

(3) *Example.* The application of this paragraph is illustrated by the following example. It is assumed that the transaction in the example occurs after March 4, 2003. The example reads as follows:

Example. Convertible bonds treated as stock of foreign corporation.—(i) *Facts.* DT, a domestic corporation with 80 shares of stock issued and outstanding, is owned by a group of individuals. FA, a foreign corporation unrelated to DT, has 20 shares of stock issued and outstanding. Pursuant to a plan, the shareholders of DT transfer all of their shares of DT to FA in exchange for 25 newly issued shares of FA stock (with a value of $25x) and $55x of FA bonds that are convertible at the election of the holder into 55 shares of FA stock, for no additional consideration, at any time during the ensuing 5-year period. After the acquisition, the EAG that includes FA does not have substantial business activities in FA's country of incorporation when compared to the total business activities of the EAG.

(ii) *Analysis.* FA has indirectly acquired substantially all the properties held directly or indirectly by DT pursuant to a plan. Before the application of this paragraph (f), the former shareholders of DT own 25 shares of FA stock by reason of holding stock in DT. Accordingly, the section 7874(a)(2)(B)(ii) fraction would be 25/45, the resulting percentage would be 55%, and FA would not be a surrogate foreign corporation. Pursuant to paragraph (f)(2) of this section, the FA convertible bonds issued to the former shareholders of DT are treated as interests that are similar to options. As a result, and pursuant to paragraph (f)(1) of this section, the convertible bonds are treated as being converted into 55 shares of FA stock for purposes of section 7874(a)(2)(B)(ii). Therefore, the section 7874(a)(2)(B)(ii) fraction is 80/100, the resulting percentage is 80% and FA is a surrogate foreign corporation. In addition, pursuant to section 7874(b), FA is treated as a domestic corporation.

(g) *Change from foreign to domestic status.*—(1) *Conversion*—(i) *General rule.* Except for purposes of determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B) and § 1.7874–2T, the conversion of a foreign corporation to a domestic corporation under section 7874(b) shall, immediately before commencement of the acquisition described in section 7874(a)(2)(B)(i), be treated as a reorganization described in section 368(a)(1)(F). For the consequences of the conversion, *see* § 1.367(b)–2(f). *See also* § 1.367(b)–3. The tax treatment of all aspects of the transaction other than such conversion shall be determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine.

(ii) *Example.* The following example illustrates the application of paragraph (g)(1)(i) of this section. It is assumed that the transaction in the example occurs after March 4, 2003. The example reads as follows:

Conversion treated as reorganization under section 368(a)(1)(F).—(i) *Facts.* DT, a domestic corporation is owned by a group of individuals. FA, a foreign corporation unrelated to DT which has been conducting a trade or business for several years, has 20 shares of stock issued and outstanding. Pursuant to a plan, the shareholders of DT transfer all of their shares of DT to FA in exchange for 80 newly issued shares of FA stock. After the acquisition, the EAG that includes FA does not have substantial business activities in FA's country of incorporation when compared to the total business activities of the EAG.

(ii) *Analysis.* FA has indirectly acquired substantially all the properties held directly or indirectly by DT pursuant to a plan. After the acquisition, the former shareholders of DT own 80 shares of FA stock by reason of holding stock in DT. Accordingly, the section 7874(a)(2)(B)(ii) fraction is 80/100, the resulting percentage is 80%, and FA is a surrogate foreign corporation. In addition, pursuant to section 7874(b), FA is treated as a domestic corporation. Other than for purposes of determining whether FA is a surrogate foreign corporation, the conversion of FA from a foreign corporation to a domestic corporation shall, immediately before FA's acquisition of the DT stock, be treated as a reorganization under section 368(a)(1)(F). See §§ 1.367(b)–2(f) and 1.367(b)–3. The tax treatment of all other aspects of the transaction, including the acquisition of the DT stock by FA, is determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine.

(2) *Entity classification.* An entity that is treated as a domestic corporation under section 7874(b) is not an eligible entity as defined in § 301.7701–3(a) of this chapter and therefore may not elect noncorporate status.

(3) *Time of determination.* Subject to the application of the step transaction doctrine and section 7874(c)(4), the determination of whether a foreign entity is a surrogate foreign corporation is made immediately after completion of the acquisition described in section 7874(a)(2)(B)(i), except as provided in paragraphs (d)(3)(v) and (e)(2) of this section. A foreign entity that is treated as a domestic corporation under section 7874(b) shall continue to be treated as a domestic corporation without regard to whether the provisions of section 7874(a)(2)(B)(ii) and (iii) are satisfied at a later time.

(h) *Nonapplication of section 367*—(1) *General rule.* If section 7874(b) applies to a surrogate foreign corporation, section 367 shall not apply to the transfer of stock or other property to such entity as part of the acquisition described in section 7874(a)(2)(B)(i).

(2) *Example.* The following example illustrates the application of paragraphs (g) and (h)(1) of this section. It is assumed that the transaction in the example occurs after March 4, 2003. The example reads as follows:

Example. Conversion of foreign corporation to domestic corporation.—(i) *Facts.* FP, a newly formed foreign corporation, acquires pursuant to a plan substantially all of the stock of DX, a domestic corporation, by issuing its stock to the owners of DX in exchange for their DX stock. The former owners of DX, all of whom are U.S. persons, hold more than 80% of the stock of FP by reason of their ownership of DX stock. The EAG that includes FP does not have substantial business activities in FP's country of incorporation after the acquisition when compared to the total business activities of the EAG.

(ii) *Analysis.* FP is a surrogate foreign corporation under section 7874(a)(2)(B). Under section 7874(b), FP is treated as a domestic corporation for purposes of the Internal Revenue Code. In addition, the former owners of DX are not subject to section 367 with respect to the transfer of their DX stock to FP.

(i) [*Reserved.*]

(j) *Effective date.* This section shall apply to acquisitions completed on or after June 6, 2006. However, taxpayers may apply this section to acquisitions completed prior to that date, but must apply it consistently to all acquisitions within its scope.

Approved: May 22, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. E6–8699 Filed 6–5–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–MI–0001; FRL–8176–6]

Approval and Promulgation of Air Quality Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a June 17, 2005, Michigan petition for exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major sources of nitrogen oxides (NO_X). The petition is for sources in six of Michigan's eight-hour ozone nonattainment areas, which comprise eleven counties. EPA proposed approval of the petition in a January 5, 2006 rulemaking action. Section 182(f) of the Clean Air Act allows this exemption for areas where additional reductions in NO_X will not contribute to attainment of the ozone standard. The Grand Rapids, Kalamazoo/Battle Creek, Lansing/East Lansing, Benzie County, Huron County, and Mason County nonattainment areas will each receive an exemption.

DATES: This final rule is effective on July 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2005–0001. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

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

I. What Is EPA's Analysis of the Supporting Materials?
II. What Are the Environmental Effects of These Actions?
III. What Is EPA's Response to Comments?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

I. What Is EPA's Analysis of the Supporting Materials?

Michigan submitted the 2002–04 monitoring data for the six ozone nonattainment areas. The eight-hour ozone concentrations for these areas were all below the National Ambient Air Quality Standard (NAAQS)for ozone. EPA records indicate the 2003–05 monitoring data is also below the eight-hour ozone NAAQS for all six areas. Michigan has not implemented NO_X control provisions in the areas.

EPA's January 14, 2005 document, ''Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation'' gives the requirements for demonstrating that further NO_X reduction in an ozone nonattainment area will not contribute to ozone attainment. The guidance provides that three consecutive years of monitoring data below the standard in areas that have not implemented NO_X controls adequately demonstrates that additional NO_X reductions will not aid attainment. EPA's approval of the petition is granted on a contingent basis. Michigan must continue to monitor the ozone levels in the areas. Each of the six areas receives its own exemption. If an area violates the standard, EPA will remove the exemption for that area.

II. What Are the Environmental Effects of These Actions?

Nitrogen oxides are a precursor in ozone formation. Volatile organic compounds (VOC) are another ozone precursor. The photochemical reactions that form ozone are complex. Reducing NO_X (NO and NO_2) emissions will not always reduce ozone levels. When the ratio of NO to VOC emissions is high, the NO will react with ozone (O_3) to form NO_2 and oxygen (O_2). In this environment, the NO_2 will react with hydroxyl (OH) radicals instead of forming ozone. A decrease in NO_X emissions would cause an increase in ozone formation when these conditions exist. This effect is usually localized.

Because of this chemical reaction, the section 182(f) exemptions should not interfere with attainment of the standard NAAQS for ozone in the six Michigan ozone nonattainment areas. The state demonstrated that the areas were able to hold ozone levels under the NAAQS without employing NO_X controls. Thus, additional NO_X controls would not be expected to contribute to attainment. Ozone levels are expected to remain below the standard which will protect human health. If a violation occurs in one of the areas, EPA will remove the exemption for that area and will require additional control measures.

III. What Is EPA's Response to Comments?

EPA received one comment on the January 5, 2006 (71 FR 577–579), proposed approval of Michigan's petition. That comment came from the New York State Department of Environmental Conservation (New York). New York was concerned that EPA did not evaluate the impact of the NO_X waivers on its ozone nonattainment areas. It cited the results of ozone contribution modeling from another EPA program, the Clean Air Interstate Rule. The contribution modeling shows a link between state-wide Michigan NO_X and VOC emissions and nineteen counties, including the New York ozone nonattainment counties of Erie, Richmond, and Suffolk.

In considering this petition, EPA did not evaluate the impact of the NO_X waivers on downwind ozone nonattainment areas. This is not a part of the process for evaluating section 182(f) waiver requests. The NO_X emission reductions required from Michigan under other EPA programs are not affected by granting of the waivers. Also, reductions of other ozone precursors, such as VOC, are unaffected by this action. If called for under other programs, Michigan will be required to reduce its state-wide emissions to address its contribution to nonattainment counties in other states. The Clean Air Interstate Rule will address the specific concern New York expressed by requiring ozone precursor reductions in Michigan and other states

that contribute to the New York ozone nonattainment areas.

IV. What Action Is EPA Taking Today?

EPA is approving a Michigan petition for exemptions from the RACT and NSR requirements for major NO_X sources in six of the state's eight-hour ozone nonattainment areas. These nonattainment areas encompass eleven counties. The Grand Rapids area includes Kent and Ottawa counties. Calhoun, Kalamazoo, and Van Buren counties make up the Kalamazoo/Battle Creek area. The Lansing/East Lansing area consists of Clinton, Eaton, and Ingham counties. Benzie, Huron, and Mason counties are all single county nonattainment areas.

Section 182(f) of the Clean Air Act allows this exemption for areas where a state demonstrates that additional reductions in NO_X will not contribute to attainment of the NAAQS for ozone. Monitoring data shows the ozone levels in the six areas are now below the NAAQS without utilizing NO_X controls. These exemptions from the NO_X requirements in section 182(f) are on a contingent basis. The state used monitoring data to demonstrate that it meets the requirements for the exemption. If an area's monitored level of ozone violates the NAAQS in the future, EPA will remove its exemption.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' 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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13132: Federalism

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.

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

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.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

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.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: May 18, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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 X—Michigan

■ 2. Section 52.1174 is amended as follows:
■ A. The first paragraph designated as paragraph (c) is redesignated as paragraph (c)(1).
■ B. The second paragraph designated as paragraph (c) is redesignated as paragraph (c)(2).
■ C. Paragraph (w) is added to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(w) Approval—On June 17, 2005, the Michigan Department of Environmental Quality submitted a petition requesting the exemption from Clean Air Act oxides of nitrogen control requirements in six 8-hour ozone nonattainment areas. The Grand Rapids, Kalamazoo/Battle Creek, Lansing/East Lansing, Benzie County, Huron County, and Mason County nonattainment areas each receive an exemption. Section 182(f) of the 1990 amended Clean Air Act authorizes the exceptions. The exemption will no longer apply in an area if it experiences a violation of the 8-hour ozone standard.

[FR Doc. 06–4986 Filed 6–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[EPA–HQ–OAR–2004–0229; FRL–8178–3]

RIN 2060–AJ72

Control of Air Pollution From Motor Vehicles and Nonroad Diesel Engines: Alternative Low-Sulfur Diesel Fuel Transition Program for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule will implement the requirements for sulfur, cetane and aromatics for highway, nonroad, locomotive and marine diesel fuel produced in, imported into, and distributed or used in the rural areas of Alaska. Beginning June 1, 2010, diesel fuel used in these applications must meet a 15 ppm (maximum) sulfur content standard. This rule will assist the implementation of the programs for highway and nonroad diesel fuels in Alaska and provide some limited additional lead time for development of any necessary changes to the fuel distribution system in Alaska's rural areas. We believe this additional lead time is appropriate given the circumstances in the rural areas. In 2010, highway and nonroad fuel in rural Alaska will be required to meet the 15 ppm sulfur standard, providing the full environmental benefits of these programs to rural Alaska as well. In addition, fuel used by engines in rural Alaska covered by the new source performance standard (NSPS) for new stationary diesel engines will also be required to meet the 15 ppm sulfur standard in 2010.

DATES: This final rule is effective on July 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0229. 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.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog or Tia Sutton, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; fax number: (734) 214–4816; telephone numbers: (734) 214–4227 or (734) 214–4018, respectively; e-mail addresses: *Herzog.jeff@epa.gov* or *Sutton.tia@epa.gov*, respectively.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You are regulated by this rule if you produce, import, distribute, or sell diesel fuel for use in the rural areas of Alaska. The following table gives some examples of entities that must follow the regulations. However, because these are only examples, you should carefully examine the regulations in 40 CFR part 80. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Examples of potentially regulated entities	NAICS codes [a]	SIC codes [b]
Petroleum Refiners	32411	2911
Petroleum Bulk Stations, Terminals	42271	5171
Petroleum and Products Wholesalers	42272	5172
Diesel Fuel Trucking	48422	4212
	48423	4213
Diesel Service Stations	44711	5541
	44719	.....

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

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information are not included in the EPA Dockets. Information claimed as CBI as well as other information, the disclosure of which is restricted by statute, is not available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material is not to be placed in EPA's electronic public docket but is available only in printed, paper form in the official public docket. To the extent feasible, public docket materials are available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system identifies whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

It is EPA's policy that public comments, whether submitted electronically or on paper, are available, without change, for public viewing in EPA's electronic public docket as EPA receives them, unless the comment contains copyrighted material, CBI, or other information the disclosure of which is restricted by statute. When EPA identifies a comment containing copyrighted material, we provide a reference to that material in the version of the comment in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

Outline of This Preamble

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VIII. Statutory Provisions and Legal Authority

II. Background

A. How Was Alaska Treated in the Highway Diesel Rule?

The nationwide implementation dates (including those for all of Alaska) for highway diesel fuel at 40 CFR 80.500 *et seq.* are shown in Table II.A–1. (*See* 66 FR 5002, January 18, 2001; also see *Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs* (70 FR 70498, November 22, 2005).)

TABLE II.A–1.—FEDERAL IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD

Date	Applicable parties
June 1, 2006	Refiners and importers.
September 1, 2006	Downstream facilities except retailers and wholesale-purchaser consumers.
October 15, 2006	Retailers and wholesale-purchaser consumers.

These implementation dates begin the transition of the nation to ultra-low sulfur (15 ppm sulfur, maximum) highway diesel fuel from the current low sulfur (500 ppm sulfur, maximum) diesel fuel.[1] Nationwide, until 2010, at least 80 percent of each refiner's production (or imports) must meet the 15 ppm sulfur standard, with the remaining 20 percent or less meeting the 500 ppm sulfur standard—this is commonly referred to as the 80/20 Temporary Compliance Option. Exceptions are made for EPA-approved small refiners, which may produce all their highway fuel to the 500 ppm sulfur standard until later years, and refiners and importers that obtain early-use credits, which would allow them to produce or import more than 20 percent of their diesel fuel to the 500 ppm sulfur standard until 2010. However, because of the sensitivity of the model year 2007 and later highway engines and emission control systems to fuel with high sulfur content, those engines must not be fueled with diesel fuel having a sulfur content greater than 15 ppm. This requires that all 500 ppm sulfur highway diesel fuel (*i.e.*, fuel from the 80/20 Temporary Compliance Option, credit-trading, or EPA-approved small refiners) be segregated from the 15 ppm sulfur highway diesel fuel, labeled for its specific use, and dispensed, only in 2006 and earlier highway vehicles and engines. Labeling requirements and instructions are discussed at length in a later section of this rule.

From the beginning of the 500 ppm highway diesel fuel program in 1993, Alaska was exempted from both the 500 ppm highway diesel fuel sulfur standard and the non-highway dye provisions of 40 CFR 80.29 because of its unique geographical, meteorological, air quality, and economic factors.[2] We granted temporary exemptions for the urban areas of the State served by the

[1] Alaska was granted an exemption from the 500 ppm standard until June 1, 2006.

[2] Under section 211(i)(4) of the Clean Air Act, the States of Alaska and Hawaii may be exempted from the 500 ppm sulfur content standard (and cetane, aromatics and dye requirements) of section 211(i). Copies of information regarding Alaska's petition for exemption under section 211(i)(4), subsequent requests by Alaska, public comments received, and action by EPA are available in public docket A–96–26.

Federal Aid Highway System, and a permanent exemption for the remaining State-defined rural areas.

On December 12, 1995, Alaska submitted a petition for a permanent exemption for all areas of the State served by the Federal Aid Highway System, that is, those areas previously covered only by the temporary exemption. While considering that petition, we began work on a nationwide rule to impose more stringent requirements for the sulfur content in highway diesel fuel. In the subsequent highway diesel final rule (66 FR 5002, January 18, 2001), we applied the complete highway engine emission standards in Alaska. The permanent exemption from the 500 ppm sulfur standard of 40 CFR 80.29 for rural Alaska terminates on the implementation date of the new 15 ppm sulfur standard in 2006. However, based on factors unique to Alaska, we provided the State with: (1) An extension of the temporary exemption from the 500 ppm sulfur standard in the urban areas until the implementation date of the new 15 ppm sulfur standard for highway diesel fuel in 2006, (2) an opportunity to request an alternative implementation plan for the 15 ppm sulfur diesel fuel program, and (3) a permanent exemption from the diesel fuel dye provisions. In that rule, our goal was to establish a minimum cost mechanism to make appropriate modifications for transitioning Alaska to the ultra-low sulfur (15 ppm sulfur maximum) highway diesel fuel program, while still ensuring that model year 2007 and later highway vehicles and engines receive the 15 ppm sulfur diesel fuel they need.

B. How Was Alaska Treated in the NRLM Diesel Rule?

The nationwide implementation of new sulfur requirements for nonroad, locomotive, and marine (NRLM) diesel fuel at 40 CFR 80.500 *et seq.* (69 FR 38958, June 29, 2004) begins June 1, 2007 for refiners and importers. This implementation date begins the first step of a two-step program of transitioning the nation from uncontrolled sulfur levels in non-highway diesel fuel to15 ppm sulfur NRLM diesel fuel. In this first step, beginning in 2007, all NRLM diesel fuel produced in or imported into the U.S. must meet the 500 ppm sulfur standard and applicable cetane or aromatic standards. Facilities downstream of the refiners and importers must meet the 500 ppm standard on subsequent dates depending on location and facility type, as shown below:

TABLE II.B–1.—FEDERAL IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 500 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2007	June 1, 2007	Refiners and importers.*
August 1, 2007	August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2007	October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2007	December 1, 2010	All facilities including farm tanks and construction facility tanks.

* Other than small refiners and those with early-use credits.

Until June 1, 2010, EPA-approved small refiners/importers and refiners/importers with early-use credits can produce NRLM uncontrolled sulfur content diesel fuel (also uncontrolled aromatics content and cetane index), in most of the U.S. (the areas contained in the Northeast/Mid-Atlantic Exclusion Area, as defined in 40 CFR 80.510(g)(1)). Until 2010, there is no restriction on the use of this EPA-approved small refiner/importer NRLM uncontrolled sulfur content diesel fuel in NRLM engines. Nevertheless, according to this rule, as it applies nationwide, other uncontrolled sulfur content diesel fuel (*i.e.*, all fuel meeting the definition of heating oil) must be segregated from NRLM diesel fuel, dyed with a yellow marker and red dye, and must not be used in NRLM engines and equipment.

As previously stated, the NRLM rule requires that heating oil be segregated and marked with a yellow marker and red dye to distinguish it from small refiner or credit-using NRLM high sulfur content diesel fuel (40 CFR 80.510). However, in that rule, we determined that a dye requirement would impose a significant challenge to Alaska's unique distribution system, which cannot easily handle another fuel grade that must be segregated. Apart from that challenge, the same transfer and storage facilities must accommodate jet fuel that must not be contaminated by dye. Therefore, the rule exempted Alaska from the dye and marker requirements, but in exchange precluded the use of credits and constrained the flexibility granted to small refiners.[3]

Step two of the nationwide NRLM diesel fuel program implements the 15 ppm sulfur standard for nonroad diesel fuel beginning on June 1, 2010 for refiners and importers. Locomotive and marine diesel fuel produced or imported continues to be subject to the 500 ppm sulfur standard until June 1, 2012. The downstream implementation dates for this second step are shown in Tables I.B–2 and I.B–3.

TABLE II.B–2.—FEDERAL IMPLEMENTATION DATES FOR NR DIESEL FUEL 15 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2010	June 1, 2010	Refiners and importers.*
August 1, 2010	August 1, 2014	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	October 1, 2014	Retailers and wholesale-purchaser consumers.

[3] For the small refiner flexibilities to be used in Alaska a refined must first obtain approval from the Administrator for a compliance plan (40 CFR 80.554(a)(4)).

TABLE II.B–2.—FEDERAL IMPLEMENTATION DATES FOR NR DIESEL FUEL 15 PPM STANDARD—Continued

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
December 1, 2010	December 1, 2014	All facilities including farm tanks and construction facility tanks.

* Other than small refiners and those with early-use credits.

TABLE II.B–3.—FEDERAL IMPLEMENTATION DATES FOR LM DIESEL FUEL 15 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2012	June 1, 2012	Refiners and importers. *
August 1, 2012	n/a	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2012	n/a	Retailers and wholesale-purchaser consumers.
December 1, 2012	n/a	All facilities including farm tanks and construction facility tanks.

* Other than small refiners and those with early-use credits.

Nationally, EPA-approved small refiners/importers and refiners/importers, except in Alaska, with early-use credits, as noted above, may produce or import nonroad diesel fuel that meets the 500 ppm sulfur standard until June 1, 2014. While the early-use credit provisions do not apply to Alaska, nevertheless, EPA-approved small refiner/importers in Alaska may produce 500 ppm sulfur content diesel fuel for all approved uses until June 1, 2014. In addition, because of the sensitivity to fuel sulfur content of the model year 2011 and later nonroad engines and emission control systems that will be certified to the Tier 4 emission standards, those engines must not be fueled with diesel fuel having a sulfur content greater than 15 ppm.

Alaska submitted its suggested modification of the highway diesel rule for rural Alaska to the Agency on June 12, 2003, after publication of our NRLM proposal but before we had completed the final NRLM rule. This suggested modification covered only highway diesel for use in rural areas. Urban areas of Alaska were addressed in a previous submission [4] for highway fuel and in Alaska's comments on the NRLM proposed rule. In both cases, the State of Alaska requested that urban areas adhere to the federal fuel sulfur standards and implementation schedule. The provisions for NRLM diesel fuel in urban Alaska, finalized in the NRLM final rule, require that NRLM in urban areas meet the same requirements as the contiguous 48 states.

[4] Letter from Michele Brown, Commissioner, Alaska Department of Environmental Conservation, to Jeffrey R. Holmstead, Assistant Administrator of the EPA's Office of Air and Radiation, April 1, 2002.

The NRLM final rule stated that our original proposal to permanently exempt all NRLM diesel fuel in rural Alaska from the sulfur content standards was inconsistent with the action requested by the State. As such, this would have imposed the NRLM sulfur content standards on all diesel fuel in rural Alaska, including all the associated labeling, recordkeeping, and reporting requirements. However, we deferred imposing the sulfur content standards, along with the labeling and recordkeeping, in order to coordinate the NRLM with highway sulfur standards. This rule addresses those issues from the NRLM final rule raised by the State for NRLM diesel fuel in the rural areas, as well as the State's suggestion for an alternative implementation plan for highway diesel fuel in the rural areas.

C. Alaska's Submission and Comments in Response to NRLM Proposal

On June 12, 2003, Alaska submitted its suggested modifications to the implementation of the highway diesel fuel sulfur standards in Alaska. In its plan, the State indicated that the rural areas will not need the 15 ppm sulfur diesel fuel in the early stage of the highway diesel program. (The rural areas are those areas not served by the Federal Aid Highway System—which includes the marine highway system—as defined by the State of Alaska.) If we implement a one-step, rather than a two-step, transition to 15 ppm sulfur, the rural areas will have more time to plan the switch to 15 ppm sulfur diesel fuel, which would lessen the overall impact. The two-step transition would have required a minimum of 80 percent of each refinery's highway diesel to meet the 15 ppm standard in 2006, with the remainder meeting the 500 ppm standard. The State requested that the rural areas be exempt from the nationwide program from 2006 to 2010, and join the nationwide program in 2010 when all highway diesel fuel must meet the 15 ppm standard. Thus, the rural areas would switch from uncontrolled to 15 ppm sulfur for all highway diesel fuel in 2010 along with the rest of the nation. Nevertheless, since all model year 2007 and later highway diesel vehicles must use 15 ppm sulfur diesel fuel, fuel meeting this standard must be available in rural communities, in which, prior to 2010, there is one or more model year 2007 or later highway vehicles. This approach provides rural Alaska more time to transition to the low sulfur fuel program in a manner that minimizes costs while still ensuring that the model year 2007 and later highway vehicles receive the low sulfur diesel fuel they need.

On September 15, 2003, Alaska submitted its comments to the May 23, 2003 NRLM proposal. In those comments, Alaska asked us to bring the NRLM diesel fuel requirements for Alaska in line with the State's recommendations for highway diesel fuel, as described above. The State made the following three requests, stressing the need to avoid the segregation of rural Alaska's fuel stream: (1) The State previously requested that June 2010 be the deadline for conversion to highway diesel fuel in the rural areas of Alaska; (2) it further requested that June 2010 be the deadline for conversion of all NRLM diesel fuel to 15 ppm sulfur content in the rural areas; and, (3) it requested that the 15 ppm standard applicable to locomotive and marine diesel fuel produced in, imported into, and distributed or used within rural Alaska

be moved up to June 2010, from the June 2012 date in the final nationwide NRLM rule.

Although it was outside the scope of this rule, Alaska also suggested that we capture marine engines, locomotive engines, and more engine sizes under the 15 ppm sulfur standard in the NRLM final rule, and that we allow the State to continue to use dye-free diesel fuel. Alaska also requested our financial and technical assistance to perform a health study of diesel exhaust exposure in rural Alaska because of concern about exposure to diesel exhaust from village electric power generators.[5]

D. How Was Alaska Treated in the NSPS for New Stationary Diesel Engines

On July 11, 2005, EPA proposed a new source performance standard (NSPS) applicable to stationary compression-ignition (*i.e.*, diesel) engines manufactured on or after April 1, 2006 and modified or reconstructed after July 11, 2005 (70 FR 39869). The proposed standards mirrored in many ways the standards promulgated for nonroad CI engines, including requiring non-emergency engines to meet standards likely to require sulfur-sensitive aftertreatment beginning in 2011. In addition, the proposed NSPS included a requirement that all engines subject to the NSPS must use diesel fuel meeting the 500 ppm sulfur standard beginning October 1, 2007 and meeting the 15 ppm sulfur standard beginning October 1, 2010.[6]

EPA received comment from entities in Alaska requesting that EPA allow similar exemptions for diesel fuel used by stationary engines in rural Alaska as were expected to be proposed for NRLM fuel in rural Alaska. EPA subsequently proposed such exemptions in the proposal for this rule. The final NSPS rule as not yet been completed, but it is expected to reference this issue and discuss EPA's agreement with the commenters. The exemptions in this final rule are intended to resolve these concerns.

III. What Is EPA Specifying for Rural Areas of Alaska?

A. Highway Diesel Fuel

With this rule, we are delaying the implementation dates for the requirements of 40 CFR 80.500 *et seq.* for highway diesel fuel produced in, imported into, and distributed or used within the rural areas of Alaska. We are also specifying that the rural areas of Alaska join the rest of Alaska and the nation in implementing the 15 ppm sulfur content standard for highway diesel fuel on the final implementation date of the nationwide program in 2010.[7] These provisions were proposed in the Notice of Proposed Rulemaking (NPRM) for this rule, which published in the **Federal Register** on October 13, 2005 (70 FR 59690), and are being finalized today. The implementation dates for our highway diesel fuel requirements in the rural areas of Alaska are shown in table III.A–1.

TABLE III.A–1.—IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD IN RURAL ALASKA

Date	Applicable parties
June 1, 2010	Refiners and importers.
August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2010	All facilities including farm tanks and construction facility tanks.

The dates shown in Table III.A–1 are slightly different from the downstream dates that mark the end of the nationwide Temporary Compliance Option. We specified the above dates for highway diesel fuel because they are more consistent with the downstream implementation dates associated with NRLM, as described in section III.B below.

Prior to the dates shown in Table III.A–1, rural areas of Alaska will continue to be exempt from the sulfur standards. However, that exemption, notwithstanding, we require that diesel fuel used in model year 2007 and later vehicles and engines meet the 15 ppm sulfur content standard, because emission control systems on those engines are sensitive to fuel sulfur content. The same fueling requirement applies nationwide, including the urban areas of Alaska, in the 2006–2010 time frame.

To fully implement the transition program for rural Alaska, we are extending the current exemption from the 500 ppm sulfur standard of 40 CFR 80.29 until the implementation dates in 2010. Had we not included this extension, highway diesel fuel in the rural areas of Alaska would be required to meet the 500 ppm sulfur standard of 40 CFR 80.29 beginning in 2006, when the current exemption expires, regardless of the proposed exclusion under 40 CFR 80.500 et al. However, under this rule, highway diesel fuel sulfur content will remain uncontrolled in rural Alaska until the implementation dates in 2010.

In its comments to the proposal for this rule, the State expressed concern regarding how the implementation schedule may adversely impact the villages in rural Alaska. That is, that the rule sets out distinct transition dates for different applicable parties, including refiners and importers; downstream facilities; retailers and wholesale purchasers; and tank farms, including construction facility tanks. The State's concern was that in a typical Alaskan village, many of these designations either do not exist or may all be included in a combined entity. For example, there may be a village or villages in which fuel is pumped from a barge into a tank from which villagers purchase fuel. Thus, it is arguable that retail customers in such a rural village could be forced into compliance as early

[5] In the June 29, 2004 NRLM final rule, we applied the 15 ppm sulfur content standard to locomotive and marine diesel fuel, but not until June 1, 2012, and we exempted Alaska from the dye and marker requirements.

[6] For purposes of this preamble, we are simplifying the discussion of the fuel provisions of the NSPS for stationary engines. There are different regulations, for example, for stationary engines with displacement greater than 30 liters per cylinder. The regulations promulgated in this rule exempt all regulated stationary engines in rural Alaska from the fuel provisions of the NSPS until December 1, 2010, after which time all of the provisions of the NSPS, including those particular regulations not discussed in the preamble, apply.

[7] Canada also requires 15 ppm sulfur highway diesel fuel beginning June 1, 2006, and in October 2004 proposed that its NRLM diesel fuel meet a 500 ppm limit beginning June 1, 2007, its nonroad diesel fuel meet the 15 ppm sulfur limit beginning June 1, 2010, and that its locomotive and marine diesel fuel meet the 15 ppm sulfur limit beginning June 1, 2012. If finalized as proposed, the sulfur requirements for highway and NRLM diesel fuel in Canada will be harmonized with those of the U.S., and this rule will have rural Alaska catch up to the requirements in both the U.S. and Canada on June 1, 2010.

as August 1, 2010, when in fact the last seasonal fuel barge typically doesn't arrive until October. Regarding this concern and for this rule, we accept, as a single entity, any legally recognized combination (defined above as a ''combined entity'') of the downstream parties as listed in the above implementation table. The compliance date for the ''combined entity'' is to be that date on which the ''party or member of the entity'' listed at the latest date on the implementation schedule is to be in compliance. For example, in cases where there may be no combined entity, each party is expected to be in compliance according to the schedule. On the other hand, there may be cases in which all the downstream parties, including retail sales, are combined into single entities. In these cases, the compliance date for the entities would be December 1, 2010.

B. Nonroad, Locomotive, and Marine and Stationary Engine Diesel Fuel

In the nonroad, locomotive and marine (NRLM) diesel final rule, we covered urban Alaska along with the rest of the nation, but held off finalizing any provisions for rural Alaska so they could be coordinated with those for the highway diesel program in rural Alaska. This rule specifies that NRLM diesel fuel produced in, imported into, and distributed or used within the rural areas of Alaska is not subject to the requirements of 40 CFR 80.500 *et seq.*, until 2010. Thus, during the first step of the nationwide program from June 1, 2007 until June 1, 2010, NRLM diesel fuel sulfur content will remain uncontrolled in rural Alaska. Beginning June 1, 2010, nonroad diesel fuel in rural Alaska will join the rest of Alaska and the nation in implementing the nonroad diesel fuel requirements of 40 CFR 80.500 *et seq.* Also, due to the unique circumstances in rural Alaska which limit the number of grades of diesel fuel that can be stored and distributed, this rule further specifies that the 15 ppm sulfur standard applicable to locomotive and marine fuel (LM) be moved forward to 2010 to be implemented at the same time as the 15 ppm sulfur standard for nonroad (NR) diesel fuel. In this way, there will only be one grade of NRLM diesel fuel in rural areas in 2010 and 2011 instead of the two separate grades (*i.e.* 15 ppm and 500 ppm) that will be present elsewhere in the U.S. The implementation dates for the NRLM diesel fuel sulfur standards in rural Alaska are shown in Table II.B–1. All of the provisions noted above that are being finalized in this rule were proposed on October 13, 2005 (70 FR 59690).

TABLE III.B–1.—IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 15 PPM STANDARD IN RURAL ALASKA

Date	Applicable parties
June 1, 2010	Refiners and importers.
August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2010	All facilities including farm tanks and construction facility tanks.

Similarly, diesel fuel used in engines covered by the NSPS for diesel stationary engines in rural Alaska is exempt from the requirements of 40 CFR 80.510 until December 1, 2010. Beginning on December 1, 2010, all diesel fuel used in engines covered by the stationary internal combustion engine NSPS (*i.e.*, all stationary diesel engines manufactured on or after April 1, 2006 and all stationary diesel engines modified or reconstructed after July 11, 2005) is subject to the requirements of 40 CFR part 60, which is expected to refer to the provisions of 40 CFR 80.510, as they apply to nonroad engines.

Since the urban areas of Alaska will follow the nationwide schedule for sulfur standards, some 500 ppm LM fuel will likely be available in these areas in the 2010–2012 timeframe, during which time nonroad and stationary engines requiring 15 ppm fuel will also likely be present. We remind all those who will be handling both 500 ppm and 15 ppm sulfur content fuel that model year 2011 nonroad and stationary engines are prohibited from using the 500 ppm sulfur content LM fuel. We wish to further stress that although heating oil will remain uncontrolled for sulfur content in all areas of Alaska, it must not be used in any model year 2007 or later highway vehicles or engines, or in any model year 2011 or later nonroad or stationary engines or equipment.

C. Summary of Sulfur Standards for Alaska

Table III.C–1 shows the Federal and Alaskan sulfur standards for highway and NRLM diesel fuel. Note that Alaska must ensure that model year 2007 and later highway engines and model year 2011 and later nonroad and stationary source engines are only fueled with fuel meeting the 15 ppm standard.

TABLE III.C–1.—SUMMARY OF FEDERAL AND ALASKAN SULFUR STANDARDS FOR DIESEL PRODUCTION AND IMPORTS

[Parts per million]

Area	Fuel	Before 2006	2006	2007–2009	2010–2011	2012†
Federal	HW	500	†‡15	‡15	15	15
Urban Alaska	HW	none	†‡15	‡15	15	15
Rural Alaska	HW	none	none	none	†15	15
Federal	NR	none	none	†500	†15	15
Urban Alaska	NR	none	none	†500	†15	15
Rural Alaska	NR	none	none	none	†15	15
Federal	LM	none	none	†500	500	†15
Urban Alaska	LM	none	none	†500	500	†15
Rural Alaska	LM	none	none	none	†15	15

† Refinery gate standard begins on June 1 of the first applicable year

‡ Temporary Compliance Option in effect: Up to 20% of a refinery's production may exceed the 15 ppm standard so long as it meets the 500 ppm standard, is segregated from 15 ppm, and is not used in MY2007 and later engines.

IV. Why Are We Specifying a June 1, 2010 Effective Date for Rural Areas of Alaska?

Rural Alaska represented a rather unique situation. The majority of distillate fuel used in rural Alaska is for stationary sources such as power generation and home heating. The State estimated that highway vehicles consume only about one percent of the distillate fuel in the rural areas. ''Heating oil'' consumes approximately 95 percent (about 50 percent for heating and 45 percent for electricity generation) and marine engines consume the remaining five percent. There is no significant consumption of other nonroad or locomotive diesel fuel in rural Alaska. Thus, in rural Alaska, only a very small proportion of the distillate fuel used is currently regulated for sulfur content (as well as aromatics content and/or cetane index).[8] A single grade of fuel is generally distributed to rural Alaska. It is usually downgraded Jet A (which has a pour point of −50 degrees) in order to ensure the fuel is usable in arctic conditions. If we had followed the nationwide requirements, either multiple grades of arctic grade fuel would have had to be transported and stored for multiple uses, or else a single grade of fuel meeting the 15 ppm standard would have had to be used by everyone. The limited transportation and storage capabilities in rural Alaska would have forced communities to build additional infrastructure to handle multiple fuel grades. In order to provide a single grade of fuel meeting the 15 ppm standard, these small communities would have been forced to pay a premium for a fuel that was required for only a very small number of engines in the 2006 to 2010 timeframe. Either approach could have caused significant economic hardship for the many rural communities which have primarily subsistence economies.

Our goal is to allow Alaska to transition to the low sulfur fuel programs in a manner that minimizes costs while still ensuring that the small number of model year 2007 and later highway vehicles and engines, and the small number of model year 2011 and later nonroad and stationary engines and equipment certified to the Tier 4 nonroad standards beginning with the model year 2011, receive the 15 ppm sulfur content diesel fuel they need. By coordinating the transition to 15 ppm of highway, NRLM, and regulated stationary engine fuels in 2010, rural communities can make individual decisions about whether to use only one grade of diesel fuel (*e.g.*, ultra low) or build additional storage tanks to handle two grades, one of which would be high sulfur fuel, to be used for space heating and unregulated power generation. In addition, requiring rural areas to provide 15 ppm diesel fuel for all NRLM and regulated stationary applications beginning in 2010, rather than exempting them permanently,[9] helps them avoid the temptation to misfuel that may arise as the number of model year 2011 and later engines increases and they are faced with the choice of either building additional tankage or using only 15 ppm fuel.

A. Highway Diesel Fuel

Under the highway diesel rule, at least 80 percent of a refinery's highway diesel fuel production (except for that produced by small refiners approved by EPA under 40 CFR 80.550–80.553), must meet the ultra-low sulfur content standard (15 ppm sulfur, maximum) by 2006 (see Table I.A–1). The remaining highway diesel fuel must meet the low sulfur content standard (500 ppm sulfur, maximum) and must not be used in model year 2007 and later highway diesel vehicles. These nationwide standards and deadlines apply to all of Alaska, including the rural areas. Since the current fuel supply in rural Alaska is primarily high sulfur, these nationwide requirements for highway fuel would have caused the highway fuel supply in rural Alaska to switch to 15 ppm sulfur diesel fuel, and possibly some to 500 ppm sulfur diesel fuel, in 2006.

As previously discussed, Alaska has been exempt from the sulfur and dye provisions of 40 CFR 80.29 since the beginning of the 500 ppm highway diesel fuel program in 1993 because of its unique geographical, meteorological, air quality, and economic factors. The rural areas are permanently exempt, and the urban areas are temporarily exempt. When we finalized the 15 ppm sulfur content standard for highway diesel fuel, we recognized the factors unique to Alaska and provided the State with: (1) An extension of the temporary exemption for the urban areas from the 500 ppm sulfur standard until the implementation date of the new 15 ppm sulfur standard for highway diesel fuel in 2006, (2) an opportunity to request an alternative implementation plan for the 15 ppm sulfur diesel fuel program, and (3) a permanent exemption from the diesel fuel dye provisions. As stated in that rule and in this rule, our goal is to allow Alaska to transition to the 15 ppm sulfur standard for highway diesel fuel in a manner that minimizes costs while still ensuring that model year 2007 and later highway vehicles and engines receive the 15 ppm sulfur diesel fuel they need. In its subsequent request for an alternative implementation plan for the rural areas, the State indicated that the rural areas will have few, if any, model year 2007 and later highway vehicles in the early stages of the highway diesel program, and thus would need little, if any, 15 ppm sulfur diesel fuel during that time. The State also indicated that rural areas need more time to plan the switch to 15 ppm sulfur diesel fuel. We have reduced the overall impact of this fuel switch by implementing a one-step, rather than a two-step, transition to 15 ppm sulfur.

There are about 600 highway diesel vehicles with an average age of about 18 years in the rural areas of Alaska. Many replacement vehicles are typically pre-owned, and only about five to 15 new diesel vehicles are brought into the rural areas each year.[10] Thus, most of the approximately 250 rural area villages likely won't obtain their first model year 2007 or later diesel highway vehicle for some time after 2007.

According to the State, the fuel storage and barge infrastructure in rural Alaska is currently designed for one grade of diesel fuel. Jet fuel, usually a high sulfur content fuel, is downgraded, distributed, (and sometimes mixed with #1 diesel), sold, and used as #1 diesel because it meets arctic specifications. The efficiency and cost effectiveness of this system discourages the introduction of a small volume of a specialty fuel, such as low or ultra-low sulfur highway diesel fuel. However, the rural hub communities with jet service must continue to import jet fuel untainted by dye for aviation purposes. In the rural areas, fuel storage tanks are owned, operated, and maintained by the communities. Thus, any new tankage or additional tank maintenance would have fallen directly on those rural communities, most of which have subsistence economies.

We agree with the State that a 2010 implementation date for rural Alaska is justified. We expect that the demand for 15 ppm sulfur content fuel will be very low in rural Alaska between 2006 and 2010, because very few model year 2007 and later highway diesel vehicles are expected there during those years.

[8] Personal communication from Ron King, Alaska Department of Environmental Conservation. July 2, 2002.

[9] The permanent exemption under the existing regulations still requires all model year 2011 and later nonroad engines to be fueled with 15 ppm fuel.

[10] Diesel vehicle registration data (12,000 pound and greater, unladed weight) as of October 1998 provided by the State of Alaska.

Requiring the rural areas to comply with the nationwide requirements for 15 ppm fuel [11] during the first step of the highway program (2006–2010) would have imposed a significant economic burden on Alaska's rural communities to expand their distribution and storage systems without providing corresponding environmental benefits. We also agree that 2010 is an appropriate time to implement a sulfur content requirement for highway diesel fuel in the rural areas. As the number of model year 2007 and later highway vehicles increases, the environmental benefits from using 15 ppm sulfur diesel fuel will also increase. Extending the lead time for sulfur-controlled diesel fuel by an additional four years (from 2006 to 2010) is adequate for the distributors and rural communities to make decisions on the most economical way to transition to sulfur-controlled highway diesel fuel, and to make any necessary capital improvements. Finally, 2010 marks the point in time at which both the Temporary Compliance Option (TCO) for highway diesel fuel ends and the requirement for 15 ppm nonroad diesel fuel begins. Distribution of diesel fuel to meet demand is obviously more efficient if the same sulfur standards apply everywhere. As a result, 2010 is an ideal year in which to transition rural Alaska to 15 ppm fuel in a single step.

We do not require the use of 500 ppm sulfur highway diesel fuel as a transition to 15 ppm fuel between June 1, 2006 and June 1, 2010. Such an interim step would have created the same burden on Alaska's distribution system and rural communities as requiring 15 ppm sulfur highway diesel fuel on June 1, 2006. As discussed in more detail below, the primary issue of requiring low sulfur highway diesel fuel in rural Alaska was not whether there was a source of the low-sulfur diesel fuel, nor whether the fuel might meet the 500 ppm or 15 ppm sulfur standard. The issue was that most of the distribution systems, including the storage tanks, were designed to handle a single fuel grade. To have required an additional fuel grade would have imposed an unreasonable economic burden on communities already functioning under subsistence economies. If we had imposed a transition of 500 ppm to 15 ppm sulfur content highway diesel fuel on June 1, 2006, rural Alaska would not have the relief provided by this rule.

[11] The first step of the nationwide highway program would require only 80% of each refinery's production to meet the 15 ppm standard; the rest must meet a 500 ppm standard.

Based on a comment received in response to our NPRM, we learned that there are, in fact, marine facilities in some of the State-defined rural areas of Western Alaska, particularly along the Pribilof and Aleutian islands, which can handle more than one grade of fuel. Under the regulations, small refiners/importers with access to such facilities could continue to supply 500 ppm sulfur content fuel to such marine facilities until June 1, 2014. We remind those who handle both 500 ppm and 15 ppm sulfur content fuels that they must be kept segregated, properly labeled, and sold only to legal end-users.

As discussed in the January 18, 2001 **Federal Register** notice, any revisions to the final rule for highway diesel fuel in Alaska, must as a minimum: (1) Ensure an adequate supply (either through production or imports) of 15 ppm fuel to meet the demand of any model year 2007 or later vehicles, (2) ensure sufficient retail availability of low sulfur fuel for new vehicles in Alaska, (3) address the growth of supply and availability over time as more new vehicles enter the fleet, (4) include measures to ensure segregation of the 15 ppm fuel and avoid contamination and misfueling, and (5) ensure enforceability. As discussed below, we believe the provisions in this rule meet these criteria.

1. Ensure an Adequate Supply (Either Through Production or Imports) of 15 ppm Sulfur Diesel Fuel To Meet the Demand of Any Model Year 2007 or Later Vehicles

Alaska has nearly 9000 highway diesel vehicles. The fuel provided to those vehicles in the areas served by the Federal Aid Highway System—approximately 8400 vehicles—must meet the requirements of the highway rule, regardless of this rule. Other than diesel fuel produced or imported by an EPA-approved small refiner/importer under 40 CFR 80.550–80.553, at least 80 percent of the fuel produced or imported into Alaska, must meet the 15 ppm sulfur standard, beginning June 1, 2006. The remainder of that fuel must meet the 500 ppm sulfur standard.

Consumption of highway diesel fuel in the rural areas is about seven percent of highway diesel fuel consumption in Alaska (assuming the same average vehicle consumption throughout the state). Consumption of highway diesel fuel by the five to 15 new vehicles per year from 2007 through 2010 (for a total of 20 to 60 model year 2007 and later vehicles by the end of 2010) will be much smaller—less than one percent of the highway diesel fuel consumption in Alaska. Thus, under this rule, the production or importation of 15 ppm sulfur diesel fuel until June 1, 2010 for the model year 2007 and later highway vehicles in the rural areas should not be a challenge.

The significant challenge in the rural areas is the distribution and storage infrastructure, which is currently designed to handle only one grade of distillate fuel. The highway diesel rule would have required changes to that infrastructure in order to handle an additional grade, including a shift to 15 ppm sulfur diesel fuel for all purposes, to occur by September 1, 2006. However, under this rule, changes to the distribution and storage infrastructure, or a shift to 15 ppm sulfur diesel fuel for all purposes, will not be required in rural areas until October 1, 2010. Thus, this rule grants the fuel distributors and villages in rural areas an additional four years to make the necessary changes. However, they are still required to supply 15 ppm sulfur fuel to all model year 2007 and later highway vehicles and engines.

Supplying 15 ppm sulfur diesel fuel for model year 2007 and later diesel vehicles until October 1, 2010 can be accomplished several ways. A village fwith no model year 2007 or later diesel vehicles or engines will not need the new fuel and/or infrastructure changes until October 1, 2010. Nevertheless, if someone in a rural village does purchase or otherwise operate one or more model year 2007 or later highway vehicles or engines, 15 ppm sulfur fuel must be supplied by some means. One suggestion is to ship the fuel in 55-gallon drums; another is to modify the fuel infrastructure in order to handle a second fuel grade. A third option is for the village to shift to 15 ppm sulfur content fuel for all of its fuel needs.

The first option—using 55-gallon drums—will likely have additional transportation costs for shipping the new fuel for the model year 2007 and later diesel vehicles, but the volume will likely be low (only 20 to 60 of those vehicles by the end of 2010 distributed among the approximate 250 villages in rural Alaska). Thus, we expect that on average, the overall incremental cost of using this 55-gallon drums to supply diesel fuel to rural Alaska will be negligible.

The second option (changing the fuel infrastructure to handle the additional fuel grade) will likely have the highest cost impact because the distributors would need to split their barge deliveries into multiple fuel grades, and a village would need multiple storage, handling, and delivery systems. These modifications will cost money. If a village were to choose this option, we

expect the choice would likely impact consumers by increasing the cost of all fuels, not just the 15 ppm diesel.

While the third option (switching all uses to 15 ppm sulfur diesel) would avoid any incremental transportation, storage, and delivery systems costs, nevertheless the 15 ppm sulfur fuel will likely cost more than the higher sulfur fuel. Over the short term, this higher fuel cost may be significant, especially compared to option one, in that heating and electricity generation accounts for about 95%, on average, of the distillate consumption in a village.

Under this rule, it is possible that all of the above options, or some combination of them, will be found prior to December 1, 2010 among the villages that need the fuel. In any case, during this time period, we believe an adequate supply of 15 ppm sulfur diesel fuel for all model year 2007 and later vehicles and engines in the rural areas will not present a significant challenge.

2. Ensure Sufficient Retail Availability of Low Sulfur Fuel for New Vehicles in Alaska

Sufficient retail availability [12] is not an issue if adequate supply is provided to rural Alaska. Fuel deliveries to rural Alaska are made to village tank farms (typically one tank farm per village). In some cases, where villages have no separate consumer tanks, pumps, or separate filling stations, the villagers withdraw fuel directly from the tank farm. In villages with refueling locations other than the village tank farm, the pumps are, nevertheless, usually filled directly from the village tank farm. Presumably, fuel deliveries in 55-gallon drums will be delivered either to the village tank farm or directly to the vehicle owners.

3. Address the Growth of Supply and Availability Over Time as More New Vehicles Enter the Fleet

Under this rule, and as required nationwide, all diesel fuel for model year 2007 and later highway diesel vehicles and engines in the rural areas must meet the 15 ppm sulfur content standard. As previously discussed, we expect that from as few as 20 to as many as 60 model year 2007 and later diesel vehicles will arrive in Alaska between late 2006 and December 1, 2010, the date by which all highway diesel fuel in the rural area retail facilities must meet the 15 ppm sulfur content standard. Likewise, we expect that the demand for 15 ppm sulfur content diesel fuel will be very low for these vehicles in the rural areas. Nevertheless, regardless of whether the small volume of this fuel for these vehicles prior to December 1, 2010 is stored in 55 gallon drums, in segregated tanks, or in village tanks, storing the additional incremental volume for a few new vehicles will present no significant challenge.

4. Include Measures To Ensure Segregation of the 15 ppm Fuel and Avoid Contamination and Misfueling

Under this rule, between 2006 and December 1, 2010, all segregation and contamination avoidance measures that apply nationwide to highway diesel fuel, except for the dye requirements, are applicable to diesel fuel used in model year 2007 and later highway vehicles and engines in the rural areas of Alaska. We do not believe any measures beyond these are necessary. After 2010, all diesel fuel meeting the 15 ppm standard must be segregated from all other diesel fuel. After June 1, 2010 and until December 1, 2014, it is incumbent upon all fuel handlers, especially those handling both 15 ppm sulfur content fuel and 500 ppm sulfur content fuel produced and/or distributed by EPA-approved small refiners, to assure that the 15 ppm sulfur content fuel is segregated from the small refiner fuel and that both fuels are dispensed to appropriate and legal end-users, are properly labeled, and carry appropriate transfer documents for all custody transfers other than retail sales.

5. Ensure Enforceability

Under this rule, between 2006 and December 1, 2010, all quality assurance measures (including testing and sampling) and enforcement provisions that apply nationwide to highway diesel fuel, except for the dye requirements, are applicable to any diesel fuel used in model year 2007 and later highway vehicles and engines in the rural areas of Alaska. We do not believe that any additional measures beyond these are necessary.

B. NRLM and Stationary Diesel Fuel

As discussed above, under this rule, 15 ppm sulfur content highway diesel fuel must be in retail facilities in the rural areas by December 1, 2010. In comments on the NRLM proposal, the State asked that we apply the nationwide NRLM fuel requirements to the rural areas beginning in 2010 (except for the dye and marker requirements). This approach allowed us to coordinate the highway, NRLM, and regulated stationary diesel fuel requirements in the rural areas. Given the significant distribution limitations in rural areas, this was a critical need.

This rule specifies one exception to the nationwide NRLM standards and implementation deadlines in effect for diesel fuel produced in, imported into, and distributed or used within rural Alaska, beginning June 1, 2010. This exception is that locomotive and marine diesel fuel will also be required to meet the 15 ppm sulfur content standard on June 1, 2010 rather than in 2012.

Rather than allowing the current exemption to continue indefinitely, we believe that imposing the 15 ppm standard on all NRLM and regulated stationary diesel fuel in rural Alaska is both warranted and feasible. First, all highway diesel fuel, as well as all NRLM diesel fuel and all diesel fuel for regulated stationary engines in urban areas, must meet the 15 ppm standard by 2010. Given the limited ability of the distribution system for handling multiple grades, much (if not all) of the NRLM diesel fuel in the rural areas will likely meet the 15 ppm standard even under the existing regulations. Second, we expect that the model year 2011 and later nonroad and stationary engines will represent an increasing fraction of the nonroad and stationary fleet beginning in 2010. Under the indefinite exemption, rural communities would have had to decide when to switch their NRLM fuel to only 15 ppm sulfur content fuel. Under those conditions, there may have been a temptation to misfuel model year 2011 and later model year engines in order to avoid making this switch. If misfueling had occurred for this or any other reason the environmental benefits of the model year 2011 and later nonroad and stationary engines would be compromised. In addition, while pre-2007 highway engines and pre-2011 nonroad and stationary engines are not sensitive to high sulfur fuels, the direct environmental benefits from using lower sulfur fuel, including reduced sulfur dioxide and diesel sulfate particulate, would be lost if there were an indefinite exemption. In summary, there are logistical and economic benefits for coordinating the implementation of highway, NRLM, and stationary 15 ppm sulfur standards in urban and rural areas of Alaska and with the rest of the nation. We believe that these benefits exceed the costs in rural Alaska.

In response to our proposal, we received a comment expressing concern about whether an EPA-approved small refiner's status will be affected by the June 1, 2010 NRLM rule as we have described its implementation. That is, whether an EPA-approved small refiner

[12] For the purpose of this discussion concerning rural Alaska, we assume that retail availability means availability to the end user (*e.g.,* diesel vehicle or engine owner/operator).

can produce, import, or otherwise distribute 500 ppm NRLM diesel fuel for general use in other than model year 2007 and later diesel vehicles and engines between June 1, 2010 and mid-2014. As stated previously in this rule, ''EPA-approved small refiners * * * may produce or import diesel fuel that meets the 500 ppm sulfur standard until June 1, 2014.'' It should also be clear that until June 1, 2014 EPA-approved small refiners can distribute or otherwise sell 500 ppm sulfur content NRLM diesel fuel for use in pre-model year 2007 diesel vehicles and engines as well as for heating and, if the engine is unregulated, electrical generation. However, along with all other rules and restrictions that apply to small refiners, we stress that the small refiner 500 ppm sulfur content NRLM diesel fuel can only be sold to appropriate and legal end-users and must be properly labeled and segregated from all other fuels after June 1, 2010.

The NRLM final rule exempts all areas in Alaska from the red dye and yellow marker requirements, and any segregation requirements that would otherwise apply for fuels meeting the same sulfur, aromatics and/or cetane standards. Thus, in rural Alaska, prior to June 1, 2010, uncontrolled highway and non-highway diesel fuels can be commingled. To eliminate the need for segregation, beginning June 1, 2010, highway and NRLM diesel fuels may be commingled if both meet the 15 ppm sulfur standard as well as applicable aromatics and/or cetane standards. The market will determine whether segregated or commingled distillate fuel for highway, NRLM, and heating oil are available in any given area.

V. Transition Dates for Urban Areas of Alaska

As stated above in section II.A., under the final highway diesel rule, provisions were provided for the transition of the distribution system from 500 ppm diesel fuel to 15 ppm diesel fuel. These provisions were recently modified such that refiners are required to begin producing 15 ppm highway diesel fuel on June 1, 2006, while distributors are allowed until September 1, and retail outlets and wholesale purchaser-consumers until October 15. A comment was received from the State of Alaska that the current language of the regulations would essentially require that all parties downstream of the refinery in Alaska would have to transition to a 500 ppm standard by June 1 since they are currently exempted from the 500 ppm standard and are at a higher sulfur level. This was clearly not the intent of the final highway diesel rule. The intent was for fuel distributors in Alaska to have the same transition period as distributors in the rest of the country. Therefore, distributors would be allowed to remain at high sulfur until September 1 and retail outlets and wholesale purchaser-consumers would be allowed to remain at high sulfur until October 15. This final rule is making this change to be consistent with the original intent of the highway diesel rule.

VI. What Is the Emissions Impact of This Rule?

The flexibility offered by this rule will not increase diesel emissions over current levels, but will likely delay some sulfate emission reduction benefits in rural Alaska until 2010, when low sulfur diesel fuel is more widely used. The sulfate emissions of pre-model year 2007 highway vehicles and engines and of all marine engines in rural Alaska will likely remain at current levels until December 1, 2010. Accordingly, where low sulfur fuel is available, sulfate emissions will be reduced.

The State of Alaska reported that there are approximately 600 diesel highway vehicles distributed among approximately 250 villages or rural communities. That is an average of fewer than three diesel vehicles per village, although the absolute numbers likely vary considerably between the smallest and largest villages. We believe that if 15 ppm sulfur content fuel is available for this small number of pre-model year 2007 diesel highway vehicles, the sulfate emission reductions will, nevertheless, be very small. On the other hand, the villages will receive the full emission reduction benefits from any model year 2007 and later diesel highway vehicles fueled with 15 ppm sulfur content diesel fuel that may be present. Once again, we don't expect many of these late-model vehicles will be present in the rural areas, so the emissions reduction benefits will be limited.

We do not know the actual number of NRLM equipment and engines in rural Alaska. However, we do know that the consumption of distillate fuel in the rural areas by marine engines is about four percent, and that the fuel used for other nonroad and locomotive engines is negligible. We also know that fuel used for power generation constitutes about 45 percent of total fuel used, but we do not know how many new stationary engines regulated under the NSPS will be installed in rural Alaska prior to 2010, given the long life of such engines. Thus, sulfate emission benefits, primarily from marine and new stationary engines, will be delayed as long as high sulfur diesel fuel is used, for the most part, no later than December 1, 2010. At that time, given the distribution limitations in rural Alaska, ULSD may also be used much more broadly in locomotive, marine, heating, and unregulated power generation services. If this is the case, there will be significantly greater sulfate PM benefits than strictly required. Nevertheless, there is at least one EPA-approved small refiner in Alaska that can produce, import, and distribute 500 ppm sulfur content fuel for all uses other than highway use in Alaska or in model year 2007 and later diesel vehicles and engines, between December 1, 2010 and June 1, 2014. Accordingly, to the extent this 500 ppm sulfur content fuel is used by legal end-users, rather than the 15 ppm sulfur content that would otherwise be used, the sulfate emissions benefit will be reduced by a smaller amount. Nevertheless, we expect the net difference will be quite small. Ultimately there will be benefits in terms of reduced PM (including sulfate PM), HC, sulfur dioxide, and NO_X emissions from highway, nonroad, and stationary engines meeting the new standards, and required to use 15 ppm fuel.

As in previous exemptions from the 500 ppm sulfur standard, we will not order any vehicle or engine recalls based on emissions exceedances caused by the use of high sulfur fuel (greater than 500 ppm sulfur for pre-model year 2007 vehicles and engines; greater than 15 ppm sulfur for model year 2007 and later vehicles and engines) in rural Alaska during the period prior to the implementation dates of this rule. Our testing goal is to establish whether properly maintained and operated engines will meet emission standards during their useful lives. This is consistent with the requirements for recall specified in section 207(c)(1) of the CAA. Further, manufacturers may have a reasonable basis for denying emission related warranties where damages or failures are caused by the use of high sulfur fuel in rural Alaska.

In a comment to a previous proposal to grant Alaska a sulfur exemption, the Engine Manufacturers Association expressed concern that the level of protection provided to engine manufacturers falls short of what they believe is reasonable and necessary. It asserted that the use of high sulfur diesel fuel in an engine should raise a '' 'rebuttable presumption' '' that the fuel caused the engine to fail, and that the EPA should have the burden of rebutting that presumption. It also

asserted that an emissions warranty is a regulatory requirement under section 207, according to which, only the EPA has the authority to exclude claims based on the use of high sulfur diesel fuel.

We understand and concur with the manufacturers' concerns about in-use testing of engines operated in an area exempt from fuel sulfur requirements, or as in the case of this rule, engines operated in an area with an implementation date later than that for the rest of the country. Consequently, we affirm that, for recall purposes, we will not seek to conduct or otherwise cause the in-use testing of engines we know have been exposed to high sulfur fuels in rural Alaska. We believe we can readily obtain the necessary number of engines for our testing program by screening-out engines that were operated in rural Alaska. Having reviewed the warranty concerns of the Engine Manufacturers Association regarding previous sulfur exemptions, we believe, as previously stated, that our position regarding warranties is consistent with section 207(a) and (b) of the CAA and does not require any new or amended regulatory language for implementation.

The additional changes that this rule is making to clarify that fuel distributors and retailers and wholesale purchaser-consumers in urban Alaska will follow the same transition period as the rest of the country will not have any emissions impacts. These additions merely ensure that the original intent of the highway diesel rule transition period is reflected in the regulations.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act stipulates that every federal agency must obtain approval from the Office of Management and Budget (OMB) before collecting the same or similar information from 10 or more members of the public. If the Environmental Protection Agency decides to gather information, the appropriate program office must prepare an Information Collection Request (ICR) and submit it to OMB for approval. An ICR describes the information to be collected, gives the reason the information is needed, and estimates the time and cost for the public to answer the request.

OMB previously approved the ICRs contained in the existing regulations at 40 CFR 80.500 et seq. and assigned OMB control number 2060–0308 and EPA ICR numbers 1718.03 (dying of tax exempt diesel fuel), 1718.04 (motor vehicle diesel fuel), and 1718.05 (NRLM diesel fuel). A copy of the OMB approved ICRs may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

This rule does not establish any new requirements for highway diesel fuel sold in Alaska, but instead only delays the requirements for 15 ppm fuel from 2006 to 2010 in rural areas of Alaska. Under this rule, reporting requirements in rural Alaska after 2010 will be exactly the same as they are under the final highway diesel sulfur rule. The previously approved ICR for highway diesel fuel applies to rural Alaska. Thus no new ICR or amended ICR is required for highway fuel.

As the NRLM final rule did not finalize the sulfur standards for rural Alaska, the requirements in this rule for NRLM diesel fuel in rural Alaska are new. Nevertheless, according to the NRLM rule, all model year 2011 and later engines in rural Alaska must use fuel meeting the 15 ppm diesel fuel sulfur content standard. However, these new requirements for NRLM diesel fuel in rural Alaska do not require a new or amended ICR. The approved ICR for the nonroad final rule (ICR number 1718.05; OMB Control Number 2060–0308) covers all U.S. states, including rural Alaska. For example, the aforementioned nonroad ICR made an addition to the existing diesel fuel regulations by explicitly defining ''diesel fuel'' as fuel sold in any state or territory of the U.S. In addition, product transfer documents, as required in the nonroad final rule, explicitly include those to be used to identify fuel for use in Alaska. Finally, the calculation of total information collection costs associated with the nonroad final rule represented maximum costs and included all areas of Alaska. As a result, the existing nonroad final rule ICR is applicable for this rule.

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

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small

entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

This rule delays the implementation date for ultra-low sulfur highway diesel fuel in rural Alaska compared to the existing regulations and extends the same deadline to NRLM diesel fuel in rural Alaska to bring those areas in line with the national standards. Since this rule delays the 15 ppm highway sulfur standard in rural areas, the regulatory burden is effectively relieved.

Regarding NRLM diesel fuel in Alaska, the requirements in this rule are new in that rural areas of Alaska need not switch to the15 ppm diesel fuel sulfur content standard as specified in the NRLM final rule. It was our stated intention in that rule that all of Alaska, including the rural areas, switch to 15 ppm sulfur diesel fuel content fuel at the time specified in the NRLM final rule. However, as previously explained, we deferred that action in order to coordinate the implementation of highway and NRLM diesel fuel in rural Alaska.

Even though the NRLM sulfur standards in this rule are new, they do not impose a significant economic impact on a significant number of small entities. The distribution and storage system limits the number of grades of diesel fuel that can be stored and distributed within the approximately 250 rural area villages in Alaska. This discourages the introduction of a small volume of a specialty fuel, generally forcing these communities to choose between using a single fuel for all diesel applications, or purchasing extra storage and distribution equipment. The latter approach is generally more expensive and would likely be pursued only if the equipment would be needed in the long term. On the other hand, we believe that after 2010 an increasingly greater proportion of the fuel inventory in an average rural village will need to meet the 15 ppm standard, as the number of model year 2011 and later stationary, nonroad and marine engines in these villages is expected to increase. Thus, in the long term, segregated storage and distribution capacity would become unnecessary. In addition, since the highway fuel in rural areas will already be 15 ppm sulfur standard diesel fuel by 2010, we believe many rural communities will simply switch to 15 ppm sulfur standard diesel for all uses, rather than install additional storage and distribution capacity. This rule's requirement that all NRLM diesel fuel used in rural areas meet the 15 ppm standard starting in 2010 is therefore unlikely to create an additional economic burden for rural areas.

Lastly, the additional changes that this rule is making to clarify that fuel distributors and retailers and wholesale purchaser-consumers in urban Alaska will follow the same transition period as the rest of the country (following the request from the State of Alaska) will not have any emissions impacts. These additions merely ensure that the original intent of the highway diesel rule transition period is reflected in the regulations.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory rules with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It imposes no enforceable duty on any State, local, or tribal governments or on the private sector, and does not contain a Federal mandate that results in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Rather, this rule: (1) Relieves burden by applying a delayed implementation date for ultra-low sulfur highway, nonroad, locomotive and marine diesel fuel in rural Alaska compared to the existing regulations and the rest of the country; and, (2) clarifies that fuel distributors and retailers and wholesale purchaser-consumers in urban Alaska will follow the same transition period as the rest of the country, as was the intent of the highway diesel final rule. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. 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. This rule simply applies a delayed implementation date for low sulfur highway diesel fuel in the rural areas of Alaska, and provides a delayed implementation date for inclusion of rural Alaska in the nationwide nonroad, locomotive and marine (NRLM) diesel fuel program. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the State of Alaska, who spent much time gathering feedback from the rural communities about our highway and NRLM diesel fuel requirements. In fact, this rule is an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska that resulted directly from, and is consistent with State submittals to EPA, as well as with comments to the

proposed NRLM diesel rule as it relates to rural Alaska, as previously mentioned in this preamble. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicited comment on this rule from State and local officials.

F. Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This rule does not have tribal implications as specified in Executive Order 13175. The regulations this rule amends will be implemented at the Federal level and impose compliance costs only on diesel fuel producers, importers, distributors, retailers and consumers of diesel fuel. This rule relates to the standards and deadlines that apply specifically to the rural areas of Alaska, and tribal governments in the rural areas of Alaska will be affected only to the extent that they or their constituents purchase and use diesel fuel.

We specifically solicited additional comment on this rule from tribal officials. Also, in order for tribal officials to provide us with meaningful and timely input, State representatives consulted with them early in the process of developing this regulation. State representatives spent much time gathering feedback about our highway and NRLM diesel fuel requirements from representatives of both rural and tribal communities. The State gave full consideration to that feedback in their request to EPA for an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska. Likewise, the State gave full consideration to that feedback in their comments to the proposed NRLM diesel rule as it relates to rural Alaska, as mentioned previously in this preamble.

G. Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We do not believe this rule presents disproportionate environmental health or safety risks to children, nor do we believe it is economically significant. Therefore, this rule is not subject to Executive Order 12866. This rule will affect only highway diesel fuel sold in rural areas of Alaska which have unique meteorological conditions and sparse populations that make environmental health and safety risks highly unlikely and it clarifies the dates of the transition period for distributors and retailers/wholesale purchaser-consumers in urban Alaska.

We invited the public to submit or identify peer-reviewed studies and data that assessed results of early-life exposure to the sulfur-based emissions (primarily SO_2) addressed by this rule, of which we may not have been aware.

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

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

I. National Technology Transfer and Advancement Act

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 6, 2006.

VIII. Statutory Provisions and Legal Authority

The statutory procedural authority under which this rule is being promulgated is found in section 307(d) of the Clean Air Act and section 4 of the Administrative Procedure Act. Statutory authority for this rule is also found in sections 211(c) and 211(i) of the CAA, which directs EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment which is in general use or has been in general use. 42 U.S.C. 7545(c) and (i). Additional support for the procedural and enforcement-related aspects of fuel controls, including recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control.

Dated: May 25, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 69 of title 40 of the Code of Federal Regulations is amended as follows:

PART 69—SPECIAL EXEMPTIONS FROM THE REQUIREMENTS OF THE CLEAN AIR ACT

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

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

■ 2. Section 69.51 is revised to read as follows:

§ 69.51 Motor vehicle diesel fuel.

(a) *Definitions.* (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(b) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and (b) and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements until the implementation dates of 40 CFR 80.500 for refiners and importers, until September 1, 2006 for all downstream parties other than retailers and wholesale purchaser-consumers, and until October 15, 2006 for retailers and wholesale purchaser-consumers, provided that:

(1) The fuel is segregated from nonexempt diesel fuel from the point of such designation;

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating: ''This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to highway diesel fuel and red dye requirements applicable to non-highway diesel fuel only if it is used in Alaska.''; and,

(3) After June 1, 2006 and prior to the implementation dates specified above, diesel fuel represented by a downstream party as meeting the 500 ppm sulfur standard or the 15 ppm sulfur standard for highway diesel fuel shall be subject to and must meet such standard.

(c) Beginning on the implementation dates specified in paragraph (b) of this section, motor vehicle diesel fuel that is designated for use in areas of Alaska accessible by the Federal Aid Highway System, or is used in areas of Alaska accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel.

(d) From the implementation dates specified in paragraph (b) of this section, until the implementation dates specified in paragraph (e) of this section, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, and is used in areas of Alaska not accessible by the Federal Aid Highway System, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and (b), and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in model year 2007 and later highway vehicles and engines,

(2) The exempt fuel is segregated from nonexempt highway diesel fuel from the point of such designation; and

(3) On each occasion that any person transfers custody or title to the exempt fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating: ''This fuel is for use only in those areas of Alaska not accessible by the FAHS.''

(4) The exempt fuel must meet the labeling requirements under § 80.570, except the following language shall be substituted for the language on the labels:

''HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

WARNING

Federal Law *prohibits* use in model year 2007 and later highway diesel vehicles and engines. Its use may damage these vehicles and engines.''

(e) Beginning on the following implementation dates, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, or is used in areas of Alaska not accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel:

(1) June 1, 2010 for diesel fuel produced or imported by any refiner or importer;

(2) August 1, 2010 at all downstream locations, except at retail outlets and wholesale-purchaser consumers;

(3) October 1, 2010 for:

(i) Retail outlets and wholesale-purchaser consumers, or

(ii) Downstream locations which include retail outlets and wholesale-purchaser consumers; and,

(4) December 1, 2010 at all locations.

■ 3. Section 69.52 is amended as follows:

■ a. By adding a new paragraph (a)(4).

■ b. By revising paragraphs (c)(1) and (c)(2).

■ c. By revising paragraph (f).

■ d. By revising paragraph (g).

■ e. By adding a new paragraph (h).

§ 69.52 Non-motor vehicle diesel fuel.

(a) * * *

(4) *Heating oil* has the meaning given in 40 CFR 80.2.

* * * * *

(c) * * *

(1) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under 40 CFR 80.520(b)(2) and 80.510(d)(5), (e)(5), and (f)(5).

(2) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the marker solvent yellow 124 requirements, and the presumptions associated with the marker solvent yellow 124 requirements, under 40 CFR 80.510(d) through (f).

* * * * *

(f) Non-motor vehicle diesel fuel and heating oil that is intended for use and used only in areas of Alaska not accessible by the Federal Aid Highway System, are excluded from the applicable provisions of 40 CFR part 80, subpart I and 40 CFR part 60, subpart IIII until the implementation dates specified in paragraph (g) of this section, except that:

(1) All model year 2011 and later nonroad and stationary diesel engines and equipment must be fueled only with diesel fuel that meets the specifications for NR fuel in 40 CFR 80.510(b) or (c);

(2) The following language shall be added to any product transfer document: ''This fuel is for use only in those areas of Alaska not accessible by the FAHS;'' and

(3) Pump labels for such fuel that does not meet the specifications of 40 CFR 80.510(b) or 80.510(c) shall contain the following language:

''HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

WARNING

Federal Law *prohibits* use in model year 2007 and later highway diesel vehicles and engines, or in model year 2011 and later nonroad and stationary diesel engines and equipment. Its use may damage these vehicles and engines.''

(g) *NRLM and stationary engine standards.* (1) Beginning on the following implementation dates, NRLM diesel fuel that is used or intended for use in areas of Alaska not accessible by the Federal Aid Highway System is subject to the provisions of 40 CFR part

80, subpart I, except as provided in paragraphs (c), (d), (e), and (g)(2) of this section:

(i) June 1, 2010 or diesel fuel produced or imported by any refiner or importer,

(ii) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(iii) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(iv) December 1, 2010 at all locations.

(2) The per-gallon sulfur content standard for all LM diesel fuel shall be 15 ppm maximum.

(3) Diesel fuel used in new stationary internal combustion engines regulated under 40 CFR part 60 shall be subject to the fuel-related provisions of that subpart beginning December 1, 2010.

(h) Alternative labels to those specified in paragraphs (e)(3) and (f)(2) of this section may be used as approved by EPA.

[FR Doc. 06–5053 Filed 6–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2002–0003; FRL–8180–2]

RIN 2025–AA10

Community Right-to-Know; Toxic Chemical Release Reporting Using North American Industry Classification System (NAICS); Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined it is appropriate to amend its regulations for the Toxics Release Inventory (TRI) to include the North American Industry Classification System (NAICS) codes. We are including the NAICS codes that correspond to the Standard Industrial Classification (SIC) codes that are currently subject to Toxics Release Inventory (TRI) reporting requirements in order to facilitate the transition from reporting of SIC codes on TRI reporting forms to reporting of NAICS codes. Consistent with the language of section 313(b)(1)(A) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), SIC codes still remain in the regulatory text as a basis for identifying the facilities that are subject to TRI requirements, along with the new NAICS codes.

EPA conducted a careful crosswalk between the SIC codes covered under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA) and their corresponding NAICS codes. The Agency believes it has correctly identified the covered NAICS codes and no longer expects facilities to identify their SIC codes to determine TRI Program compliance. Facilities may now rely on the list of covered NAICS codes to determine whether they are required to report to the TRI Program.

DATES: This final rule is effective on August 7, 2006. Facilities will be required to report NAICS codes beginning with TRI reporting forms that are due on July 1, 2007, covering releases and other waste management quantities at the facility for the 2006 calendar year.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2002–0003. All documents in the docket are listed on the *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 only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For specific information on this rulemaking contact: Judith Kendall, Toxics Release Inventory Program Division, Mail code 2844T, OEI, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0741; e-mail address: *kendall.judith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities that may be affected by this action are those facilities that have 10 or more full-time employees or the equivalent 20,000 hours per year that manufacture, process, or otherwise use toxic chemicals listed on the TRI, and that are required under section 313 of EPCRA and section 6607 of the PPA to report annually to EPA and States their environmental releases and other waste management quantities of such chemicals. Under Executive Order 13148, revised April 26, 2000 (65 FR 24599), all Federal facilities are required to comply with the provisions set forth in section 313 of EPCRA and section 6607 of the PPA. Federal facilities are required to comply with those provisions without regard to SIC or NAICS delineations.

Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et. seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action

to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is EPA's Statutory Authority for Taking This Action?

EPA is finalizing this action under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499). In general, section 313 of EPCRA requires owners and operators of facilities in specified SIC codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility specific information about such chemicals, including the annual releases and other waste management quantities. Section 313(g)(1) of EPCRA requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. Section 313(g)(1)(A) requires owners and operators of facilities that are subject to section 313 requirements to report the principal business activities at the facilities. However, Congress provided no guidance as to how such activities should be described. In the past, EPA has required owners and operators of such facilities to identify their principal business activities by reporting, among other things, their primary, and any other applicable SIC codes for the facility. Congress also granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the ''Administrator [to] prescribe such regulations as may be necessary to carry out this chapter'' (42 U.S.C. 11048).

Consistent with these authorities, EPA is amending 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to section 313 of EPCRA and section 6607 of the PPA. Owners and operators of facilities that are subject to section 313 must identify their principal business activities by NAICS codes beginning with TRI reporting forms that are due on July 1, 2007, covering releases and other waste management quantities at the facility for the 2006 calendar year. Finally, EPA is amending 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI requirements.

For the purpose of establishing consistency with the NAICS classification methodology, and to avoid confusion in the future with respect to reporting obligations by establishments that are considered auxiliary establishments under the SIC system, EPA is changing its interpretation that EPCRA reporting requirements apply to auxiliary establishments. EPA believes this change is warranted in light of the significant differences in treatment of auxiliary establishments between the SIC and NAICS systems. It is possible, in light of EPA's new interpretation, that some auxiliary establishments will no longer be subject to TRI reporting requirements. EPA is also amending the regulations to extend the exemption provided in the regulations to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI requirements. The TRI regulations currently exempt from TRI reporting requirements ''owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC code 20 through 39 where the owner has no other business interest in the operation of the covered facility.'' EPA believes it is appropriate to extend this exemption to owners of facilities that lease such facilities to operators of establishments within the SIC codes added in the 1997 TRI Industry Expansion Rule, when such owners have no other business interest in the operation of such establishments. This amendment is unrelated to the purpose of this rule which is to change TRI reporting from SIC codes to NAICS codes. The Agency is simply using the opportunity of this rulemaking to extend the exemption to all facilities that are covered under TRI.

III. Background Information

What Is the General Background for This Action?

Section 313 of EPCRA and section 6607 of the PPA require owners and operators of certain facilities called ''covered facilities'' to annually report to EPA, and to the State in which the facility is located, their releases and other waste management quantities of listed toxic chemicals. 42 U.S.C. 11023, 13106. In general, a covered facility is one that: (1) Manufactures, processes, or otherwise uses one or more chemicals listed in the EPCRA section 313 list of toxic chemicals in excess of specified threshold quantities; (2) has 10 or more full-time employees or the equivalent 20,000 hours per year and; (3) is classified in an applicable SIC code. 42 U.S.C. 11023(b)(1)(A); 40 CFR 372.22. Information collected pursuant to section 313 of EPCRA and section 6607 of PPA is organized into the national TRI data base which is readily accessible to the public, researchers, industry, government agencies, and other interested parties.

When Congress enacted EPCRA in 1986, it specifically identified the manufacturing sector, which included facilities in SIC major group codes 20 through 39 (see Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual 1987 (hereinafter referred to as the 1987 SIC Manual), as being subject to the reporting requirements of section 313. Section 313(b)(1)(A) states:

> The requirements of this section shall apply to owners and operators of facilities that have 10 or more full time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

In addition, in 1997, pursuant to section 313(b)(1)(B), EPA added seven industry groups to the list of industries required to report to EPA and State governments. See 62 FR 23833, May 1, 1997 (hereinafter referred to as the Industry Expansion Rule). These industries included metal mining, coal mining, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce, facilities regulated under the Resource Conservation and Recovery Act (RCRA) subtitle C, chemical wholesalers, petroleum terminals and bulk stations and solvent recovery services. As a result, those facilities with the following SIC code designations (that meet all other applicable threshold criteria for TRI reporting) must report toxic chemical releases and other waste management quantities of toxic chemicals each year: SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*); 5169; 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on

a contract or fee basis). (See 40 CFR 372.22.)

As explained below, the United States is in the process of replacing SIC with NAICS. This final action will put NAICS in place for the TRI Program.

IV. Final Action

A. Why Did the EPA Propose This Action, and What Will the Final Action Be?

On April 9, 1997, the Office of Management and Budget (OMB) published a **Federal Register** Notice of final decision (62 FR 17288) to adopt NAICS for the United States, a new economic classification system that replaces the SIC system which has traditionally been used by the Federal Government for collecting and organizing industry-related statistics. See Executive Office of the President, Office of Management and Budget, North American Industry Classification System—United States, 1997 (hereinafter referred to as the 1997 NAICS Manual). OMB's Economic Classification Policy Committee (ECPC) developed NAICS in cooperation with the Instituto Nacional de Estadística, Geografía e Informática (INEGI) of Mexico and Statistics Canada, in order to standardize the industrial statistics produced by the three countries. It was felt that the SIC system was inadequate for this purpose, in part because it classified industries on the basis of several different economic concepts. NAICS, on the other hand, classifies establishments according to similarities in the processes used to produce goods and services. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification.

Notwithstanding its primary function as a tool to aid in the collection and organization of industrial statistical information, OMB recognized that NAICS, like its predecessor, SIC, may also be effectively used for nonstatistical purposes including administrative, tax and regulatory programs. However, in its notice of final decision adopting NAICS for the United States, OMB instructed the heads of government agencies to determine that NAICS industry definitions are appropriate for the implementation of such programs before agencies use NAICS codes in them. See 62 FR 17288, 17294. For the reasons discussed in Unit IV.C. below, EPA's Administrator has determined that NAICS industry definitions will be appropriate for implementing section 313 of EPCRA and section 6607 of the PPA.

In this final rule, EPA is amending 40 CFR Part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to the reporting requirements of section 313 of EPCRA and section 6607 of the PPA. EPA is also amending 40 CFR 372.85(b)(5) and 372.95(b)(10) such that covered facilities must report their appropriate NAICS codes on the TRI reporting form, Form R, or on the Alternate Threshold Certification Statement, Form A, where applicable. EPA is also amending 40 CFR 372.38(g) and (h), and 40 CFR 372.45 to include the NAICS codes that will be subject to the exemption and notification requirements of those sections. Finally, EPA is amending 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI reporting requirements.

B. Will This Final Rule Affect the Universe Of Facilities That Are Currently Required To Report to EPA and the States?

With the exception of facilities defined as ''auxiliary facilities'' under SIC (see Unit V.D.), this action will not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not adding or deleting industry groups from the list of industries that are currently subject to section 313 reporting requirements. EPA is simply assigning NAICS codes to those SIC codes that are already subject to section 313 reporting requirements, and requiring covered facilities in those industries to report the NAICS code that corresponds to the covered SIC code. EPA notes that this action also eliminates reporting requirements for owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in the Industry Expansion Rule SIC codes, but this revision does not affect the universe of covered facilities, only who is required to report on such facilities.

The TRI Program developed an extensive SIC to NAICS to SIC crosswalk document based on ECPC's U.S. SIC to NAICS and NAICS to SIC conversion tables in order to identify the universe of NAICS codes that correspond to covered SIC codes. See ''Table 1: 1997 NAICS Matched to 1987 SIC'' and ''Table 2: 1987 SIC Matched to 1997 NAICS'' on the U.S. Census Bureau's Web site at *http://www.census.gov/epcd/www/naicstab.htm.* A more direct crosswalk between the 1987 SIC and 2002 NAICS may be found in ''Table 4: 1987 SIC Matched to 2002 NAICS'' at *http://www.census.gov/epcd/naics02/.*

EPA developed its crosswalk document by carefully mapping each SIC code to its corresponding NAICS code or codes, and then mapping each of the resulting NAICS codes back to SIC. More specifically, for each 3-digit industry subsector in the NAICS manufacturing sector (i.e., NAICS 311 through 339), EPA checked OMB's NAICS to SIC crosswalk table at *http://www.census.gov/* to find industries that are not in the SIC manufacturing sector (SIC codes 20 through 39), but that have been classified as manufacturing industries under NAICS. Similarly, EPA checked OMB's ECPC SIC to NAICS crosswalk table to find SIC manufacturing industries that are not classified in the NAICS manufacturing sector. By conducting this mapping, EPA was able to develop a list of NAICS codes that corresponds to the list of manufacturing sector SIC codes that are subject to TRI requirements. EPA conducted similar mapping with respect to the industries added to TRI in the Industry Expansion Rule. Please refer to the preamble to the proposed rule (68 FR 13877–13878) for a more complete discussion of the methodology EPA used to identify NAICS codes that correspond to currently covered SIC codes.

When EPA issued the proposed rule, it identified the NAICS codes that correspond to covered SIC codes based on the OMB crosswalks between the 1987 SIC Manual and the 1997 NAICS Manual. OMB formalized adoption of revisions to the 1997 NAICS Manual in a **Federal Register** notice on January 16, 2001 (66 FR 3826–3827). In 2002, OMB published a revised NAICS Manual. See Executive Office of the President, Office of Management and Budget, North American Industry Classification System United States, 2002 (hereinafter referred to as the 2002 NAICS Manual). As explained in Unit V.E., the final list of NAICS codes to be covered under TRI has been updated to reflect several minor additions and revisions that the 2002 NAICS Manual made to the 1997 NAICS codes that were identified in the proposed rule as corresponding to covered SIC codes

C. Why Will EPA Add NAICS Codes for EPCRA Section 313 and PPA Section 6607 Reporting Purposes?

EPA has determined it is appropriate to amend 40 CFR Part 372 to include the

NAICS codes that correspond to the SIC codes that are currently subject to TRI reporting requirements for several reasons. First, the SIC Manual has not been updated since 1987 despite significant changes in the national economy, and limitations in the structure of the SIC system have led to difficulties in classifying new and emerging industries (1997 NAICS Manual at 21). As a result, the existing SIC system does not reflect many of the important changes that have occurred within the national economy over the last decade or so. More importantly, it will not be updated in the future because of OMB's adoption of NAICS as the United States' new industry classification system. Accordingly, facilities that come into existence in the future will not have experience using SIC codes and may have difficulty determining whether or not they are subject to TRI requirements. Moreover, as OMB has recognized, the SIC system is somewhat cumbersome and inflexible to use because it classifies industries on the basis of several economic principles rather than a single, consistent principle (Id.). NAICS, on the other hand, represents a more targeted approach to industry classification, focusing primarily on production processes. Finally, the conversion to NAICS is part of EPA's data standards program, which helps promote efficient data exchange and integration through consistently defined and formatted data. Using NAICS for TRI reporting purposes will enable more efficient database integration and will promote public access to commonly defined data from disparate sources.

D. Office of Management and Budget Updates to NAICS

OMB plans to update NAICS every five years. The next update is scheduled for 2007. In accordance with OMB's established NAICS revision practice, a final decision FR notice for the 2007 NAICS revision will be published early in 2006 and the 2007 NAICS Manual will be published early in 2007. The TRI Program will issue **Federal Register** notices to update the NAICS codes that correspond to covered SIC codes every five years, if necessary, after OMB completes its five-year updates.

E. How Will TRI Reporting Requirements Change as a Result of This Final Rule?

TRI reporting requirements remain substantially the same under this action. The difference is that covered facilities will report their primary and secondary NAICS codes on Form R and Form A, rather than their primary and secondary SIC codes. Because the statute identifies covered facilities by SIC code, the industries subject to TRI requirements will continue to be identified in the regulatory text by SIC code; however, the text will be amended to include NAICS codes as well. See 40 CFR 372.22(b) and 372.23 of the amended regulatory text below. With the exception of auxiliary facilities, facilities that currently report to the TRI Program because they are classified in a covered SIC code must continue to report to the TRI Program under this action if they continue to satisfy the applicable reporting criteria; however, these facilities may now rely on the list of covered NAICS codes in the amended regulations to determine whether they are subject to TRI reporting requirements. Accordingly, EPA no longer expects facilities to identify their SIC codes to determine TRI program compliance.

F. Why Is EPA Extending the Exemption in 40 CFR 372.38(e)?

The TRI regulations at 40 CFR 372.38(e) currently exempt from TRI reporting requirements ''owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC code 20 through 39 where the owner has no other business interest in the operation of the covered facility.'' The exemption acknowledges the difficulties in requiring such an owner to report when he is not in a position that would allow him to determine compliance or report the required information. EPA believes it is appropriate to extend this exemption to owners of facilities that lease such facilities to operators of establishments within the SIC codes added in the 1997 TRI Industry Expansion Rule, when such owners have no other business interest in the operation of such establishments. The rationale for the exemption applies equally to those owners as it does to owners of facilities who lease them to operators of establishments in SIC codes 20 through 39. Because the amendment to 40 CFR 372.38(e) extends the exemption to other industries, there is no cost to industry associated with it.

V. Summary of Public Comments and EPA Responses

What comments did EPA receive on the proposal to add NAICS codes for TRI reporting and what are EPA's responses?

EPA received comments from five entities in response to the proposal to add NAICS codes for TRI reporting. The submitted comments can be accessed in the EPA docket under Docket ID No. EPA–HQ–TRI–2002–0003.

A. What comments did EPA receive on its method for implementing NAICS for TRI reporting?

One commenter states that EPA noted in the proposed rule that its intent in adopting NAICS codes for TRI purposes is to make sure presently covered facilities continue to report and so be ''consistent with the statutory requirements.'' The commenter believes, however, that there is no explanation of the statutory requirements that EPA is being consistent with, and whether they are relevant to the changing industry and how it is classified. The commenter also believes that EPA should not attempt to correlate SIC sectors with NAICS sectors. For the purpose of simplification and ease of explanation to the regulated community, the commenter believes that the proposal should state that covered codes will be NAICS 31–33 (NAICS manufacturing sector) plus the Industry Expansion Rule facilities. The commenter has suggested new language for 40 CFR 372.22(b) to achieve this objective. The commenter also believes that in the year after rule approval, EPA should educate facilities regarding the change and assign a proposed NAICS number for the facility to review and accept and that the burden should be on the EPA to educate reporters and make the initial correlations between SIC and NAICS codes. The commenter further states that future NAICS revisions should be used ''as is'' to include the manufacturing sectors with no consideration of past revisions and that correlation should only be used for historical statistical purposes. The commenter also disagrees with the stated differences between SIC and NAICS systems in the proposed rule. In particular, the commenter points out that NAICS, like SIC, was developed to reflect changes in the economy and in industries and that under both classification systems establishments are classified according to their primary activities.

EPA Response: The commenter is correct that EPA's intent is to implement NAICS in such a way that, with the exception of auxiliary facilities (see Unit V.D.), there is no change in the universe of facilities that is currently required to report toxic chemical releases and other waste management quantities under section 313 of EPCRA and section 6607 of the PPA. EPA believes this approach to implementing NAICS with respect to TRI reporting is the most consistent with EPCRA section 313. As EPA stated in the proposed rule:

> For purposes of TRI reporting, section 313 defines covered facilities in terms of SIC codes. Facilities in the affected SIC codes are required to report, regardless of how those facilities are designated in other nomenclature systems. Because inclusion in a specific SIC code is what triggers the reporting obligation, to use NAICS codes, EPA must be able to ''cross-walk'' reliably between SIC codes and NAICS codes.

68 FR 13876, March 21, 2003. As indicated in this excerpt from the proposed rule, the statutory requirements underlying EPA's proposed approach are found in section 313 which defines covered facilities in terms of SIC codes. In particular, EPA explained that section 313(b)(1)(A) of EPCRA explicitly identifies, by SIC code, the universe of facilities that was initially subject to TRI reporting when the statute was enacted. See 68 FR 13875. Section 313(b)(1)(A) provides in relevant part:

> The requirements of this section shall apply to owners and operators of facilities * * * that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985). * * *

42 U.S.C. 11023(b)(1)(A). In addition, EPCRA authorizes EPA to ''add or delete Standard Industrial Classification codes'' to the list of those initially identified by Congress in section 313(b)(1)(A) as being subject to TRI reporting requirements. See EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B). However, EPA may only add SIC codes under section 313(b)(1)(B) if it concludes that each ''Standard Industrial Code to which [section 313] applies is relevant to the purposes of [section 313].'' Id. EPCRA therefore explicitly provides in section 313(b)(1)(A) and section 313(b)(1)(B) that section 313 applies to facilities in SIC codes 20 through 39 and to facilities in other SIC codes that EPA makes subject to EPCRA requirements by rule, if such facilities also meet the full-time employee and chemical activity criteria. EPA believes, therefore, that the facilities that are currently subject to TRI reporting because they are in a covered SIC code should continue to be subject to TRI requirements after EPA implements NAICS for TRI purposes. Similarly, facilities that are not currently subject to TRI reporting because they are not in a covered SIC code should not be subject to TRI requirements simply because EPA is implementing NAICS for TRI purposes.

EPA agrees with the commenter that NAICS was developed because the economy changes and industries change over time and therefore, the industry classification system must be updated to reflect such changes. EPA also agrees that establishments are classified according to their primary activities under both SIC and NAICS. However, NAICS is in fact a different classification system than SIC. In particular, the organizing principle underlying NAICS differs in certain fundamental respects from the organizing principles underlying SIC. As the Standard Industrial Classification Manual, 1987 states:

> The [SIC] classification system is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure. * * *

1987 SIC Manual at 699. (For a comprehensive discussion of the organizing principles underlying the SIC system, see Economic Classification Policy Committee, Report No. 1: Economic Concepts Incorporated in the Standard Industrial Classification Industries of the United States, Aug. 1994, available at *http://www.census.gov/epcd/naics/ecpcrpt1*). In contrast, NAICS was developed around the single organizing principle that establishments should be grouped into industries ''according to similarity in the processes used to produce goods or services.'' 1997 NAICS Manual at 13. This makes NAICS ''unique among industry classification systems.'' Id. at 3.

With respect to TRI, the result of the different organizing principles inherent in SIC and NAICS is that facilities that are classified in the SIC ''manufacturing sector'' (SIC codes 20–39) which Congress intended to be subject to TRI requirements might not be classified in the NAICS ''manufacturing sector'' (NAICS codes 31–33). Accordingly, if EPA had proposed that the NAICS ''manufacturing sector'' report under EPCRA section 313, then some facilities that are currently subject to TRI would be exempt from reporting. Similarly, facilities that are not currently subject to TRI requirements because they are not in the SIC ''manufacturing sector'' might be classified in the NAICS ''manufacturing sector'' and would therefore be subject to TRI reporting. For example, as discussed in the preamble to the proposed rule, if all facilities in NAICS codes 31–33 were required to report, then that would mean that retail bakeries (SIC code 5461) would need to start reporting if they met the employee and chemical activity thresholds because they are classified in the NAICS ''manufacturing sector'' (NAICS 31181). See 68 FR 13876. It may be true in practice that retail bakeries would rarely have to report because they typically would not meet the full-time employee and/or chemical activity criteria. Nevertheless, even if retail bakeries would not normally satisfy the applicability criteria, they would still incur the burden of making compliance determinations, (*e.g.*, determining whether they manufacture, process or otherwise use listed toxic chemicals in excess of applicable thresholds and whether they meet the full-time employee criterion). More importantly, section 313(b)(1)(A) indicates that retail bakeries are not currently subject to TRI reporting requirements. Nor has EPA made a determination pursuant to section 313(b)(1)(B) that it would be ''relevant to the purposes of [section 313]'' for retail bakeries to begin reporting to TRI.

Similar changes in the universe of facilities that are subject to EPCRA section 313 could occur with respect to the SIC industries added to TRI in the 1997 Industry Expansion Rule. Such changes would not be the result of changes in the economic activities at the facility itself. Nor would they be the result of a rulemaking supported by the statutory finding required under section 313(b)(1)(B) (or section 313(b)(2) which authorizes EPA to apply section 313 requirements to particular facilities without regard to their SIC codes). Rather, the changes would result simply because the organizing principles for the industry classification system that is in effect today are different from those underlying the industry classification system that was in effect for 50 years prior to the time that Congress enacted EPCRA. EPA does not believe that this is a sufficient basis to impose reporting obligations on facilities that otherwise would not be subject to section 313 or to exempt facilities from TRI reporting requirements that otherwise would be required to report. EPA conducted a careful crosswalk between SIC codes covered under EPCRA section 313 and PPA section 6607 and the corresponding NAICS codes. The Agency believes it has correctly identified the covered NAICS codes as reflected in the amended 40 CFR part 372, and no longer expects facilities to identify their SIC codes to determine TRI program compliance. Facilities may now rely on the list of covered NAICS codes in the amended 40 CFR part 372 to determine whether they are required to report to the TRI program.

EPA disagrees with the commenter's recommendation that EPA assign NAICS codes to currently reporting facilities. Unlike some government programs that do assign SIC or NAICS codes to a particular establishment based on information provided to the government about the facility's activities, EPA has never followed this approach in

implementing section 313. Facilities have typically self-determined their SIC codes for purposes of TRI and EPA believes that they should continue to do so with NAICS codes. Owners and operators have first-hand knowledge of the activities undertaken at their facilities and such knowledge is useful in assigning an appropriate SIC or NAICS code to a facility. This is particularly true with respect to determining SIC or NAICS codes for TRI reporting because facilities often need to evaluate activities and economic data at multiple establishments and make judgments based on that information in accordance with 40 CFR 372.22(b)(3) in order to determine the SIC or NAICS code that applies to the entire facility.

B. What comments did EPA receive seeking clarification of TRI reporting requirements for particular facilities?

One commenter, although in support of the proposal to incorporate NAICS codes into the TRI program, requested that the Agency clarify the TRI reporting requirements for recycling facilities that are exempt from obtaining RCRA Subtitle C permits. The commenter notes that many hazardous waste management facilities are exempt from RCRA permitting requirements, but are still regulated under RCRA Subtitle C. According to the commenter, at least one EPA Regional Office provided guidance indicating that facilities that recycle mercury-containing fluorescent lamps and other Universal Wastes are required to report to TRI because these facilities fall under SIC code 4953 and are regulated under RCRA Subtitle C. By contrast, however, the commenter noted that in another region, a mercury-lamp recycling facility has assumed that it is properly categorized under SIC 5093 and the EPA Regional Office in that case has not provided any guidance or information contradicting the facility's assumption of its designation under this SIC code. The commenter believes that recycling facilities should be exempt from TRI reporting, but if not, that EPA should clarify in this rulemaking the SIC or NAICS codes that these facilities come under that would require TRI reporting.

EPA Response: As an initial matter, EPA believes that this comment is beyond the scope of this rulemaking which simply identifies the NAICS codes that correspond to SIC codes that are currently subject to EPCRA section 313. Nonetheless, EPA believes it may be helpful to provide some additional clarification on this point in this preamble. By doing so, however, EPA does not intend in any way to reconsider or otherwise reopen the issue of the applicability of EPCRA section 313 to facilities in SIC code 4953 (or the corresponding NAICS codes identified below), or the types of facilities in SIC code 4953 (or the corresponding NAICS codes) that are subject to TRI. In addition, as noted in Unit V.A. of this preamble, SIC or NAICS code determinations are very fact-specific, and it is not appropriate to attempt to address questions related to specific facilities in this context. Therefore, this response should not be construed as addressing facility-specific issues regarding such determinations.

In order to determine if a recycling facility, such as a mercury-lamp recycler, is required to report under TRI, two determinations, in addition to the employee and chemical activity thresholds, are necessary. First, the facility must be in a covered SIC code (or a corresponding NAICS code). Second, if the facility is in a covered SIC code (or a corresponding NAICS code), the facility must also be regulated under RCRA Subtitle C.

The NAICS Determination. The commenter requested that EPA clarify whether recycling facilities are classified under SIC code 4953 (Refuse Systems) or under SIC code 5093 (Scrap and Waste Materials) for purposes of TRI reporting. SIC code 4953 includes establishments that are ''primarily engaged in the collection and disposal of refuse by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for the disposal of such materials.'' 1987 SIC Manual at 285. Facilities that are classified under SIC 4953 are classified in one of the following NAICS codes: NAICS 562211, Hazardous Waste Treatment and Disposal; 562212, Solid Waste Landfill; 562213, Solid Waste Combustors and Incinerators; 562219, Other Nonhazardous Waste Treatment and Disposal; or 562920, Materials Recovery Facilities. A facility in one of the above NAICS categories is required to submit a TRI report if it is also regulated under Subtitle C and meets the employee and chemical activity thresholds.

By contrast, facilities classified under SIC 5093, Scrap and Waste Materials, are not covered by the TRI Program, and they are classified under NAICS 42193, Recyclable Material Wholesalers. SIC code 5093 includes establishments that are ''primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials.'' 1987 SIC Manual at 301.

In many cases, recycling facilities may be engaged in both of these activities, and possibly other SIC or NAICS-defined activities as well. In such situations, where facilities consist of two or more establishments, the TRI regulations provide instructions for determining the primary SIC or NAICS code for the entire facility for TRI reporting purposes. If all of the establishments at the facility have covered SIC or NAICS codes, then the facility has met the SIC or NAICS code requirement. 40 CFR 372.22(b)(2). In the case of a multi-establishment facility with at least one establishment in a non-covered SIC or NAICS code, 40 CFR 372.22(b)(3) requires the facility to compare the relative value added of the various establishments to determine whether the facility as a whole is in a covered SIC or NAICS code. For example, under section 372(b)(3)(i), if a recycling facility consists of a SIC 4953 establishment and a SIC 5093 establishment, and the relative value added of the facility's SIC 5093 scrap and waste material wholesale operations is greater than 50 percent of the total value added of services provided or products shipped or produced by the whole facility, then the facility would be classified in SIC code 5093 and would not be subject to TRI reporting. Without facility-specific information of this nature, EPA cannot determine the proper SIC or NAICS code for a particular recycling facility or for recycling facilities in general.

Regulated Under Subtitle C. The commenter requested that EPA clarify the applicability of TRI to facilities that are exempt from RCRA permitting requirements, but are still regulated under RCRA Subtitle C, because for the SIC code 4953 and the corresponding NAICS codes, TRI reporting is ''limited to facilities regulated under [RCRA] Subtitle C.'' 40 CFR 372.22.

The commenter mistakenly believes that recycling facilities are exempt from TRI reporting. EPA has not provided rules or guidance that exempt recycling facilities from TRI reporting. As the commenter correctly notes, there are recycling facilities that are not required to obtain a RCRA permit (or interim status) but nonetheless, are regulated under Subtitle C. For example, some recycling facilities must complete the hazardous waste manifest, an important part of the Subtitle C cradle to grave tracking system. Some recycling facilities also must provide notifications and reports to EPA and authorized states. Still other recycling facilities must comply with air emission standards issued under Subtitle C. Each of these facilities would be regulated under RCRA Subtitle C and would also be required to report to TRI if reporting thresholds were met.

C. What comments did EPA receive regarding cross references from SIC codes to NAICS codes?

One comment was submitted that stated that EPA has not provided a comprehensive cross reference to correspond SIC codes to NAICS codes, and does not refer the regulated community to the NAICS manual to assist them in selecting the appropriate NAICS code. The commenter believes that EPA's assignment of NAICS codes to the SIC codes that are currently subject to TRI reporting requirements is not straightforward and transparent. The commenter further believes that the proposed revisions to 40 CFR 372.23 are just a compilation of ''exceptions and/or limitations'' with little guidance on determining corresponding codes. The commenter is concerned that facilities that use other reference sources to determine corresponding NAICS codes might arrive at a different conclusion than EPA and could therefore be subject to an enforcement action. The commenter also believes that EPA should consider making the OMB crosswalk information available in a guidance document or codifying the information.

EPA Response: EPA disagrees that it has not provided a comprehensive cross reference to adequately correspond SIC codes to NAICS codes. The NAICS codes in the proposed regulatory text at 40 CFR 372.23 that correspond to the SIC codes that are currently subject to TRI reporting requirements were determined by using comprehensive SIC to NAICS and NAICS to SIC crosswalk documents that were developed by OMB's ECPC. As the commenter notes, the OMB crosswalk documents are included in the docket for the proposed rule. They are also publicly accessible on the Census Bureau's Web site at *http://www.census.gov/epcd/www/naics.html* and *http://www.census.gov/epcd/naics02/*. EPA used the OMB crosswalk as the basis for its determinations of TRI NAICS reporting facilities because OMB is the Federal government entity that is responsible for developing and maintaining Federal classifications. As such, OMB has considerable experience and expertise in making classification decisions for Federal statistical purposes. EPA has examined these decisions and determined that it is appropriate to follow them, along with the exceptions presented in the regulatory text, for TRI reporting purposes.

EPA also disagrees that its assignment of NAICS codes to the SIC codes that are currently subject to TRI reporting requirements is not straightforward and transparent. The regulatory text at 40 CFR 372.23(b) and (c) is simply a condensed version of the information presented in the OMB crosswalk. The methodology that EPA used to translate the lengthy OMB crosswalk into the condensed version of it that appears in the regulatory text is explained at length in the proposed rule. See 68 FR 13877–13879.

In response to the commenter's suggestion that EPA codify the actual OMB crosswalk, EPA believes the amount of information that would need to be codified would make it more difficult for facilities to determine whether or not the NAICS code that applies to their facility corresponds to a covered SIC code. If codified, the portion of the OMB crosswalk that would need to be included in the CFR would likely occupy dozens of pages. In contrast, the list of NAICS codes in the regulatory text at 40 CFR 372.23 will likely occupy two to three pages in the CFR. In order to present the crosswalk information in a condensed form, it was necessary for EPA to create exceptions and limitations to accurately identify the specific NAICS codes that correspond to currently covered SIC codes.

The commenter indicates that facilities might use reference sources other than the OMB crosswalk to determine corresponding NAICS codes, and that they will therefore have to consult the OMB crosswalk in the docket for the proposed rule to verify their determinations. First, as noted above, the OMB crosswalk is not only available in the EPA public docket for the proposed rule, but it is also available on the NAICS Web site hosted at the Census Bureau. Second, EPA would like to clarify that in this rulemaking, the Agency is simply identifying the NAICS codes that correspond to SIC codes that are currently subject to TRI reporting. As discussed above, EPA believes OMB's experience and expertise with implementing SIC and NAICS make its crosswalk between SIC and NAICS reliable for that purpose. Therefore, if a facility chooses to identify its NAICS code for TRI purposes based only on its current SIC code, EPA strongly recommends that the facility use the OMB crosswalk. To the extent that other Federal Government agencies, State governments or private parties have developed similar crosswalks, EPA discourages their use for determining NAICS codes for TRI purposes. Such crosswalks may reflect classification decisions that depend on the nature of the programs administered by such entities. NAICS codes that are assigned to facilities by such entities for administrative purposes may also reflect such program-specific interpretations.

That does not mean, however, that owners or operators cannot or should not consult the NAICS Manual itself to determine the most appropriate NAICS code for their facilities based on the activities that occur at the facility. In fact, EPA strongly encourages owners and operators to consult the NAICS Manual when determining the most appropriate NAICS code for their facilities. In the unlikely event that a facility that is in a covered SIC code uses the NAICS Manual to determine a NAICS code for the facility, and concludes that the most appropriate NAICS code is not the same one that OMB has determined corresponds to its SIC code, then that facility is welcome to contact EPA to discuss the discrepancy. Ultimately, any disagreement between a facility and EPA with respect to the facility's proper NAICS code will be resolved based on the facility's activities and whether they are most appropriately described by one of the NAICS industry descriptions identified in the regulatory text or by some other NAICS code.

D. What comments did EPA receive regarding its proposal to require ''auxiliary facilities'' to continue to report to TRI using the NAICS code of the establishment or facility for which it performs support services?

Two commenters disagreed with EPA's guidance in the preamble to the proposed rule that auxiliary facilities should report using the NAICS code of the facility for which they perform support services and recommend that EPA reconsider how to classify auxiliary facilities in light of the fact that the SIC classification methodology differs significantly from the NAICS classification methodology. One of the commenters further stated that EPA should also consider that new auxiliary facilities (e.g., Research & Development sites) will likely determine their appropriate NAICS code by following the methodology in the NAICS manual which does not define auxiliary facilities, while older R&D facilities would still be reporting since they were considered auxiliary facilities under the obsolete SIC classification system.

EPA Response: EPA has reconsidered guidance in the preamble to the proposed rule with respect to the reporting of NAICS codes by auxiliary facilities. The 1987 SIC Manual defines auxiliary establishments as establishments primarily engaged in performing management or support services for other establishments. [1987 SIC Manual at 13.]. The SIC system

assigns these establishments (e.g., research and development laboratories, warehouses, storage facilities) SIC codes according to the primary activity of the operating establishments they serve. Id. at 16. For example, auxiliary establishments tied to manufacturing establishments are given a manufacturing SIC code. For purposes of TRI reporting, auxiliary establishments are often referred to as ''auxiliary facilities.'' In order to remain consistent with the SIC nomenclature, EPA will use the term ''auxiliary establishment'' rather than ''auxiliary facility'' in the following discussion.

EPCRA section 313(b)(1)(A) states that section 313 requirements ''shall apply to owners and operators of facilities * * * that are in [SIC] codes 20 through 39.'' Since the inception of the TRI Program in 1988, the Agency has interpreted EPCRA section 313 to cover operating establishments and auxiliary establishments, consistent with the 1987 SIC Manual definition of auxiliary establishment. EPA noted at the time that it believed that this would be the most consistent way to treat auxiliary establishments. 53 FR 4500, 4503 (Feb. 16, 1988).

NAICS, however, did not adopt the SIC system concept of auxiliary establishments. NAICS was developed around the single organizing principle that establishments should be grouped into industries according to similarities in the processes used to produce goods or services.'' 1997 NAICS Manual at 13. Thus, under NAICS, former SIC auxiliary establishments are assigned NAICS codes according to their own activities (e.g., a research and development facility that supported a SIC 3728 Aircraft Parts and Auxiliary Equipment facility would be classified under NAICS 54171, Research and Development in the Physical, Engineering, and Life Sciences).

For the purpose of establishing consistency with the NAICS classification methodology, and to avoid confusion in the future with respect to reporting obligations by establishments that are considered auxiliary establishments under the SIC system, EPA is changing its interpretation that EPCRA reporting requirements apply to auxiliary establishments. EPA believes this change is warranted in light of the significant differences in treatment of auxiliary establishments between the SIC and NAICS systems. In future reporting years, NAICS codes will be the only economic classification codes that are used by reporting facilities on TRI reporting forms, and new entities that may have been classified as auxiliary establishments facilities under SIC will look to the NAICS manual for reporting guidance, not the 1987 SIC Manual. These new establishments will not have any prior experience with the SIC system and the concept of auxiliary establishments. Without extensive outreach by EPA and possibly changes to the regulations in part 372, it will be difficult to communicate to these establishments that they may have a TRI reporting obligation based not on their own activities but on those of the establishments they serve.

It is possible, in light of EPA's new interpretation, that some auxiliary establishments will no longer be subject to TRI reporting requirements. For example, under EPA's previous interpretation, a stand-alone auxiliary establishment (*e.g.*, a warehouse that is not part of a larger facility) that met the employee and chemical activity thresholds, and that was classified in a covered SIC or NAICS code only because it served an off-site operating establishment in a covered SIC or NAICS code, would have been subject to TRI reporting requirements. Under the new interpretation, the same establishment would no longer be subject to such requirements because it would not meet the SIC or NAICS code requirement. In contrast, auxiliary establishments that are part of multi-establishment facilities whose primary SIC or NAICS codes are covered under EPCRA section 313 would still be subject to section 313 if the entire facility also met the employee and chemical activity thresholds.

In this regard, it is important to note that this new interpretation could affect the determination of the primary SIC or NAICS code for a multi-establishment facility in the first instance. For example, under 40 CFR 372.22(b)(2), if all establishments in a multi-establishment facility have covered primary SIC or NAICS codes, then the entire facility has met the SIC or NAICS code requirement. Consider a multi-establishment facility that consists of two establishments. One is an auto parts manufacturing establishment that is in a covered manufacturing code, and the other is an auxiliary establishment (*e.g.*, a warehouse) that serves the manufacturing establishment. Under EPA's previous interpretation, this multi-establishment facility would have been in a covered primary SIC code because both establishments share the same manufacturing code. Under the new interpretation, the warehouse would not be in a covered SIC code simply because of its status in the SIC system as an auxiliary facility. Nor is it likely to be in a covered NAICS code. Instead, it would have a NAICS code that is appropriate for its particular warehousing activities. Thus, this particular multi-establishment facility would no longer meet the SIC or NAICS code requirement based solely on 40 CFR 372.22(b)(2). Note however, that the facility could still meet the SIC or NAICS code requirement based on 40 CFR 372.22(b)(3), which requires owners or operators to compare the relative value added by the various establishments in a multi-establishment facility to determine whether the facility as a whole is in a covered primary SIC or NAICS code. For example, if the value added by the manufacturing establishment in the example above exceeded that of the warehousing establishment, then the entire multi-establishment facility would meet the SIC or NAICS code requirement under either of the tests in 40 CFR 372.22(b).

E. What comments did EPA receive regarding OMB's NAICS 2002 update that was published in the January 16, 2001 Federal Register (66 FR 3826)?

EPA received recommendations that the NAICS codes in the proposed rule be updated to match the NAICS 2002 listing according to the OMB notice of final decision published January 16, 2001 (66 FR 3826) that adopted the 2002 NAICS codes.

EPA Response: EPA agrees with the commenter and has updated the final rule to reflect minor, non-substantive changes that the 2002 NAICS Manual made to certain 1997 NAICS codes that were included in the proposed rule. The 2002 NAICS update made no changes to the 1997 manufacturing sector NAICS codes.

Outside of the manufacturing sector, the only TRI covered sectors that were affected by the 2002 NAICS revisions were the Wholesale Trade and Information sectors (NAICS sectors 42 and 51, respectively). These revisions and additions are included in the final list of NAICS codes that will be covered under TRI. See 40 CFR 372.23 of the final regulatory text.

As stated before, with the exception of auxiliary facilities, this final rule will not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not adding or deleting industry groups from the list of industries that are currently subject to section 313 reporting requirements.

VI. Which NAICS Codes Are Subject to TRI Requirements Under This Final Rule?

Using the OMB crosswalk tables and the methodology described in the proposed rule (68 FR 13877–13878),

EPA has determined that facilities classified in the NAICS codes listed in the final regulations in 40 CFR 372.23 must report their toxic chemical releases and other waste management quantities to EPA and State governments. This list will be used for regulatory and enforcement purposes.

VII. What Additional Reporting Burden Is Associated With This Action?

EPA has evaluated the potential burden and cost of using NAICS for TRI reporting and expects that the burden associated with this change for affected facilities is negligible. OMB adopted NAICS as the United States' industry classification system in 1997, and facilities should already be familiar with their NAICS codes from other administrative and regulatory reporting requirements of EPA and other governmental entities. With the exception of auxiliary facilities, EPA does not expect or intend this action to affect the universe of facilities that are currently required to report under section 313 of EPCRA. EPA is simply identifying NAICS industry codes which correspond to those SIC codes that are already subject to section 313 reporting requirements, and requiring covered facilities in those industries to report under the NAICS code that corresponds to the covered SIC code. Only those facilities that meet the requirements in 40 CFR 372.22(b) will need to continue to report releases and other waste management quantities of toxic chemicals under section 313 of EPCRA. The changed interpretation for auxiliary facility reporting will likely result in some reduction of burden, however, the Agency can not quantify what burden reduction is likely to occur because there is no way to tell how many stand-alone auxiliaries currently report or how auxiliaries currently affect multi-establishment applicability determinations.

VIII. What Are the References Cited in This Final Rule?

1. Executive Office of the President, Office of Management and Budget, *North American Industry Classification System, United States, 1997* (NTIS PB98–127293)

2. Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual, 1987* (NTIS PB87–100012)

3. 1997 NAICS U.S. Structure, Including Relationship to 1987 U.S. SIC, ''Table 1: 1997 NAICS Matched to 1987 SIC'' and ''Table 2: 1987 SIC Matched to 1997 NAICS'' (*http://www.census.gov/epcd/www/naicstab.htm*).

4. **Federal Register:** April 20, 2000 (Volume 65, Number 77), Office of Management and Budget, North American Industry Classification System—Update for 2002: Notice of solicitation of comments on the Economic Classification Policy Committee's recommendations for the 2002 revision of the North American Industry Classification System

5. **Federal Register:** January 16, 2001 (Volume 66, Number 10), Office of Management and Budget, North American Industry Classification System—Revision for 2002; Notice of final decision

6. Economic Classification Policy Committee, Report No. 1: Economic Concepts Incorporated in the Standard Industrial Classification Industries of the United States, Aug. 1994 (*http://www.census.gov/epcd/naics/ecpcrpt1*).

7. Executive Office of the President, Office of Management and Budget, North American Industry Classification System, United States, 2002 (NTIS PB2002–101430*88).

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule with the following impacts: (1) May 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) creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

The change required by this rulemaking is to require facilities to report their NAICS codes rather than their SIC codes. The burden of reporting NAICS codes in place of SIC codes is negligible considering that facilities are or should be already using NAICS codes in other government data collection exercises. After consideration of the potential economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. Facilities that are affected by the rule already report their industrial classification codes on the approved reporting forms using SIC codes. Moreover, OMB adopted NAICS several years ago, so affected facilities are or should already be familiar with their NAICS codes from administrative and regulatory reporting requirements of EPA and other governmental entities that have already converted to NAICS reporting. EPA will seek approval from OMB for the amended reporting forms (which will include data fields for NAICS codes instead of SIC codes) prior to the date when facilities must submit reports to the TRI Program using NAICS codes.

OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the

Information Collection Requests (ICRs) OMB control numbers 2070–0093 (EPA ICR No. 1363–13) for Form R and 2070–0143 (EPA ICR No. 1704–07) for Form A. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of the regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed in section VI above, EPA believes that affected facilities already are or should be familiar with their NAICS codes from other activities, including reporting to other governmental authorities. Provision of the NAICS code in lieu of the SIC code is expected to impose negligible incremental burden on affected facilities. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. The phrase, ''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.''

This rule does not have federalism implications. It will not have 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, as specified in Executive Order 13132. This action merely adopts, for TRI reporting purposes, NAICS in place of the SIC system which has previously been used for collecting statistical data and for other administrative and regulatory purposes. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. This action merely adopts, for TRI reporting purposes, the NAICS industry classification system that has replaced the SIC system previously used for collecting statistical data and for other administrative and regulatory purposes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to EO 13045 because it is not economically significant as defined under Executive Order 12866.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (NTTAA) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA recognizes that NAICS, like SIC, is a standard that was developed by OMB primarily as a means to collect and organize industrial statistics for the Federal Government. However, EPA has not identified an alternative voluntary consensus standard for defining industry classifications, and no other classification systems were brought to its attention in comments. Even if one exists, EPA believes it would be impractical to use such a standard for reporting purposes under section 313 of EPCRA and section 6607 of the PPA. One of the reasons for switching from SIC to NAICS is to maintain consistency within EPA and among other government agencies in the way that industry-specific data is collected, organized, and made available to the public in various databases and publications. Moreover, although NAICS is based on a different organizing principle than SIC, the two classification systems share many similarities. Industry has had several decades to become familiar with SIC so the transition to NAICS as opposed to an alternative industry classification system should be more efficient and less burdensome. Therefore, EPA believes it is appropriate to use NAICS for purposes of EPCRA section 313 reporting.

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule,'' as defined by 5 U.S.C. 804(2), can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule.'' This rule will be effective on August 7, 2006.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: May 18, 2006.

Stephen L. Johnson,

Administrator.

■ Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. Amend § 372.3 by adding in alphabetical order a definition for ''Previously classified'' to read as follows:

§ 372.3 Definitions.

* * * * *

Previously classified means properly classified, according to § 372.22(b) under a given Standard Industrial Classification (SIC) code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget.

* * * * *

■ 3. Amend § 372.22, by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3)(i) and (b)(3)(ii) to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

* * * * *

(b) The facility is in a Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group or industry code listed in § 372.23(a) (for which the corresponding North American Industry Classification System (NAICS) (as in effect on January 1, 2002) subsector and industry codes are listed in §§ 372.23(b) and 372.23(c)) by virtue of the fact that it meets one of the following criteria:

(1) The facility is an establishment with a primary SIC major group or industry code listed in § 372.23(a), or a primary NAICS subsector or industry code listed in § 372.23(b) or § 372.23(c).

(2) The facility is a multi-establishment complex where all establishments have primary SIC major group or industry codes listed in § 372.23(a), or primary NAICS subsector or industry codes listed in § 372.23(b) or § 372.23(c).

(3) * * *

(i) The sum of the value of services provided and/or products shipped and/or produced from those establishments that have primary SIC major group or industry codes listed in § 372.23(a), or primary NAICS subsector or industry codes listed in § 372.23(b) or § 372.23(c) is greater than 50 percent of the total value of all services provided and/or products shipped from and/or produced by all establishments at the facility.

(ii) One establishment having a primary SIC major group or industry code listed in § 372.23(a), or a primary NAICS subsector or industry code listed in § 372.23(b) or § 372.23(c) contributes more in terms of value of services provided and/or products shipped from and/or produced at the facility than any other establishment within the facility.

* * * * *

■ 4. Add a new § 372.23 to Subpart B to read as follows:

§ 372.23 SIC and NAICS codes to which this Part applies.

The requirements of this part apply to facilities in the following SIC and NAICS codes. This section contains three listings. Paragraph (a) of this section lists the SIC codes to which this part applies. Paragraph (b) of this section lists the NAICS codes that correspond to SIC codes 20 through 39 to which this part applies. Paragraph (c) of this section lists the NAICS codes that correspond to SIC codes other than SIC codes 20 through 39 to which this part applies.

(a) SIC codes.

Major group or industry code	Exceptions and/or limitations
10	Except 1011, 1081, and 1094.
12	Except 1241.
20 through 39	
4911, 4931, 4939	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
4953	Limited to facilities regulated under the Resource Conservation and Recovery Act, 42 U.S.C. 6921, et seq.

Major group or industry code	Exceptions and/or limitations
5169	
5171	
7389	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis.

(b) NAICS codes that correspond to SIC codes 20 through 39.

Subsector code or industry code	Exceptions and/or limitations
311	Except 311119—Exception is limited to facilities primarily engaged in Custom Grain Grinding for Animal Feed (previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning); Except 311330—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311340—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries); Except 311611—Exception is limited to facilities primarily engaged in Custom Slaughtering for individuals (previously classified under SIC 0751, Livestock Services, Except Veterinary, Slaughtering, custom: for individuals); Except 311612—Exception is limited to facilities primarily engaged in the cutting up and resale of purchased fresh carcasses for the trade (including boxed beef), (previously classified under SIC 5147, Meats and Meat Products);
312	Except 312229—Exception is limited to facilities primarily engaged in providing Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);
313	Except 313311—Exception is limited to facilities primarily engaged in converting broadwoven piece goods and broadwoven textiles, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, broadwoven and non-broadwoven piece good converters), and facilities primarily engaged in sponging fabric for tailors and dressmakers (previously classified under SIC 7389, Business Services, NEC (Sponging fabric for tailors and dressmakers)); Except 313312—Exception is limited to facilities primarily engaged in converting narrow woven Textiles, and narrow woven piece goods, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, converters, except broadwoven fabric);
314	Except 314121—Exception is limited to facilities primarily engaged in making Custom drapery for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores); Except 314129—Exception is limited to facilities primarily engaged in making Custom slipcovers for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores); Except 314999—Exception is limited to facilities primarily engaged in Binding carpets and rugs for the trade, Carpet cutting and binding, and Embroidering on textile products (except apparel) for the trade (previously classified under SIC 7389, Business Services Not Elsewhere Classified, Embroidering of advertising on shirts and Rug binding for the trade);
315	Except 315222—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' suits, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors)); Except 315223—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' dress shirts, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors)); Except 315233—Exception is limited to custom tailors primarily engaged in making and selling bridal dresses or gowns, or women's, misses' and girls' dresses cut and sewn from purchased fabric (except apparel contractors)(custom dressmakers) (previously classified under SIC Code 5699, Miscellaneous Apparel and Accessory Stores);
316	
321	
322	
323	Except 323114—Exception is limited to facilities primarily engaged in reproducing text, drawings, plans, maps, or other copy, by blueprinting, photocopying, mimeographing, or other methods of duplication other than printing or microfilming (*i.e.*, instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));
324	
325	Except 325998—Exception is limited to facilities primarily engaged in Aerosol can filling on a job order or contract basis (previously classified under SIC 7389, Business Services, NEC (aerosol packaging));
326	Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));
327	
331	
332	
333	
334	Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software));

Subsector code or industry code	Exceptions and/or limitations
	Except 334612—Exception is limited to facilities primarily engaged in mass reproducing pre-recorded Video cassettes, and mass reproducing Video tape or disk (previously classified under SIC 7819, Services Allied to Motion Picture Production (reproduction of Video));
335	Except 335312—Except is limited to facilities primarily engaged in armature rewinding on a factory basis (previously classified under SIC 7694 (Armature Rewinding Shops (remanufacturing));
336	
337	Except 337110—Except is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom wood kitchen cabinets and counter tops (previously classified under SIC 5712, Furniture Stores (custom wood cabinets));
	Except 337121—Except is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom made upholstered household furniture (previously classified under SIC 5712, Furniture Stores (upholstered, custom made furniture));
	Except 337122—Except is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture nonupholstered, household type, custom wood furniture (previously classified under SIC 5712, Furniture Stores (custom made wood nonupholstered household furniture except cabinets));
339	Except 339115—Except is limited to lens grinding facilities that are primarily engaged in the retail sale of eyeglasses and contact lenses to prescription for individuals (previously classified under SIC 5995, Optical Goods Stores (optical laboratories grinding of lenses to prescription));
	Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories);
111998	Limited to facilities primarily engaged in reducing maple sap to maple syrup (previously classified under SIC 2099, Food Preparations, NEC, Reducing Maple Sap to Maple Syrup);
211112	Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic Chemicals, NEC (recovering sulfur from natural gas));
212324	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1455));
212325	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459));
212393	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1479));
212399	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499));
488390	Limited to facilities that are primarily engaged in providing routine repair and maintenance of ships and boats from floating drydocks (previously classified under SIC 3731, Shipbuilding and Repairing (floating drydocks not associated with a shipyard));
511110	
511120	
511130	
511140	Except facilities that are primarily engaged in furnishing services for direct mail advertising including Address list compilers, Address list publishers, Address list publishers and printing combined, Address list publishing, Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Mailing list compilers, Directory compilers, and Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compilers));
511191	
511199	
512220	
512230	Except facilities primarily engaged in Music copyright authorizing use, Music copyright buying and licensing, and Music publishers working on their own account (previously classified under SIC 8999, Services, NEC (music publishing));
516110	Limited to facilities primarily engaged in Internet newspaper publishing (previously classified under SIC 2711, Newspapers: Publishing, or Publishing and Printing), Internet periodical publishing (previously classified under SIC 2721, Periodicals: Publishing, or Publishing and Printing), Internet book publishing (previously classified under SIC 2731, Books: Publishing, or Publishing and Printing), Miscellaneous Internet publishing (previously classified under SIC 2741, Miscellaneous Publishing), Internet greeting card publishers (previously classified under SIC 2771, Greeting Cards);
541710	Limited to facilities that are primarily engaged in Guided missile and space vehicle engine research and development (previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts), and in Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified);
811490	Limited to facilities that are primarily engaged in repairing and servicing pleasure and sail boats without retailing new boats (previously classified under SIC 3732, Boat Building and Repairing (pleasure boat building));

(c) NAICS codes that correspond to SIC codes other than SIC codes 20 through 39.

Subsector or industry code	Exceptions and/or limitations
212111	
212112	
212113	
212221	
212222	
212231	
212234	
212299	
221111	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221119	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221121	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221122	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
424690	
424710	
425110	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
425120	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
562112	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC);
562211	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562212	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562213	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562219	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562920	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*

■ 5. Amend § 372.38 by revising paragraphs (e), (g), and (h) to read as follows:

§ 372.38 Exemptions.

* * * * *

(e) *Certain owners of leased property.* The owner of a covered facility is not subject to reporting under § 372.30 if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated. This exemption applies to owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments in any SIC code or NAICS code in § 372.23 that is subject to the requirements of this part, where the owner has no other business interest in the operation of the covered facility.

* * * * *

(g) *Coal extraction activities.* If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, or in NAICS codes 212111, 212112 or 212113, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

(h) *Metal mining overburden.* If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, or in NAICS codes 212221, 212222, 212231, 212234 or 212299, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

■ 6. Amend § 372.45 by revising paragraph (a)(1) to read as follows:

§ 372.45 Notification about toxic chemicals.

(a) * * *

(1) Is in SIC codes 20 through 39 or a NAICS code that corresponds to SIC codes 20 through 39 as set forth in § 372.23(b),

* * * * *

■ 7. Amend § 372.85 by revising paragraph (b)(5) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(b) * * *

(5) The four-digit SIC code(s) for the facility or establishments in the facility until the reporting year ending December 31, 2005, for which reporting forms are due July 1, 2006. Beginning with the reporting year ending December 31, 2006, for which reporting forms are due July 1, 2007, and for each subsequent reporting year, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

■ 8. Amend § 372.95 by revising paragraph (b)(10) to read as follows:

§ 372.95 Alternate threshold certification and instructions.

* * * * *

(b) * * *

(10) The four-digit SIC code(s) for the facility or establishments in the facility until the reporting year ending December 31, 2005, for which reporting forms are due July 1, 2006. Beginning with the reporting year ending December 31, 2006, for which reporting

forms are due July 1, 2007, and for each subsequent reporting year, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

[FR Doc. 06–5131 Filed 6–5–06; 8:45 am]

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Proposed Rules

Federal Register
Vol. 71, No. 108
Tuesday, June 6, 2006

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

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3411

RIN 0524–AA32

National Research Initiative Competitive Grants Program—Revisions to Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to update and make technical corrections to the administrative provisions for the National Research Initiative Competitive Grants Program (NRICGP). In addition, CSREES proposes substantive revisions to 7 CFR 3411.3(d), the ''Eligibility requirements'' for NRICGP Postdoctoral Fellowships, New Investigator Awards, and Strengthening Awards, and to 7 CFR 3411.4(c)(8), Agency instructions to applicants preparing project budgets for NRICGP conference grants and postdoctoral fellowships. CSREES anticipates the proposed changes to the eligibility requirements would increase the impact of the Agricultural Research Enhancement Awards, while the proposed changes to the budget instructions would facilitate additional conference and postdoctoral fellowship awards.

DATES: The Agency must receive comments on or before August 7, 2006.

ADDRESSES: Comments should be sent to Erin Daly; United States Department of Agriculture; Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Ave., SW., Washington, DC 20250–2299. Comments may also be sent via electronic mail to *edaly@csrees.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Gail McLean at (202) 401–6060 or via electronic mail at *gmclean@csrees.usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview

The Cooperative State Research, Education, and Extension Service (CSREES) proposes revisions to the administrative provisions for the National Research Initiative Competitive Grants Program (NRICGP), which was authorized in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), (7 U.S.C. 450i(b)). Some of the revisions are mere technical corrections, including updates to the Agency's name. Other revisions reflect the Agency's developing capabilities to exchange proposal and grant data electronically. Finally, CSREES proposes substantive revisions to the eligibility requirements for Agricultural Research Enhancement Awards (7 CFR 3411.3(d)) and the Agency's instructions to applicants preparing project budgets for NRICGP conference grants and postdoctoral fellowships (7 CFR 3411.4(c)(8)).

The Agricultural Research Enhancement Awards are intended to help institutions develop competitive research programs and to attract scientists to research in agriculture, food, and environmental sciences. To increase the impact of the Agricultural Research Enhancement Awards, CSREES proposes changing the eligibility requirements for Postdoctoral Fellowships, New Investigator Awards, and Strengthening Awards. Anticipated impacts would include: (1) For Postdoctoral Fellowships, improved funding continuity and potentially more postdoctoral scientists entering into an agricultural research career; (2) for New Investigator Awards, improved project design and increased probability of a successful agricultural research program; and (3) for Strengthening Awards, improved research project continuity and more incentive for researchers to stay at USDA-Experimental Program for Stimulating Competitive Research (EPSCoR) or small/mid-sized institutions. The proposed revisions to Agency instructions regarding the preparation of project budgets apply narrowly and should optimize the use of NRICGP funds for scientific meetings and for postdoctoral researchers.

Postdoctoral Fellowships

Current provisions indicate a postdoctoral fellowship applicant should not have received a doctoral degree before January 1 of the fiscal year three years prior to the submission of the proposal and not later than June 15 of the fiscal year during which the proposal is submitted (7 CFR 3411.3(d)(1)(i)). In the past, NRICGP proposal submission dates were grouped together and occurred within an approximate range of three to four months. As a result, applicants had similar amounts of time from the date they submitted their proposals until they were notified of awards. This was important because applicants used the time to arrange for postdoctoral positions and ensure continuity of funding for their postdoctoral research.

Now, however, NRICGP proposal submission dates are spread throughout the year. The current provisions put at a disadvantage postdoctoral fellowship applicants to NRICGP programs with proposal submission dates that are later in the fiscal year than the doctoral degree cutoff date of June 15. In order to ensure the availability of their awards, applicants to these programs may wait a year between receiving their doctoral degrees and applying for the postdoctoral fellowships. The gap in funding can result in postdoctoral researchers leaving agricultural research because they cannot find a laboratory with sufficient funding to support them during this interim.

CSREES proposes revising the provisions for NRICGP postdoctoral fellowships to base cutoff dates for receipt of doctoral degrees on proposal due dates for specific NRICGP programs. This change would add equity to the process and allow applicants sufficient time to make arrangements for financial support of their postdoctoral research prior to graduation. In doing so, it should further the engagement of the best and brightest young scientists in agricultural research.

New Investigator Awards

The current provisions require that, in addition to the Project Director, all co-Project Directors must meet NRICGP New Investigator Award eligibility requirements (7 CFR 3411.3(d)(2)). When evaluating the scientific merit of

a proposal, reviewers frequently suggest that New Investigators work with established investigators. Established investigators can provide valuable expertise on scientific subjects and experimental methods that New Investigators need for successful research projects. The interaction between New Investigators and established investigators can be more than simple collaboration and require sharing of funds and significant interaction. The current eligibility requirements for New Investigator Awards inhibit, if not prevent, these close relationships. CSREES proposes revising the eligibility requirements for New Investigator Awards so that they apply to Project Directors only. As the Project Director, the New Investigator would maintain the primary responsibility for the research and the funding.

Currently, applicants are ineligible for New Investigator Awards if they have received competitively-awarded Federal research funds beyond the level of pre- or postdoctoral research awards (7 CFR 3411.3(d)(2)). As a result, CSREES is not able to make New Investigator Awards to former recipients of NRICGP seed grants. NRICGP seed grants are relatively small awards that enable investigators to collect preliminary data they can use to prepare standard research grant applications. Seed grant eligibility is limited to faculty with appointments at (1) small and mid-sized degree-granting institutions that are not in the top 100 most successful institutions; and (2) degree-granting institutions eligible for USDA–EPSCoR funding. CSREES proposes revising the NRICGP New Investigator Award provisions so that former recipients of NRICGP seed grants are eligible to apply for these funds. By allowing investigators who received seed grants to remain eligible for New Investigator Awards, CSREES hopes to increase the chances that beginning scientists will achieve funding and continuation of agricultural research projects.

Strengthening Awards

According to the eligibility requirements for Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards, no investigators on the Proposal Cover Page may have received a USDA NRICGP competitive research grant within the last 5 years (7 CFR 3411.3(d)(3)(ii)(A)). CSREES proposes removing this restriction so that investigators from eligible institutions can apply for these types of Strengthening Awards regardless of having received NRICGP awards in the past. The Agency believes this will increase the likelihood that investigators at institutions in EPSCoR states, and those at institutions with small to mid-sized enrollment, will have the funding stability necessary for successful agricultural research programs. Often researchers from these institutions have difficulty renewing strengthening awards. Although their projects have important scientific merit, they tend to be limited in size and scope due to, for example, teaching commitments, equipment access, and smaller numbers of students and postdoctoral researchers. Thus, these proposals do not compete well against projects from larger research institutions that have more resources and personnel. This change will improve funding continuity and provide incentives for established researchers to stay at EPSCoR or small/mid-sized institutions. In doing so, it will strengthen the institutions and the future of agricultural research through increased opportunities for students to participate in active, successful agricultural research projects.

The current provisions require that, in addition to the Project Director, all co-Project Directors must meet NRICGP Strengthening Award eligibility requirements (7 CFR 3411.3(d)(3)(ii)(B)). As with a similar restriction placed on New Investigators, this requirement unnecessarily hampers close relationships between investigators who can provide expertise needed to successfully complete a project. CSREES proposes revising the eligibility requirements for these types of NRICGP Strengthening Awards so that they apply to Project Directors only.

Indirect Costs—Conference Awards and Postdoctoral Fellowships

CSREES proposes adding language to 7 CFR 3411.4(c)(8) that prohibits indirect costs for conference awards and postdoctoral fellowships. Currently, CSREES restricts conference awardees' recovery of indirect costs to 20% of total Federal funds, as provided in Section 709 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97). Conference awards support meetings that bring together scientists to identify research needs, update information, or advance an area of research. Typically, these awards are modest. They rarely exceed $10,000, but are recognized as integral to research efforts. Where grantees incur administrative costs relative to sponsoring such conferences (especially in off-site locations), the Agency believes the administrative costs are negligible.

In accordance with its fiscal year 2006 Request for Applications (RFA) for NRICGP (available at *http://www.csrees.usda.gov/funding/rfas/nri_rfa.html*), CSREES allows postdoctoral fellowship awardees to request an institutional allowance (not to exceed $2,400 per year) or indirect costs within the $125,000 maximum award limit. Postdoctoral fellowship applicants primarily request funds for salary support, although they are allowed to request other expenditures (*e.g.*, supplies, travel, and publication) if they properly justify them. These awards allow postdoctoral researchers to develop independent research projects they can take with them to career-track positions. Postdoctoral fellowships play an important role in attracting and supporting beginning researchers in agricultural sciences. For postdoctoral fellowships, CSREES proposes that it continue to indicate in its annual NRICGP RFA a maximum institutional allowance, and that, in accordance with revised administrative provisions, the Agency plans to make this allowance available to awardees in lieu of indirect costs.

CSREES is soliciting public comments regarding this proposed rule and will consider and address such comments in subsequent rulemaking on this subject. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this proposed rule.

Paperwork Reduction Act of 1995—Information Collection

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Proposed Rule have been approved (OMB Approval No. 0524–0039).

Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601, *et seq.*) because it is a Federal assistance program, not a regulatory regime, and the majority of awards will be made to colleges and universities that do not qualify as small entities.

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not

materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order. This rule will not 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.

Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Department assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more;

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with the Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) no administrative proceedings are required before bringing any judicial action regarding this rule.

Executive Order 13132

In accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any substantial direct effect on policymaking discretion of 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. Nor does this rule impose substantial direct compliance costs on State and local governments.

Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 3411

Agricultural research, Grant programs—agriculture, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Cooperative State Research, Education, and Extension Service proposes to amend 7 CFR part 3411 to read as set forth below:

PART 3411—NATIONAL RESEARCH INITIATIVE COMPETITIVE GRANTS PROGRAM

1. The authority citation for part 3411 continues to read as follows:

Authority: Sec. 2(i) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(i)).

Subpart A—General

2. Revise paragraph (a) of § 3411.1 to read as follows:

§ 3411.1 Applicability of regulations.

(a) The regulations of this part apply to competitive research grants awarded under the authority of section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), (7 U.S.C. 450i(b)), for the support of research to further the programs of the Department of Agriculture and to improve research capabilities in the agricultural, food, and environmental sciences in the following categories: Single investigators or coinvestigators in the same disciplines; teams of researchers from different disciplines; multidisciplinary teams for long-term applied research problems; multidisciplinary teams whose research has the eventual goal of technology transfer and education capacity through the acquisition of special research equipment and improvement of teaching and education, including fellowships; single investigators or coinvestigators who are beginning their research careers; and, faculty of small and mid-sized institutions not previously successful in obtaining competitive grants under this subsection. In accordance with Public Law 104–127, within the Department of Agriculture, the Secretary established the National Agricultural Research, Extension, Education, and Economics Advisory Board (NAREEEAB) to provide overall guidance to the Research, Education and Economics mission area on policies and priorities related to programs, including NRICGP. In addition to the stakeholder listening sessions NAREEEAB sponsors, CSREES receives stakeholder input on policies and priorities related to NRICGP from multiple sources including scientific societies; the National Research Council of the National Academy of Sciences; producers, processors, industry; the land-grant university system; non-governmental organizations; and other federal agencies; and through international coordination. The Administrator of CSREES shall determine and announce, through publication of a notice on the CSREES Web site (*http://www.csrees.usda.gov*), the government-wide funding opportunities Web site (*http://www.grants.gov*), or in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, high-priority research areas and categories for which proposals will be solicited and the extent that funds are made available therefore.

* * * * *

3. Revise paragraphs (a) and (c) of § 3411.2 to read as follows:

§ 3411.2 Definitions.

* * * * *

(a) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

* * * * *

(c) *Project Director* means a single individual who is responsible for the scientific and technical direction of the project, as designated by the grantee in

the grant application and approved by the Administrator.

* * * * *

4. Amend § 3411.3 by revising paragraphs (a), (d) introductory text, (d)(1) introductory text, (d)(1)(i), (d)(2), and (d)(3)(ii) to read as follows:

§ 3411.3 Eligibility requirements.

* * * * *

(a) For research projects, except where otherwise prohibited by law, State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals shall be eligible to apply for and receive a competitive grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

* * * * *

(d) *Agricultural Research Enhancement Awards.* In addition to paragraphs (a), (b), and (c) of this section, the following eligibility requirements apply to Agricultural Research Enhancement Awards for research projects (Program reserves the right to specify funding limitations and administrative requirements each year in the program solicitation):

(1) *Postdoctoral Fellowships.* In accordance with section 2(b)(3)(D) of the Act of August 4, 1965, as amended, individuals who recently have received or will soon receive their doctoral degree may submit proposals for postdoctoral fellowships. The following eligibility requirements apply:

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the fiscal year three years prior to the submission of the proposal and not later than nine months after the proposal due date;

* * * * *

(2) *New Investigator Awards.* Pursuant to section 2(b)(3)(E) of the Act of August 4, 1965, as amended, Project Directors who are beginning their research careers, do not have an extensive research publication record, and have less than 5 years of post-graduate, career-track research experience, may submit proposals as new investigators. Applicants may not have received competitively-awarded Federal research funds beyond the level of pre- or postdoctoral research awards or USDA NRICGP seed grants.

(3) *Strengthening Awards.*

* * * * *

(ii) *Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards.* The following eligibility requirements apply to Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards:

(A) The Project Director listed on the Application For Funding must be from a small or mid-sized institution that is not among the top 100 universities and colleges for receiving Federal funds for science and engineering research as specified in the annual program solicitation or must be from an institution located in a USDA–EPSCoR state.

(B) Every investigator listed on the Application For Funding must have an appointment at a degree granting institution.

5. Amend § 3411.4 by revising paragraphs (a) introductory text, (a)(4), (a)(5), (c)(3) introductory text, (c)(7) introductory text, (c)(8), (c)(11), and (c)(13) to read as follows:

§ 3411.4 How to apply for a grant.

(a) Program solicitations will be prepared and announced through publication on the government-wide funding opportunities Web site (*http://www.grants.gov*) as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare competitive grant proposals and will be as complete as possible with respect to:

* * * * *

(4) Deadline dates for receipt of proposal packages;

(5) Submission addresses;

* * * * *

(b) * * *

(c) *Format for grant proposals.*

* * * * *

(3) *Project Description.* The specific aims of the project must be included in all proposals. The text of the project description may not exceed 18 single- or double-spaced pages and must contain the following components:

* * * * *

(7) *Personnel support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, all personnel who will be involved in the proposed project must be identified clearly. For each Project Director involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

* * * * *

(8) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the NRICGP Application Kit identified under § 3411.4(b) of the part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute or regulation. It should be noted, for example, that section 2(b)(7) of the Act of August 4, 1965, as amended, prohibits the use of funds under this program for the renovation or refurbishment of research spaces, purchases or installation of fixed equipment in such spaces, or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. Also, section 2(b)(8) of the Act of August 4, 1965, as amended, requires that all grants, except equipment grants authorized by section 2(b)(3)(D) of the same Act, awarded under this part, shall be used without regard to matching funds or cost sharing. Equipment grants may not exceed 50 percent of the cost of the equipment to be acquired. Equipment grant funds also may not be used for installation, maintenance, warranty, or insurance expenses. Indirect costs are not permitted on equipment grants, conference grants, or postdoctoral fellowships. According to the limit included in the annual program solicitation, a postdoctoral fellowship applicant may request and receive a reasonable institutional allowance.

* * * * *

(11) *Additions to project description.* Each project description is expected by the Administrator, the members of peer review groups, and the relevant program staff to be complete. However, if the inclusions of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the text of the proposal), the number of copies submitted should match the number of copies of the application requested in the program solicitation. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the Project Director(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous

materials will not be used during the peer review process.

* * * * *

(13) *National Environmental Policy Act.* As outlined in CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR part 3407, environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR p art 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form provided in the NRICGP Application Kit.

* * * * *

6. Revise paragraph (a) of § 3411.5 to read as follows:

§ 3411.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants and received in accordance with deadlines established in the annual program solicitation shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are uniquely qualified in the areas represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, and/or others who are recognized specialists in the areas covered by the applications received and whose general roles are defined in §§ 3411.2(j) and 3411.2(k). Specific evaluations will be based upon the criteria established in § 3411.15, unless CSREES determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, or for specific types of projects to be supported, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of these evaluations is to provide information upon which the Administrator may make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

* * * * *

7. Amend § 3411.6 as follows:

A. Revise paragraph (a), paragraph (b) heading, (b)(1)(iii), (b)(1)(iv), (d) introductory text, (d)(2), and (f).

B. Remove and reserve paragraph (b)(2).

§ 3411.6 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Federal assistance regulations.

(b) *Grant award document.*

(1) * * *

(iii) Name(s) and address(es) of Project Director(s) chosen to direct and control approved activities;

(iv) Identifying grant and proposal numbers assigned by the Department;

* * * * *

(d) *Funding mechanisms.* The two mechanisms by which grants shall be awarded are as follows:

* * * * *

(2) *Continuation grant.* This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants will also be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSREES, a grantee must submit a separate application for continued support for each subsequent fiscal year. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

* * * * *

(f) *Current Research Information Service (CRIS).* For each project funded, instructions will be sent to the grantee for the completion of CRIS Forms AD–416, ''Research Work Unit/Project Description—Research Resume'' and AD–417, ''Research Work Unit/Project Description—Classification of Research.'' Grant funds will not be released until the completed forms are received electronically via CRIS.

8. Revise paragraph (b)(1) of § 3411.7 as follows:

§ 3411.7 Use of funds; changes.

* * * * *

(b) *Change in project plans.* (1) The permissible changes by the grantee, Project Director(s), or other key project personnel in the approved grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the Project Director(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Administrator for final determination.

* * * * *

9. In the list of statutes in § 3411.8, revise the fifth and tenth statutes listed.

§ 3411.8 Other Federal statutes and regulations that apply.

* * * * *

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to

recipients of Departmental financial assistance;

* * * * *

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act;

* * * * *

Dated: May 31, 2006.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E6–8704 Filed 6–5–06; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24253; Directorate Identifier 2006–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE GMBH & CO KG Model G102 ASTIR CS Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 84–09–05, which applies to certain GROB–WERKE GMBH & CO KG (previously identified as BURKHART–GROB FLUGZEUGBAU INDUSTRIESTRABE) Model G102 ASTIR CS sailplanes. AD 84–09–05 requires you to install a modified spherical locking bolt and nut in the forward horizontal stabilizer connection to the vertical stabilizer and install new locking pins in the aft connecting plate for the horizontal stabilizer. Since we issued AD 84–09–05, fatigue cracks were found in the modified spherical locking bolt. Consequently, this proposed AD would require you to replace the modified spherical locking bolt, the retaining pins (collar bolts), and associated hardware; add a life limit on the spherical locking bolt and the retaining pins; and repetitively inspect the front and rear horizontal stabilizer attachment. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are proposing this AD to prevent cracks in the spherical locking bolt, which could result in failure of the horizontal stabilizer connection. This failure could lead to loss of control.

DATES: We must receive comments on this proposed AD by June 29, 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 GROB Luft- und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; fax: 011 49 8268 998200; e-mail: *productsupport@grob-aerospace.de.*

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

SUPPLEMENTARY INFORMATION:

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–2006–24253; Directorate Identifier 2006–CE–23–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

A broken spherical locking bolt in the horizontal stabilizer attachment on a GROB–WERKE GMBH & CO KG (GROB) (previously identified as BURKHART–GROB FLUGZEUGBAU INDUSTRIESTRABE) Model G102 ASTIR CS sailplane caused us to issue AD 84–09–05, Amendment 39–4849. AD 84–09–05 requires the following for certain Model G102 ASTIR CS sailplanes:

- Installing a modified spherical locking bolt and nut in the forward horizontal stabilizer connection to the vertical stabilizer; and
- Installing new locking pins in the aft connecting plate for the horizontal stabilizer.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA of the need to supersede AD 84–09–05 to address an unsafe condition that may exist or could develop on GROB Model G102 ASTIR CS sailplanes.

The LBA reports an incident of the modified spherical locking bolt found broken on one of the affected sailplanes after landing.

Investigation revealed that fatigue, resulting from alternating stress on the stabilizer during unsymmetrical loading, caused the spherical locking bolt to crack.

This condition, if not corrected, could result in failure of the horizontal stabilizer connection. This failure could lead to loss of control.

Relevant Service Information

We have reviewed GROB Service Bulletin MSB306–38/1, dated November 28, 2005, and GROB Service Bulletin MSB306–38, dated February 12, 2004. These service bulletins specify doing the following:

- Removing and replacing the spherical locking bolt with a new bolt, part number (P/N) 102–3500.21;
- Removing and replacing all retaining pins (collar bolts) on the T-plate with new retaining pins, P/N 102–2142.46;
- Incorporating Revision 9 into the Maintenance Manual (which may be downloaded at *http://www.Grob-Aerospace.de/*);
- Adding a life limit to the new spherical locking bolt and retaining pins; and
- Inspecting (repetitively) the front and rear horizontal stabilizer attachment assembly after the initial replacements.

Foreign Airworthiness Authority Information

The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–168, dated March 23, 2004, to ensure the continued airworthiness of these sailplanes in Germany.

These GROB Model G102 ASTIR CS 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 supersede AD 84–09–05 with a new AD that would require you to do the following:

- Remove the existing spherical locking bolt, nut, retaining pins (collar bolts), self-locking nut, and the lock washer; and replace with a new spherical locking bolt, P/N 102–3500.21, that has revision letter ''b'' permanently marked on the bottom of the bolt, a new nut, P/N 102–3510.21, new retaining pins (collar bolts), P/N 102–2142.46, a new self-locking nut, P/N LN9348–M8, and a new lock washer, P/N DIN 6797–10,5PHR.
- Add a life limit on the new spherical locking bolt and the retaining pins; and
- Inspect (repetitively) the front and rear horizontal stabilizer attachment assembly after the initial replacements.

Differences Between This Proposed AD and the Service Information

The service information specifies using a 20X magnifying glass for doing the inspections. This proposed AD specifies using a dye penetrant method and a 10X magnifying glass for doing the inspections. This difference is because 20X magnifiers are not readily available in the field.

The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 56 sailplanes in the U.S. registry.

We estimate the following costs to do the proposed replacements:

Labor cost	Parts cost	Total cost for each sailplane	Total cost on U.S. operators
2 workhours × $80 per hour = $160	$253	$413	$23,128

We estimate the following costs to do each proposed inspection:

Labor cost	Parts cost	Total cost for each sailplane	Total cost on U.S. operators
2 workhours × $80 per hour = $160	Not Applicable	$160	$8,960

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 removing Airworthiness Directive (AD) 84–09–05, Amendment 39–4849, and adding the following new AD:

GROB–WERKE GMBH & CO KG (previously identified as BURKHART–GROB FLUGZEUGBAU INDUSTRIESTRABE): Docket No. FAA–2006–24253; Directorate Identifier 2006–CE–23–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by June 29, 2006.

Affected ADs

(b) This AD supersedes AD 84–09–05, Amendment 39–4849.

Applicability

(c) This AD affects Model G102 ASTIR CS sailplanes, serial numbers 1001 through 1536, 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 cracks in the spherical locking bolt, which could result in failure of the horizontal stabilizer connection. This failure could lead to loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Remove and replace as follows: (i) Remove the existing retaining pins (collar bolts) and the self-locking nut and replace with new retaining pins, part numbers (P/N) 102–2142.46, and self-locking nut, P/N LN9348–M8 (or FAA-approved equivalent part numbers), on the T-plate; (ii) Remove the existing spherical locking bolt and replace with a new spherical locking bolt, P/N 102–3500.21, that has revision letter "b" permanently marked on the bottom of the bolt (or FAA-approved equivalent part number). Return all replaced spherical locking bolts to Grob Systems, Inc., Aircraft Division, 1070 Navajo Drive, Bluffton, Ohio 45817; (iii) Remove the existing nut and replace with a new nut, P/N 102–3510.21 (or FAA-approved equivalent part number); and (iv) Remove the existing lock washer and replace with a new lock washer, P/N DIN 6796–10,5PHR (or FAA-approved equivalent part number).	Within the next 90 days after the effective date of this AD, unless already done. After doing the replacements, the spherical locking bolt and retaining pins have a life limit of 10 years and must be replaced at that time.	As specified in GROB Service Bulletin MSB306–38/1, dated November 28, 2005, following the Accomplishment Instructions in GROB Service Bulletin MSB306–38, dated February 12, 2004, and the Annual Inspection procedures on pages 7 and 8 of the Astir CS Maintenance Manual, Rev. 9, dated Nov. 2005.
(2) Repetitively inspect the front and rear horizontal stabilizer attachment assembly using a dye-penetrant method along with a minimum 10X magnifying glass for excessive movement, cracks, and/or damage in the spherical locking bolt. This inspection method takes precedence over the procedures outlined in GROB Service Bulletin MSB306–38, dated February 12, 2004.	Initially inspect within the next 100 hours time-in-service (TIS) or at the next annual inspection after the replacement required in paragraph (e)(1) of this AD, whichever occurs first. Repetitively inspect thereafter at 12-month intervals or at intervals not to exceed 100 hours TIS, whichever occurs first.	As specified in GROB Service Bulletin MSB306–38/1, dated November 28, 2005, following the Accomplishment Instructions in GROB Service Bulletin MSB306–38, dated February 12, 2004, and the Annual Inspection procedures on pages 7 and 8 of the Astir CS Maintenance Manual, Rev. 9, dated Nov. 2005.
(3) If, during any inspection required in paragraph (e)(2) of this AD, you find excessive movement: (i) In the front horizontal stabilizer attachment, you must replace the spherical locking bolt with a new part. (ii) In the rear horizontal stabilizer attachment, you must replace the retaining pins with new parts. (iii) In the front and rear horizontal stabilizer attachment after doing the replacement(s) required in paragraph (e)(3)(i) and (e)(3)(ii) of this AD, you must replace the bearing in the stabilizer spar web.	Before further flight after each inspection required in paragraph (e)(2) of this AD. After each replacement, the spherical locking bolt and the retaining pins have a life limit of 10 years and must be replaced at that time.	As specified in GROB Service Bulletin MSB306–38/1, dated November 28, 2005, following the Accomplishment Instructions in GROB Service Bulletin MSB306–38, dated February 12, 2004, and the Annual Inspection procedures on pages 7 and 8 of the Astir CS Maintenance Manual, Rev. 9, dated Nov. 2005.
(4) If, during any inspection required in paragraph (e)(2) of this AD, you do not find excessive movement in the front and rear horizontal stabilizer attachment: (i) Inspect the spherical locking bolt for cracks and damage using a dye-penetrant method along with a minimum 10X magnifying glass. (ii) If you find cracks or damage on the spherical locking bolt, during the inspection required in paragraph (e)(4)(i) of this AD, you must replace the bolt with a new bolt.	Before further flight after each inspection required in paragraph (e)(2) of this AD. After each replacement, the spherical locking bolt and the retaining pins have a life limit of 10 year and must be replaced at that time.	As specified in GROB Service Bulletin MSB306–38/1, dated November 28, 2005, following the Accomplishment Instructions in GROB Service Bulletin MSB306–38, dated February 12, 2004, and the Annual Inspection procedures on pages 7 and 8 of the Astir CS Maintenance Manual, Rev. 9, dated Nov. 2005.

Actions	Compliance	Procedures
(5) Do not install any spherical locking bolt, P/N 102–3500.21 (or FAA-approved equivalent part number), that does not have revision letter "b" permanently marked on the bottom of the bolt.	As of the effective date of this AD	Not applicable.
(6) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase "or FAA-approved equivalent part number" in this AD is intended to signify those parts that are PMA parts approved through identicality to the design of the part under the type certificate and replacement parts to correct the unsafe condition under PMA (other than identicality). If parts are installed that are identical to the unsafe parts, then the corrective actions of the AD affect these parts also. In addition, equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.	Not Applicable	Not Applicable.

Note: During ground handling, it has been noted that a tendency exists for the ground crew to move these gliders by using the horizontal stabilizer as a lifting point. This practice may facilitate damage to the stabilizer assembly and should be avoided. See Caution note in GROB Service Bulletin MSB306–38, dated February 12, 2004.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Gregory A. Davison, Aerospace Engineer, 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.

(g) AMOCs approved for AD 84–09–05 are not approved for this AD.

Related Information

(h) German AD Number D–2004–168, dated March 23, 2004, also addresses the subject of this AD. To get copies of the documents referenced in this AD, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; fax: 011 49 8268 998200; e-mail: *productsupport@grob-aerospace.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–2006–24253; Directorate Identifier 2006–CE–23–AD.

Issued in Kansas City, Missouri, on May 30, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8712 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24951; Directorate Identifier 2005–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV and GV–SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Model GV and GV–SP series airplanes. This proposed AD would require repairing the force link assembly wire harness. This proposed AD results from a report indicating that the wiring harness outer shield and insulation on the primary conductors may have been inadvertently cut due to an improper method used to remove the wiring outer jacket. We are proposing this AD to prevent the loss of the hardover prevention system (HOPS) in the roll axis due to a short circuit in the wiring harness, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by July 21, 2006.

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

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

Contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6095; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24951; Directorate Identifier 2005–NM–184–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date

and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

While installing an aileron force link assembly during the production of a Model GIV–X series airplane, a technician noticed that the wiring harness outer shield and insulation on the primary conductors were cut. The cuts did not appear to sever the electrical wire core, but the potential for severed wires prompted an investigation by the force link supplier. The investigation revealed that an improper method had been used to remove the wiring outer jacket on approximately 221 affected force links. If this condition causes the hardover prevention system (HOPS) to fire inadvertently, the HOPS would shut down the hydraulics system in that axis, increasing pilot workload. Also, an electrical short circuit in the wiring harness could result in loss of the HOPS in the roll axis, and consequent reduced controllability of the airplane.

Relevant Service Information

We have reviewed Gulfstream G500 Customer Bulletin 14 and G550 Customer Bulletin 14 (for Model GV–SP series airplanes), and Gulfstream GV Customer Bulletin 135 (for Model GV series airplanes), all dated June 23, 2005. The customer bulletins describe procedures for repairing the force link assembly wire harness. The repair includes installing new wiring, visually inspecting the seal around the wires for nicks and other damage, and visually inspecting the mating ends of the connectors to ensure the contacts are properly inserted. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Gulfstream customer bulletins include Vought Service Bulletin SB–VAIGV/GVSP–27–PG0098, dated May 9, 2005, as an additional source of service information for the repair.

FAA's Determination and Requirements of the Proposed AD

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

Clarification of Proposed Repair Requirements

The service bulletins do not provide corrective action for nicks or other damage found during the inspection of the environmental seal around the installed wires. This proposed AD would require operators to repair those conditions using a method approved by the FAA.

Costs of Compliance

There are about 99 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
3	$80	The manufacturer states that it will supply required parts to the operators at no cost.	$240	77	$18,480

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation: Docket No. FAA–2006–24951; Directorate Identifier 2005–NM–184–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following Gulfstream Aerospace Corporation airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Serial Nos.
GV series airplanes ..	674 through 693 inclusive.
GV–SP series airplanes.	5001 through 5072 inclusive.

Unsafe Condition

(d) This AD results from a report indicating that the wiring harness outer shield and insulation on the primary conductors may have been inadvertently cut due to an improper method used to remove the wiring outer jacket. We are issuing this AD to prevent the loss of the hardover prevention system (HOPS) in the roll axis due to a short circuit in the wiring harness of the aileron force link assembly, which could result in 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.

Repair

(f) Within 12 months after the effective date of this AD, repair the force link assembly wire harness by doing all actions specified in the Accomplishment Instructions of the applicable service information identified in Table 2 of this AD, except as required by paragraph (g) of this AD.

TABLE 2.—SERVICE INFORMATION

For model—	Use—
GV–SP series airplanes	Gulfstream G500 Customer Bulletin 14, dated June 23, 2005.
GV–SP series airplanes	Gulfstream G550 Customer Bulletin 14, dated June 23, 2005.
GV series airplanes	Gulfstream GV Customer Bulletin 135, dated June 23, 2005.

Note 1: The Gulfstream customer bulletins identified in Table 2 of this AD include Vought Service Bulletin SB-VAIGV/GVSP–27–PG0098, dated May 9, 2005, as an additional source of service information for the repair.

Exception to Service Bulletin Specifications

(g) During the inspection of the environmental seal around the installed wires required by paragraph (f) of this AD: If any nick or other damage is found, repair before further flight using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on May 26, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8711 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24952; Directorate Identifier 2006–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require repetitive detailed inspections of the wire bundles, power display unit (PDU) wiring, and wire attaching hardware, supports, and sleeving located in the forward and aft lower lobe cargo compartments and corrective actions as necessary. This proposed AD results from a fire in the forward lower lobe cargo compartment found shortly after airplane arrival. We are proposing this AD to detect and correct damage to wires in the forward and aft lower lobe cargo compartments, which could result in a potential short circuit and consequent fire in the forward and aft lower lobe cargo compartments.

DATES: We must receive comments on this proposed AD by July 21, 2006.

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

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

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24952; Directorate Identifier 2006–NM–107–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

We have received a report of a fire in the forward lower lobe cargo compartment of a Boeing Model 767–300 series airplane, found 20 minutes after arrival. The flightcrew and passengers had deplaned before the start of the fire, and the cleaning crew and all other personnel were evacuated without incident. Investigation revealed that flammable debris had accumulated below the 13L and 14L power drive units (PDUs), but the source of ignition was not positively identified. During subsequent inspections of the operator's fleet of Model 767 airplanes, crushed and chafed PDU power supply cables were found. This condition, if not corrected, could result in a potential short circuit and consequent fire in the forward and aft lower lobe cargo compartments.

Relevant Service Information

We have reviewed Boeing Service Bulletin 767–25–0376 (for Model 767–200, –300, and –300F series airplanes) and Boeing Service Bulletin 767–25–0377 (for Model 767–400ER series airplanes), both dated November 17, 2005. The service bulletins describe procedures for doing repetitive detailed inspections for damage to the wire bundles, PDU wiring, and wire attaching hardware, supports, and sleeving located in the forward and aft lower lobe cargo compartments; and doing corrective actions as necessary. The corrective actions include repairing any damage to the wire bundles, PDU wiring, and wire attaching hardware, supports, and sleeving. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Clarification of Inspection Terminology

The ''detailed visual inspection'' specified in the service bulletins is referred to as a ''detailed inspection'' in this proposed AD. Boeing has included the definition for a detailed inspection in Note 4 of the service bulletins.

Costs of Compliance

There are about 857 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 374 airplanes of U.S. registry. The proposed inspections would take about 6 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $179,520, or $480 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–24952; Directorate Identifier 2006–NM–107–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a fire in the forward lower lobe cargo compartment found shortly after airplane arrival. We are issuing this AD to detect and correct damage to wires in the forward and aft lower lobe cargo compartments, which could result in a potential short circuit and consequent fire in the forward and aft lower lobe cargo compartments.

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 and Corrective Actions if Applicable

(f) Within 36 months after the effective date of this AD, do detailed inspections for damage to the wire bundles, power drive unit wiring, and wire attaching hardware, supports, and sleeving located in the forward and aft lower lobe cargo compartments; and do all applicable corrective actions before further flight after the inspections; by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 767–25–0376 (for Model 767–200, –300, and –300F series airplanes) or Boeing Service Bulletin 767–25–0377 (for Model 767–400ER series airplanes), both dated November 17, 2005, as applicable. Repeat the inspections thereafter at intervals not to exceed 24,000 flight hours or 72 months, whichever occurs first.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on May 26, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8708 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all Saab Model SAAB SF340A and SAAB 340B series airplanes. That action would have required modifying or replacing flight data recorders (FDR) of a certain model. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that the identified unsafe condition has been corrected on all airplanes that would have been subject to the NPRM. Accordingly, the proposed rule is withdrawn.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Saab Model SAAB SF340A and SAAB 340B series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on August 17, 2001 (66 FR 43128). The proposed rule would have required modifying or replacing flight data recorders (FDR) of a certain model. That action resulted from reports of a number of incidents in which flight data have been lost from the FDR.

The proposed actions were intended to prevent loss of flight data from the FDR, which could hamper discovery of the cause of an accident, preventing the Federal Aviation Administration from developing and mandating actions to prevent additional accidents caused by the same unsafe condition.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FDR manufacturer, L–3 Communications Corporation, notified the FAA that the only affected operator flying in the U.S. has accomplished the action proposed in the NPRM, and no unsafe condition exists or is likely to exist. In the event that a Saab Model SAAB-Fairchild SF340A (SAAB/SF340A), or SAAB 340B airplane is imported into the U.S., the FAA issued a Special Airworthiness Information Bulletin (NM–06–40, April 14, 2006) to alert U.S. operators of the need to install the replacement FDR.

Explanation of Change to Model Designation

We have revised the model reference in the above paragraph to identify model designations as published in the most recent type certificate data sheet for the affected models.

FAA's Conclusions

Upon further consideration, the FAA has determined that the actions that would have been required by the NPRM have already been done on all affected airplanes, and the identified unsafe condition has been corrected. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–110–AD, published in the **Federal Register** on August 17, 2001 (66 FR 43128), is withdrawn.

Issued in Renton, Washington, on May 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8710 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22420; Directorate Identifier 2005–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; B–N Group Ltd. BN–2, BN–2A, BN–2B, BN–2T, and BN–2T–4R Series (All Individual Models Included in Type Certificate Data Sheet (TCDS) A17EU, Revision 16, Dated December 9, 2002) Airplanes

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 the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country. The proposed AD would require actions that are intended to address an unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 21, 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.
- 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 the proposed AD, contact the B–N Group Ltd, Bembridge Airport, Isle of Wright, United Kingdom, PO35 5PR; telephone: 0870 881 5064; facsimile: 0870 881 5065; e-mail: *structural@britten-norman.com.*

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. We are prototyping this process and specifically request your comments on its use. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public.

This process continues to follow all existing AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to follow our technical decision-making processes in all aspects to meet our responsibilities to determine and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

The comment period for this proposed AD is open for 15 days. The comment period is reduced because the airworthiness authority and manufacturer have already published the documents on which we based our decision, making a longer comment period unnecessary.

Comments Invited

We invite you to send any written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, Docket No. FAA–2005–22420; Directorate Identifier 2005–CE–47–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 are also inviting comments, views, or arguments on the new MCAI process. 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 Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has issued British Airworthiness Directive No. G–2004–0011, dated May 25, 2004 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that that the aircraft manufacturer has identified several cases of corroded elevator final drive control rods. If not corrected corrosion of the interior surface could result in failure or collapse of the rod, resulting in loss of control or jamming of the elevator system. The MCAI requires an inspection of the internal surface of the elevator system final drive control rod and replacement if found corroded. You may obtain further information by examining the MCAI in the docket.

Relevant Service Information

BN-Group Ltd. has issued Britten-Norman Service Bulletin SB number 303, Issue 1, dated May 14, 2004. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product is manufactured outside the United States and is 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 agreement. Pursuant to this bilateral airworthiness agreement, the State of Design's airworthiness authority has notified us of the unsafe condition described in the MCAI and service information referenced above. We have examined the airworthiness authority's findings, evaluated all pertinent information, and determined an unsafe condition exists and is likely to exist or develop on all products of this type design. We are issuing this proposed AD to correct the unsafe condition.

Differences Between the Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These proposed requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 91 products of U.S. registry. We also estimate that it would take about 5 workhours per product to do the action and that the average labor rate is $80 per workhour. Required parts would cost about $1,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $127,400, or $1,400 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies 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 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 Federal Aviation Administration 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:

B–N Group Ltd: Docket No. FAA–2005–22420; Directorate Identifier 2005–CE–47–AD.

Comments Due Date

(a) We must receive comments on this proposed airworthiness directive (AD) by June 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BN–2, BN–2A, BN–2B, BN–2T, and BN–2T–4R Series (all individual models included in Type Certificate Data Sheet (TCDS) A17EU, Revision 16, dated December 9, 2002) airplanes; certificated in any U.S. category.

Reason

(d) The aircraft manufacturer has identified several cases of corroded elevator final drive control rods. If not corrected corrosion of the interior surface could result in failure or collapse of the rod, resulting in loss of control or jamming of the elevator system. The mandatory continuing airworthiness information (MCAI) requires an inspection of the internal surface of the elevator system final drive control rod and replacement if found corroded.

Actions and Compliance

(e) Unless already done, do the following except as stated in paragraph (f) below.

(1) Within the next 50 hours time-in-service or one month after the effective date of this AD, whichever occurs first, inspect the internal surface of the elevator system final drive control rod, in accordance with B-N Group Ltd. Britten-Norman Service Bulletin SB number 303, Issue 1, dated May 14, 2004.

(2) If corrosion is found, the elevator control rod must be replaced before further flight.

FAA AD Differences

(f) When complying with this AD, repeat the actions in paragraphs (e)(1) and (e)(2) of this AD at intervals not to exceed 12 months.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Taylor Martin, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Return to Airworthiness:* When complying with this AD, perform FAA-approved corrective actions before returning the product to an airworthy condition.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) This AD is related to MCAI United Kingdom Airworthiness Directive No: G–2004–0011, Issued Date: May 25, 2004, which

references B-N Group Ltd. Britten-Norman Service Bulletin SB number 303, Issue 1, dated May 14, 2004, for information on required actions.

Issued in Kansas City, Missouri, on May 30, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8713 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 401 and 402

RIN 0960–AG14

Privacy and Disclosure of Official Records and Information

AGENCY: Social Security Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: We propose to amend our privacy and disclosure rules to help preserve the anonymity of, and help protect the physical well-being of, SSA employees who reasonably believe that they are at risk of injury or other harm if certain employment information about them is disclosed. These changes in the regulations would ensure uniform application of the policy for at-risk employees.

DATES: To be sure that your comments are considered, we must receive them no later than August 7, 2006.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830, or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD. 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Edie McCracken, Social Insurance Specialist, Office of Public Disclosure, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6117 or TTY (410) 965–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Website, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

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*.

Background

Former Commissioner Kenneth S. Apfel approved a recommendation of the National Health and Safety Partnership Committee for Security (NHSPCS) to implement a nationwide program to enhance the safety and security of SSA employees who are victims, or potential victims, of domestic violence. The NHSPCS' proposed program was developed, during the era of ''partnership'', by a joint union/management workgroup. It was intended to safeguard the anonymity of at-risk employees when requests for their work location and/or phone number were received, by delaying the disclosure of the information when certain conditions were met. This would have entailed a change in SSA policy that now permits such information requests to be honored. No action was ever taken on the recommendation when the ''partnership'' was dissolved by Executive Order 13203 on February 17, 2001. We are now proposing a modified approach to strengthening our privacy and disclosure rules to better safeguard at-risk employees.

Explanation of Changes

We propose to amend subsection (b)(3)(c)(4) of Appendix A to Part 401 and add a new subsection (e) to § 402.45 to permit SSA to exercise its discretion, consistent with the Freedom of Information Act and the rules of the Office of Personnel Management (5 CFR part 293), to withhold the work location and telephone number of employees who reasonably believe that they are at risk of injury or other harm by the disclosure of such information. These proposed changes would clarify our procedures for access to, and disclosure of, personally identifiable information regarding employees and enhance our ability to maintain adequate safeguards against disclosures in situations in which an employee may be at risk or fear for his/her physical safety.

We propose to amend Part 401, Appendix A, (b)(3)(c)(4) by removing the first sentence, ''Location of duty station, including room number and telephone number.'' We also propose to revise § 402.45 by adding a new subsection (e). New subsection § 402.45(e) will fully describe the rules governing the release of personally identifiable information as it pertains to employees' telephone numbers and duty stations (including room numbers, bay designations, or other identifying information regarding buildings or places of employment).

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules would meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These proposed rules impose no reporting or record keeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social

Security-Survivors Insurance; 96.006, Supplemental Security Income).

List of Subjects in 20 CFR Parts 401 and 402

Administrative practice and procedure, Freedom of information, Privacy.

Dated: February 27, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart C of part 401 and part 402 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b–11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

Appendix A to Part 401—[Amended]

2. Appendix A, paragraph (b)(3)(c)(4) is amended by removing the first sentence.

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 30 U.S.C. 923b; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 402.45 is amended by adding paragraph (e) to read as follows:

§ 402.45 Availability of records.

* * * * *

(e) *Federal employees.* The agency will generally not disclose information when the data sought is a list of telephone numbers and/or duty stations of one or more Federal employees which, as determined by the official responsible for custody of the information:

(1) Is selected in such a way that would reveal more about the employee on whom information is sought than the aforementioned items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

[FR Doc. E6–8697 Filed 6–5–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112994–06]

RIN 1545–BF47

Guidance Under Section 7874 Regarding Expatriated Entities and Their Foreign Parents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulation and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B) of the Code. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 5, 2006. Outlines of topics to be discussed at the public hearing scheduled for October 24, 2006, at 10 a.m., must be received by October 3, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112994–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–112994–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–112994–06). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Milton Cahn at (202) 622–3860; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874. The temporary regulations set forth rules relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B) of the Code. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The nature of the businesses that are most likely to consider corporate expatriation transactions, as well as the complexity and the costs of structuring and implementing those transactions, makes it unlikely that a substantial number of small entities will engage in such transactions. In addition, any economic impact to entities affected by section 7874, large or small, is derived from the operation of the statute or its intended application, not the proposed regulations in this notice of proposed rulemaking. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 24, 2006, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 3, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jefferson VanderWolk of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.7874–2 also issued under 26 U.S.C. 7874(c)(6) and (g). * * *

Par. 2. Section 1.7874–2 is added to read as follows:

§ 1.7874–2 Surrogate foreign corporation.

[The text of proposed § 1.7874–2 is the same as the text of § 1.7874–2T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–8698 Filed 6–5–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of additional committee members notice of and meeting dates and times.

SUMMARY: This notice lists the additional committee members as nominated by the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) and approved by the Deputy Administrator of the Federal Transit Administration (FTA). This notice also includes new meeting dates and times.

DATES: *Effective Date:* June 6, 2006. See **SUPPLEMENTARY INFORMATION** section for dates of future meetings.

FOR FURTHER INFORMATION CONTACT: Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202–366–1936 (*elizabeth.martineau@dot.gov*). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

New Members

April 10, 2006, FTA published a final notice establishing the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) (71 FR 18056). The CBNRAC held its first meeting in Washington, DC on May 8 and 9. During those meetings, the members of the CBNRAC nominated four additional members for inclusion on the CBNRAC. Those individuals are:

(1) Michael Waters, Vice President and General Manager, Coach USA;

(2) Dale Moser, Chief Operating Officer, Coach America;

(3) Richard Ruddell, President and Executive Director, Fort Worth Transportation Authority;

(4) Sandy Dragoo, Executive Director, Capital Area Transportation Authority.

The Deputy Administrator considered these names, and, on May 26, 2006, approved the inclusion of these individuals on the CBNRAC.

Schedule of Meetings

As mentioned above, the first meetings of the CBNRAC occurred on May 8 and 9 in Washington, DC. During those meetings, the Committee agreed on the following schedule for future meetings:

June 19 from 9 a.m. to 4:30 p.m.
June 20 from 8:30 a.m. to 4 p.m.
July 17 from 9 a.m. to 4:30 p.m.
July 18 from 8:30 a.m. to 4 p.m.
September 12 from 9 a.m. to 4:30 p.m.
September 13 from 8:30 a.m. to 4 p.m.
October 25 from 9 a.m. to 4:30 p.m.
October 26 from 8:30 a.m. to 4 p.m.
December 6 from 9 a.m. to 4:30 p.m.
December 7 from 8:30 a.m. to 4 p.m.

All of the above meetings will be held in room 2301 at 400 Seventh Street, SW., Washington, DC. Any changes in dates, times, or location, will be announced in a **Federal Register** notice in advance of the next meeting.

Issued this 31st day of May, 2006, in Washington, DC.

Sandra K. Bushue,
Deputy Administrator.

[FR Doc. 06–5133 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU33

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spikedace and Loach Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment, notice of public hearings, and updated legal descriptions for critical habitat units.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) under the Endangered Species

Act of 1973, as amended (Act). The draft economic analysis finds that costs associated with spikedace and loachminnow conservation activities are forecast to range from $25.2 million to $100.3 million in constant dollars over the next 20 years. Adjusted for possible inflation the costs would range from $19.0 million to $83.6 million over 20 years, or $1.3 million to $5.7 million annually, using a three percent discount; or $13.9 million to $69.2 million over 20 years, or $1.4 million to $6.7 million over 20 years annually, using a seven percent discount rate.

We are also reopening the public comment period for the proposal to designate critical habitat to allow all interested parties an opportunity to comment on and request changes to the proposed critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. In addition, we are proposing corrected legal descriptions for some of the critical habitat units. Comments previously submitted on the December 20, 2005, proposed rule need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule. We will hold two public informational sessions and hearings (see **DATES** and **ADDRESSES** sections).

DATES: Comments must be submitted directly to the Service (see **ADDRESSES**) on or before July 6, 2006, or at the public hearings.

We will hold a public informational session from 3 p.m. to 4:30 p.m., followed by a public hearing from 6:30 p.m. to 8 p.m., on each of the following dates:

1. June 13, 2006: Camp Verde, Arizona.
2. June 20, 2006: Silver City, New Mexico.

ADDRESSES:

Information Sessions/Hearings

The public informational sessions and hearings will be held at the following locations:

1. Camp Verde, AZ: Cliff Castle Casino Hotel & Conference Center, Tri-City Room, 555 Middle Verde Road.
2. Silver City, NM: Flame Convention Center, 2800 Pinos Altos Road.

For information on requesting reasonable accommodations to attend a session, see ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION**.

Comments

If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit your comments and materials identified by RIN 1018–AU33, by any of the following methods:

(1) E-mail: *SD_LMComments@fws.gov*. Include RIN 1018–AU33 in the subject line. Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Arizona Ecological Services Field Office at (602) 242–0210.

(2) Fax: (602) 242–2513.

(3) Mail or hand delivery/courier: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021.

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

You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment by mail or by visiting our Web site at *http://arizonaes.fws.gov/*. You may review comments and materials received and review supporting documentation used in preparation of this proposed rule by appointment, during normal business hours, at the Arizona Ecological Services Field Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone, 602–242–0210; facsimile, 602–242–2513).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule, the draft economic analysis, and the draft environmental assessment. Based on public comment on the proposed rule, the draft economic analysis, and the environmental assessment, as well as on the conclusions of the final economic analysis and environmental assessment, we may find during the development of our final determination that some areas proposed do not contain the features that are essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. We particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the distribution of the spikedace and loach minnow, the amount and distribution of the species' habitat, and which habitat contains the necessary features (primary constituent elements) essential to the conservation of these species and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on these species or proposed critical habitat;

(4) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat;

(6) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families;

(7) Whether the economic analysis identifies all State and local costs, and if not, what other costs should be included;

(8) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(9) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(10) Whether the critical habitat designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(11) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing of these species in 1986;

(12) Based on the information in the draft economic analysis, we are considering excluding the Verde River Unit based on disproportionate costs from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking

comment along with additional information on the estimated costs, how these estimated costs are distributed within the Verde River Unit, and whether we should exclude all or a portion of the Verde River Unit based on disproportionate costs from the final designation per our discretion under section 4(b)(2) of the Act; and

(13) Whether the benefit of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office (see **ADDRESSES**).

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat for the spikedace and loach minnow will take into consideration all comments and any additional information received during both comment periods.

Persons needing reasonable accommodations in order to attend and participate in a public hearing should contact the Field Supervisor, Arizona Ecological Services Field Office, at the address or phone number listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding this proposal is available in alternative formats upon request.

Background

On December 20, 2005, we proposed to designate critical habitat for spikedace and loach minnow of approximately 633 stream miles (mi) (1018.7 stream kilometers (km)) of critical habitat, which includes various stream segments and their associated riparian areas, including the stream at bankfull width and a 300-foot buffer on either side of the stream banks (70 FR 75546). The proposed designation includes Federal, State, Tribal, and private lands in Arizona and New Mexico.

Critical habitat identifies specific areas containing features essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed critical habitat designation is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

The draft economic analysis considers and attempts to quantify the potential economic effects of efforts to protect the spikedace and loach minnow and their habitat, collectively referred to as ''spikedace and loach minnow conservation activities,'' in the proposed critical habitat designation, as well as the economic effects of protective measures taken as a result of the listing or other Federal, State, and local laws that aid habitat conservation in the areas proposed for designation. In the case of habitat conservation, these costs would reflect the costs associated with the commitment of resources to comply with habitat protection measures. The analysis also addresses how potential economic impacts are likely to be distributed.

We did not propose Bear Creek, a tributary of the Gila River in New Mexico, as critical habitat because there had been no information to indicate this area was occupied by either species. However, we have since received information to indicate this area is occupied by loach minnow. Due to our tight timeframe for completion of the final rule and associated documents we are not able to consider inclusion of Bear Creek at this time. However, if the critical habitat designation is amended in the future we will consider inclusion of this area at that time.

Corrected Coordinates for Proposed Units of Critical Habitat

Below we provide corrected legal descriptions for the spikedace and loach minnow proposed critical habitat designation. Following the publication of the proposed rule on December 20, 2005, and in part through comments we received during the subsequent comment period, we determined that some of the critical habitat units were incorrectly described. In particular, in Table 2, the column headings for Arizona and New Mexico were inadvertently switched. We have since corrected the descriptions and tables to accurately reflect what we are proposing as critical habitat, and we provide the corrected descriptions for all critical habitat units below. Table 1 below provides a corrected version of Table 2 from the December 20, 2005, proposed rule (70 FR 75546) with approximate distances by major landowner type. Corrected Geographic Information System (GIS) layers are available at *http://criticalhabitat.fws.gov/*.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS AND MILES

[7 River Units]

Land owner	New Mexico km (mi)	Arizona km (mi)	Total km (mi)
Federal	167.71 (269.90)	197.99 (318.63)	365.7 (588.53)
Tribal	0.0 (0.0)	33.00 (53.11)	33.00 (53.11)
State	1.32 (2.12)	8.32 (13.39)	9.64 (15.51)
County	0.0 (0.0)	0.0 (0.0)	0.0 (0.0)
Private	89.73 (144.40)	134.44 (216.36)	224.17 (360.76)
Total	258.75 (416.42)	373.75(601.49)	632.51 (1017.91)

No additional mileage was incorporated into the proposed designation through the corrections provided in Table 1. Mileage was reduced by approximately 0.51 mi (0.82 km) for Eagle Creek after correcting for a mapping error in the original proposal. Mileage was additionally modified for East Fork Black River and North Fork East Fork Black River due to a change in our determination of the confluence points of these two streams. Mileage that was previously attributed to North Fork East Fork Black River is now encompassed in the mileage for East Fork Black River. The overall mileage for these two streams remained the same. The majority of the changes correct errors in the Township, Range, and section descriptions provided for each proposed critical habitat unit.

All legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). All mileage calculations were performed using GIS.

Required Determinations—Amended

This revised proposed rule affirms the information contained in the December 20, 2005, proposed rule (70 FR 75546) concerning Executive Orders (EO) 13132 and EO 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the draft economic analysis, we are amending our required determinations, as provided below, concerning EO 12866 and the Regulatory Flexibility Act; EO 13211 and 12630; and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with EO 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for the spikedace and loach minnow would result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, EO 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, provided that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our factual basis for determining that this rule will not result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the spikedace and loach minnow would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, water management and use, livestock grazing, residential and related development, spikedace- and loach minnow-specific management activities, recreation activities, fire management activities, mining, and transportation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our economic analysis of this proposed designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in nine categories: water management and use, livestock grazing activities, mining operations, spikedace

and loach minnow-specific management activities, recreation, residential and commercial development, Tribal activities, transportation activities, and fire management activities. Based on our analysis, impacts associated with small entities are anticipated to occur to water management and use, livestock grazing, residential and commercial development, Tribal businesses, transportation, and fire management. It should be noted that the majority of Tribal lands are under consideration for exclusion at this time. The following is a summary of the information contained in the draft economic analysis:

(a) Water Management and Use Related to Agricultural Production

According to the draft economic analysis, spikedace and loach minnow conservation activities have not impacted private crop production since the listing of the species in 1986. However, because agricultural water use comprises 98 percent of surface water use and 81 percent of groundwater use in counties that contain proposed critical habitat, it appears most likely that any additional water supplies needed for the species would potentially come from agriculture. The economic analysis estimates that only 810 acres of cropland are included within proposed critical habitat, and only 6,310 acres of cropland are in the vicinity of critical habitat. The average small farm includes 4,600 acres, and farms vary between 1,300 and 8,000 acres. Based on the fact that at most 9,000 acres of cropland are involved, and small farms vary in size, we believe that there are not many farms located along the streams proposed for the designation. Additionally, under the assumption that all farms are small (1,884 small business farming operations across five affected counties), there would be well less than one percent of small farm businesses impacted by this proposed designation. As a result of this information, we have determined that this proposed designation will not have an effect on a substantial number of small business farming operations.

(b) Livestock Grazing Activities

Ranching operations that hold grazing allotment permits are anticipated to be impacted by conservation activities for the spikedace and loach minnow. The costs assumed to be incurred by livestock operations are primarily due to anticipated installation and maintenance of riparian fencing. The economic analysis concluded that approximately 76 ranches—or 4.7 percent of ranches in affected counties that contain proposed critical habitat, or 1 percent of ranches in New Mexico and Arizona—could be impacted by conservation activities. Annual costs to each of these 76 ranching operations may be between $390 and $9,200 per ranch. Average revenues of a ranch in the proposed critical habitat region are $133,000, or between 0.3 and 7 percent of a ranch's estimated average revenue. Approximately 94 percent of beef cattle ranching and farming operations in counties containing spikedace and loach minnow critical habitat are small businesses; thus approximately 72 small ranching operations may experience a reduction in revenues. Because only 1 percent of ranches in New Mexico and Arizona, or 4.7 percent of ranches, in affected counties are estimated to be impacted by this proposal, we have determined that this proposed designation will not have an effect on a substantial number of small business ranching operations. From this analysis, we also have determined that this proposed designation would also not result in a significant effect to the annual sales of these small businesses impacted by this proposed designation because the above analysis has determined that annual costs may represent between 0.3 and 7 percent of a ranch's estimated average revenue.

(c) Residential and Commercial Development

The draft economic analysis concludes that the most likely location for development activities within the proposed critical habitat designation is within the Verde River Complex, which contains a large amount of private land, has a large population, and is projected to have substantial human population growth over the next 20 years. No North American Industry Classification System (NAICS) code exists for landowners, and the Small Business Administration does not provide a definition of a small landowner. However, recognizing that it is possible that some of the landowners may be small businesses, this analysis provides information concerning the number of landowners potentially affected and the size of the impact on those owners. The draft economic analysis (section 7) estimates that 1,646 housing units could be built on the approximately 2,880 privately owned acres within proposed critical habitat over the next 20 years. Impacts to developers are estimated to include fencing costs, scientific studies, surveying and monitoring requirements, and possibly off-setting mitigation (habitat set-aside). Costs are estimated to range from $3.1 million to $4.8 million per large development, or $3,900 to $5,900 per housing unit ($190 to $300 annually, if costs are distributed evenly over 20 years). Actual conservation requirements undertaken by an individual landowner will depend on how much of a parcel crosses proposed critical habitat. It is important to note that it is likely that some or all housing subdivisions may be developed by large corporations which do not qualify as small businesses under RFA/SBRFA. Furthermore, because there is no loss in housing units estimated, there would likely not be any impact to small businesses that are residential housing sub-contractors. In addition, individual single-family home development has not historically been subject to consultation or habitat conservation requirements for the spikedace and loach minnow in Arizona or New Mexico, although consultation could be required if Federal permits from the Army Corps of Engineers, Environmental Protection Agency, or Federal Emergency Management Agency are required.

Because individual single-family home development has not historically been subject to consultation or habitat conservation requirements as described above, the probability that single-family home development will involve many larger businesses, as opposed to small businesses, and because the impacts will not reduce the number of housing units, we have determined that this proposed designation will not have an effect on a substantial number of small businesses that are part of residential and commercial development. From this analysis, we also have determined that this proposed designation would also not result in a significant effect to the annual sales of these small businesses impacted by this proposed designation. This is because of the above analysis which has determined that each housing unit would bear at most a cost of $190 to $300 annually, if costs are distributed evenly over 20 years.

(d) Tribal Businesses

The proposed critical habitat development includes lands of the Yavapai-Apache Nation (1.6 km (1 mi) of tributary proposed as critical habitat), San Carlos Apache Tribe (17.2 km (27.7 mi) of tributary proposed as critical habitat), and White Mountain Apache Tribe (12.5 km (20.1 mi) of tributary proposed as critical habitat). The Tribes have expressed concerns that critical habitat on their lands will have a disproportionate impact on their ability to use resources on their sovereign lands and to successfully achieve economic self-sufficiency. However, Tribal governments are not classified as small

businesses under RFA/SBRFA, whereas Tribal corporations may qualify as small businesses under RFA/SBRFA. The draft economic analysis concluded that future economic costs of implementing spikedace and loach minnow conservation efforts on Tribal lands could include administrative costs of consultation, surveys and monitoring, modifications to grazing, fire management, and recreation activities, and potential project modifications to grazing, fire management, and recreation activities, and potential project modifications to restoration activities. Impacts in each of these areas could affect the Tribes' revenues and employment in the future; however, many of these impacts may not fall on Tribal corporations, as opposed to the Tribal governments in question. It should be noted that the lands of both the White Mountain Apache Tribe and the San Carlos Apache Tribe are proposed for exclusion from the critical habitat designation in the proposed rule. Because both White Mountain Apache Tribe and the San Carlos Apache Tribe are proposed for exclusion from the critical habitat designation in the proposed rule and only 1.6 km (1 mi) of stream tributary is proposed as critical habitat on Yavapai-Apache Nation, we have determined this proposed designation will not have an effect on a substantial number of small businesses on Tribal lands.

(e) Recreation

Areas currently stocked with non-native rainbow trout include the Camp Verde area of the Verde River in Complex 1 and East Fork Gila River in complex 5. The future impact of proposed critical habitat on the stocking regimes in these reaches is unknown, as is the reduction in fishing activity that would occur if stocking is curtailed. Further, it is unknown whether nonnative fish stocking may be replaced with catchable native fish stocking (*e.g.* Apache trout). Thus, the analysis in the economic analysis estimates the value of angler days at risk if sportfish stocking were discontinued on these reaches as part of the high-end estimates. Angling trips are valued at approximately $8.6 million over 20 years (or $816,000 annually), assuming a discount rate of 7 percent. It should be noted that because State fish managers typically identify alternative sites for stocked fish when areas are closed to stocking, these angler days are likely to be redistributed to other areas rather than lost altogether. Thus, the high-end estimate does not consider the possibility that rather than not fishing at all, recreators will visit alternative, less desirable fishing sites. Existing models of angler behavior in these areas were not available to refine this estimate.

The two stream reaches where impacts on recreation are anticipated are located in Yavapai County, Arizona, and Catron County, New Mexico. If, as in the low-end estimate of impacts, angler trips are not lost, but instead are redistributed to other streams, then regional impacts on small businesses are likely to be minimal. If, as in the high-end estimate of impacts, angler trips to the two stream reaches that currently stock nonnative fish are not undertaken, localized impacts on anglers and, in turn, small businesses that rely on fishing activities could occur. These impacts would be spread across a variety of industries, including food and beverage stores, food service and drinking places, accommodations, transportation, and sporting goods. These industries generate approximately $829 million in total annual sales for these two counties. The high-end estimate of annual loss of $485,000 in trip expenditures would therefore represent a loss of approximately 0.06 percent of annual revenues for these businesses.

We have determined that this proposed designation will not have an effect on a substantial number of small businesses that may be impacted from lost recreation because these angler days are likely to be redistributed to other areas rather than lost altogether. From this analysis, we also have determined that this proposed designation would not result in a significant effect to the annual sales of these small businesses impacted by this proposed designation because any potential impact to small businesses from lost anglers not fishing in an area is likely to be redistributed to other areas and, if they are not redistributed, then they would represent a loss of approximately 0.06 percent of annual revenues for these businesses.

E.O. 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to its potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a discussion and analysis of this determination. The OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis; thus, energy-related impacts associated with spikedace and loach minnow conservation activities within proposed critical habitat are not expected.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In Accordance With the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service Makes the Following Findings

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with the following two exceptions: It excludes ''a condition of federal assistance'' and ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or

private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The draft economic analysis discusses potential impacts of critical habitat designation for the spikedace and loach minnow on water management activities, livestock grazing, Tribes, residential and commercial development activities, recreation activities, fire management activities, mining, and transportation activities. The analysis estimates that annual costs of the rule could range from $25.2 million to $100.3 million in constant dollars over 20 years. Impacts are largely anticipated to affect water operators and Federal and State agencies, with some effects on livestock grazing operations, residential and commercial development, and transportation. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to water operations would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the spikedace and loach minnow will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the spikedace and loach minnow in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the spikedace and loach minnow does not pose significant takings implications.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Rule Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the loach minnow (*Tiaroga cobitis*) and spikedace (*Meda fulgida*) in § 17.95(e), which was proposed on December 20, 2005, at 70 FR 75546, is proposed to be amended by revising some of the critical habitat unit descriptions as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Loach minnow (*Tiaroga cobitis*)

1. Critical habitat for the loach minnow in Arizona and New Mexico is described in detail as follows.

* * * * *

(6) Complex 2—Black River, Apache and Greenlee Counties, Arizona.

(i) East Fork Black River—12.2 miles (19.7 km) of the river extending from the confluence with the West Fork Black River at Township 4 North, Range 28 East, section 11 upstream to the confluence with an unnamed tributary approximately 0.51 miles (0.82 km) downstream of the Boneyard Creek confluence at Township 5 North, Range 29 East, section 5. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(ii) North Fork East Fork Black River—4.4 miles (7.1 km) of river extending from the confluence with East Fork Black River and an unnamed drainage at Township 5, Range 29, section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, section 30. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(iii) Boneyard Creek—no changes from proposed rule at this time.

* * * * *

(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham counties, Arizona.

(i) Aravaipa Creek—no changes from the proposed rule at this time.

(ii) Turkey Creek—2.7 miles (4.3 km) of creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 19 East, section 19 upstream to the confluence with Oak Grove Canyon at Township 6 South, Range 19 East, section 32. Land ownership: Bureau of Land Management.

(iii) Deer Creek—no changes from the proposed rule at this time.

* * * * *

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham counties, Arizona and Catron County, New Mexico.

(i) Eagle Creek—44.7 miles (71.9 km) of creek extending from the Phelps-Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong and East Eagle creeks at Township 2 North, Range 28 East, section 29. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest), Tribal (San Carlos) lands, and private.

(ii) San Francisco River—126.5 miles (203.5 km) of river extending from the confluence with the Gila River at Township 5 South, Range 29 East, section 21 upstream to the mouth of the Box, a canyon above the town of Reserve, at Township 6 South, Range 19 West, section 2. Land ownership: Bureau of Land Management, U.S. Forest Service (Apache-Sitgreaves National Forest), State, and private in Arizona, and U.S. Forest Service (Gila National Forest) and private in New Mexico.

(iii) Tularosa River—no changes from the proposed rule at this time.

(iv) Negrito Creek—4.2 miles (6.8 km) of creek extending from the confluence with the Tularosa River at Township 7 South, Range 18 West, section 19 upstream to the confluence with Cerco Canyon at Township 7 South, Range 18 West, section 21. Land ownership: U.S. Forest Service (Gila National Forest), and private lands.

(v) Whitewater Creek—no changes from the proposed rule at this time.

(vi) Blue River—51.1 miles (82.2 km) of river extending from the confluence with the San Francisco River at Township 2 South, Range 31 East, section 31 upstream to the confluence of Campbell Blue and Dry Blue Creeks at Township 7 South, Range 21 West, section 6. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest) and private lands in Arizona;

U.S. Forest Service (Gila National Forest) in New Mexico.

(vii) Campbell Blue Creek—no changes from the proposed rule at this time.

(viii) Dry Blue Creek—3.0 miles (4.8 km) of creek extending from the confluence with Campbell Blue Creek at Township 7 South, Range 21 West, section 6 upstream to the confluence with Pace Creek at Township 6 South, Range 21 West, section 28. Land ownership: U.S. Forest Service (Gila National Forest).

(ix) Pace Creek—no changes from the proposed rule at this time.

(x) Frieborn Creek—1.1 miles (1.8 km) of creek extending from the confluence with Dry Blue Creek at Township 7 South, Range 21 West, section 6 upstream to an unnamed tributary at Township 7 South, Range 21 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest).

(xi) Little Blue Creek—no changes from the proposed rule at this time.

* * * * *

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo counties, New Mexico.

(i) Upper Gila River—no changes from the proposed rule at this time.

(ii) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence of Beaver and Taylor Creeks at Township 11 South, Range 12 West, section 17. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—no changes from the proposed rule at this time.

(iv) West Fork Gila River—no changes from the proposed rule at this time.

* * * * *

Spikedace (*Meda fulgida*)

1. Critical habitat for the spikedace in Arizona and New Mexico is depicted on the following overview map and described in detail following the map.

* * * * *

(6) Complex 1—Verde River, Yavapai County, Arizona.

(i) Verde River—106.5 miles (171.4 km) of river extending from the confluence with Fossil Creek at Township 11 North, Range 6 East, section 25 upstream 106.5 (171.4 km) miles to Sullivan Dam at Township 17 North, Range 2 West, section 15. Land ownership: U.S. Forest Service (Coconino, Prescott, and Tonto National Forests), Tribal (Yavapai Apache Nation), State, and private lands.

* * * * *

(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham counties, Arizona.

(i) Gila River—no changes from the proposed rule at this time.

(ii) Lower San Pedro River—no changes from the proposed rule at this time.

(iii) Aravaipa Creek—28.1 miles (45.3 km) of creek extending from the confluence with the San Pedro River at Township 7 South, Range 16 East, section 9 upstream to the confluence with Stowe Gulch at Township 6 South, Range 19 East, section 35. Land ownership: Bureau of Land Management, Tribal, State, and private lands.

* * * * *

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham counties, Arizona.

(i) Eagle Creek—44.7 miles (71.9 km) of creek extending from the Phelps-Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong and East Eagle Creeks at Township 2 North, Range 28 East, section 29. Land ownership: Bureau of Land Management, U.S. Forest Service (Apache-Sitgreaves National Forest), Tribal (San Carlos), and private lands.

* * * * *

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo counties, New Mexico.

(i) Upper Gila River—no changes from the proposed rule at this time.

(ii) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence of Beaver and Taylor creeks at Township 11 South, Range 12 West, section 17. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—7.7 miles (12.3 km) of river extending from the confluence with the West Fork Gila River at Township 12 South, Range 14 West, section 25 upstream to the confluence with Big Bear Canyon at Township 12 South, Range 14 West, section 2. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) West Fork Gila River—no changes from the proposed rule at this time.

* * * * *

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 25, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–8645 Filed 6–5–06; 8:45 am]

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Notices

Federal Register

Vol. 71, No. 108

Tuesday, June 6, 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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Aerotech Laboratories Inc. of Phoenix, Arizona, an exclusive license to U.S. Patent Application Serial No. 10/670,575, ''High Efficiency Electrostatic Air Sampler'', filed on September 26, 2003.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Aerotech Laboratories Inc. of Phoenix, Arizona has submitted a complete and sufficient application for a license. 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 thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which 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.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E6–8647 Filed 6–5–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0016]

Codex Alimentarius Commission: 29th Session of the Codex Alimentarius Commission

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on June 15, 2006. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States' positions that will be discussed at the 29th Session of the Codex Alimentarius Commission (CAC), that will be held in Geneva, Switzerland, July 3–7, 2006. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 29th Session of CAC and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, June 15, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107–A, J.L. Whitten Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. Documents related to the 29th Session of the CAC will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The Food Safety and Inspection Service (FSIS) invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number FSIS–2006–0016 to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to FSIS Docket Room, Docket Clerk, USDA, Food Safety and Inspection Service (FSIS), 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number FSIS–2006–0016.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

For Further Information about the 29th Session of the CAC Contact: F. Edward Scarbrough, U.S. Manager for Codex, Office of the Under Secretary for Food Safety, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157, E-mail: *uscodex@fsis.usda.gov.*

For Further Information about the Public Meeting Contact: Jasmine Matthews, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international

organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in trade.

The Codex Alimentarius Commission is responsible for making proposals to, and being consulted by, the Directors-General of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) on all matters pertaining to the implementation of the Joint FAO/WHO Food Standards Programme, the purpose of which is:

(a) Protecting the health of the consumers and ensuring fair practices in the food trade;

(b) Promoting coordination of all food standards work undertaken by international governmental and non governmental organizations;

(c) Determining priorities and initiating and guiding the preparation of draft standards through and with the aid of appropriate organizations;

(d) Finalizing standards elaborated under (c) above and publishing them in a Codex Alimentarius either as regional or world wide standards, together with international standards already finalized by other bodies under (b) above, wherever this is practicable; and

(e) Amending published standards, after appropriate survey, in the light of developments.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 29th Session of the CAC will be discussed during the public meeting:

- Election of Chairperson and Vice-Chairpersons of the Commission Report of the 57th Session of the Executive Committee.
- Amendments to the Procedural Manual.
- Draft Standards and Related Texts submitted to the Commission for Adoption.
- Proposed Draft Standards and Related Texts submitted at Step 5.
- Revocation of existing Codex Standards and Related Texts.
- Proposals for the Elaboration of new Standards and Related Texts and for the Discontinuation of Work.
- Strategic Planning of the Codex Alimentarius Commission.
- Implementation of the Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards—General Implementations Status.
- Review of the Codex Committee Structure and Mandates of Codex Committees and Task Forces.
- Matters arising from the Reports of the Commission, Codex Committees, and Task Forces.
- Relations between the Codex Alimentarius Commission and other International Organizations.
- FAO/WHO Project and Trust Fund for Enhanced Participation in Codex.
- Other Matters arising from FAO and WHO.
- Designation of Countries responsible for Appointing the Chairpersons of Codex Committees and Task Forces.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the Meeting. Members of the public may access or request copies of these documents via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*

Public Meeting

At the June 15th public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Manager for Codexs, (see *For Further Information About the 29th Session of the CAC Contact*). Written comments should state that they relate to the activities of the 29th Session of the CAC.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS–FAIM customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC, on June 2, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 06–5172 Filed 6–2–06; 11:47 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Wednesday, June 21, 2006, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us.*

Dated: May 30, 2006.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 06–5126 Filed 6–5–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Groundfish Tagging Program.

Form Number(s): None.

OMB Approval Number: 0648–0276.

Type of Request: Regular submission.

Burden Hours: 88.

Number of Respondents: 661.

Average Hours Per Response: Forms for tagged fish, 5 minutes; electronic archival tag return, 30 minutes.

Needs and Uses: The Groundfish Tagging Program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Pacific Northwest. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, the Alexander Archipelago of Southeast Alaska), California, Oregon, and Washington. The distribution, movement rates and direction, growth, recruitment and mortality estimated from tag recoveries are important parameters used in groundfish population assessment models and in developing allocation systems.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: June 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–8752 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Cooperatives in the Bering Sea and Aleutian Islands.

Form Number(s): None.

OMB Approval Number: 0648–0401.

Type of Request: Regular submission.

Burden Hours: 320.

Number of Respondents: 11.

Average Hours Per Response: Cooperative preliminary report, 20 hours; cooperative final report, 8 hours; inshore cooperative catcher vessel pollock catch report, 5 minutes; and appointment of agent for service of process, 5 minutes.

Needs and Uses: The cooperative management structure, originally implemented by the American Fisheries Act (AFA), has shifted more of the monitoring and enforcement burden to the cooperatives and their members; and has allowed NMFS to manage the Bering Sea and Aleutian Islands pollock fishery more precisely. With the flexibility provided by cooperatives, vessels are able to individually (and in aggregate) come very close to harvesting exactly the amount of pollock they were allocated. The allocations of pollock and other species have allowed the AFA fleet the ability to spread their effort in time and space to accommodate Steller Sea Lion conservation measures. This collection describes some of the recordkeeping and reporting requirements under the AFA Program.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: June 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–8753 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: National Estuaries Restoration Inventory.

Form Number(s): None.

OMB Approval Number: 0648–0479.

Type of Request: Regular submission.

Burden Hours: 787.

Number of Respondents: 234.

Average Hours Per Response: New project reports, 4 hours; and project updates, 2 hours.

Needs and Uses: The collection of estuary habitat restoration project information (*e.g.,* location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act of 2000. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. Estuary habitat restoration project information will be submitted by habitat restoration project managers through an interactive Web site, and will be accessible to the public via Internet for data queries and project reports.

Affected Public: Not-for-profit institutions; business or other for-profit organizations; State, Local or Tribal Government; Federal Government.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–8759 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To collect Information on the Annual Survey of Foreign Direct Investment in the United States

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 comment on proposed and/or continuing information collections, as authorized 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 5 p.m., August 7, 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 e-mail *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Obie G. Whitchard, Chief, International Investment Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890 (or e-mail *obie.whichard@bea.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Foreign Direct Investment in the United States (Form BE–15) obtains sample data on the financial structure and operations of nonbank U.S. affiliates of foreign investors. The data are needed to provide reliable, useful, and timely measures of foreign direct investment in the United States, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign investors, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. In addition, data covering employment and property, plant, and equipment are collected by state. The data are also used to update similar data for the universe of U.S. affiliates collected once every five years on the BE–12 benchmark survey.

BEA proposes the following changes to the survey, beginning with the survey for 2006: (1) Add a question to the BE–15 EZ, short form, and long form to identify the accounting principles used to compile and report the survey data. (2) Modify the question on the BE–15 long form that collects information on the major industrial activity of the U.S. affiliate to include all of the affiliate's major activities; currently, information on only one major activity is collected. (3) Include a check box on the BE–15 Supplement C to determine if a U.S. affiliate is claiming an exemption based on a merger or on a consolidation; currently, a single check box covers both mergers and consolidations. (4) Clarify certain instructions, add illustrative diagrams, and modify formatting in an effort to make the survey forms more clear and easier to complete. Taken together, these changes will not affect the overall respondent burden for the survey.

II. Method of Collection

The BE–15 annual survey is sent to potential respondents at the end of March each year. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31. Reports must be filed by every nonbank U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales, or net income (or loss) of over $30 million. Potential respondents are those nonbank U.S. business enterprises that reported in the 2002 benchmark survey of foreign direct investment in the United States, along with nonbank businesses that subsequently entered the direct investment universe. The BE–15 is a sample survey, as described; universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0034.

Form Number: BE–15.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,950.

Estimated Time per Response: 21.8 hours.

Estimated Total Annual Burden: 107,900 hours.

Estimated Total Annual Cost: $4,316,000 (based on an estimated reporting burden of 107,900 hours and an estimated hourly cost of $40).

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) 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: June 1, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 06–5138 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Scope Clarification Request Foreign–Trade Subzone 234B(Loading Equipment and Parts and Components Thereof), LeTourneau, Inc., Longview, Texas

An request for clarification of scope has been submitted to the Foreign–Trade Zones Board (the Board) by LeTourneau, Inc., operator of Foreign–Trade Subzone 234B. A grant of authority for LeTourneau's subzone was

issued on February 22, 2005, for certain activity involving loading equipment, components of offshore drilling rigs, log handling equipment, cranes, drive systems, and parts and components thereof. In its original application, LeTourneau had indicated that one of its foreign–sourced inputs would be a driver assembly, imported duty free under subheading 8483.90.5000 of the Harmonized Tariff Schedule of the United States (HTSUS), to be used in the production of loaders.

LeTourneau now seeks clarification whether its scope includes authority to import two subcomponents of the driver assembly and then assemble the drive assembly at LeTourneau's Texas facility (rather than importing the completed driver assembly). The driver–assembly components would be a pre–machined hub (HTSUS 7326.90.8587 - 2.9% duty rate) and a spindle 7326.19.0000 (HTSUS 7326.19.0000 - 2.9% duty rate).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 6, 2006. A copy of the request is available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: May 31, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–8761 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–602–803, A–122–822, A–427–808, A–428–816, A–588–824, A–580–816)

Final Results of Expedited Sunset Reviews: Corrosion–Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2005, the Department of Commerce (''the Department'') initiated the sunset reviews of the antidumping duty (''AD'') orders on certain corrosion–resistant carbon steel flat products (''CORE'') from Australia, Canada, France, Germany, Japan, and South Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate, an adequate substantive response filed on behalf of the domestic interested parties, an inadequate response from Canadian and French interested parties, and no response from other respondent interested parties, the Department determined to conduct expedited sunset reviews of these orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of these AD orders would be likely to lead to continuation or recurrence of dumping at the margins indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: June 6, 2006.

FOR FURTHER INFORMATION CONTACT: John Conniff, Darla Brown or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009, (202) 482–2849 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated sunset reviews of the AD orders on CORE from Australia, Canada, France, Germany, Japan, and South Korea pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 65884 (November 1, 2005). The Department received notices of intent to participate from the following domestic interested parties: United States Steel Corporation (''U.S. Steel''); Mittal Steel USA ISG Inc. (''Mittal Steel''); Nucor Corporation (''Nucor''); Ispat–Inland (''Ispat''); Oregon Steel Mills, Inc. (''Oregon Steel'') (hereinafter, collectively ''domestic interested parties''); and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO-CLC (''USW''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the domestic like product. USW claimed interested party status under section 771(9)(D) of the Act as a union representing the domestic CORE industry. We received complete substantive responses from the domestic interested parties[1] within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).

The Department did not receive a substantive response from any respondent in any of the sunset reviews of the AD orders on CORE from Australia, Germany, Japan, and South Korea. The Department received a substantive response from Stelco Inc. (''Stelco''), a producer and exporter of CORE from Canada, in the sunset review of the AD order on CORE from Canada. With respect to the sunset review of the AD order on CORE from France, the Department received a substantive response from Duferco Coating SA and Sorral SA (collectively, ''Duferco Sorral'') and a waiver of participation from Arcelor. The Department determined that it had received inadequate respondent participation in each of these sunset reviews. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited reviews of these orders.

On February 28, 2006, the Department extended the deadline for the final results of these reviews for 90 days, until May 30, 2006. *See Certain Corrosion–Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea: Extension of Time Limits for Final Results of Expedited Reviews*, 71 FR 10006 (February 28, 2006).

Scope of the Orders

The products subject to these orders include flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090,

[1] Despite filing a notice of intent to participate, the USW neither filed its own nor joined the domestic interested parties in the substantive responses filed.

7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in these orders are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') -- for example, products which have been beveled or rounded at the edges.

Excluded from the scope of these orders are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of these orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the orders are certain clad stainless flat–rolled products, which are three–layered corrosion- resistant carbon steel flat–rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Japan

In addition to the above, the Department has issued the following rulings regarding the scope of the order on Japan:

Excluded from the scope of this order are imports of certain corrosion–resistant carbon steel flat products meeting the following specifications: widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (Dec. 22, 1997).

Also excluded from the scope of this order are imports of subject merchandise meeting all of the following criteria: (1) Widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and (3) a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14862 (Mar. 29, 1999).

Also excluded from the scope of this order are: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% polytetrafluorethylene (''PTFE''), 3% to 5% molybdenum disulfide and less than 2% other materials. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (Oct. 22, 1999).

Also excluded from the scope of the order are imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 mm (0.006 inches), a width between 31.75 mm (1.25 inches) and 50.80 mm (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900--990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 65 FR 53983 (Sept. 6, 2000).

Also excluded from the scope of the order are imports of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 mm in thickness and 19.5 mm in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 8778 (Feb. 2, 2001).

Also excluded from the scope of the order are carbon steel flat products meeting the following specifications: (1) Carbon steel flat products measuring 0.975 mm in thickness and 8.8 mm in width consisting of carbon steel coil (SAE 1012) clad with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9%-11% tin, 9%-11% lead, maximum 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 13%-17% carbon, 13%-17% aromatic polyester, with a balance (approx. 66%-74%) of PTFE; and (2) carbon steel flat products measuring 1.02 mm in thickness and 10.7 mm in width consisting of carbon steel coil (SAE 1008) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9%-11% tin, 9%-11% lead, less than 0.35% iron, and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45%-55% lead, 3%-5% molybdenum disulfide, with a balance (approx. 40%-52%) of PTFE. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 15075 (Mar. 15, 2001).

Also excluded from this order are carbon steel flat products meeting the following specifications: (1) carbon steel coil or strip, measuring 1.93 mm or 2.75 mm (0.076 inches or 0.108 inches) in thickness, 87.3 mm or 99 mm (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum; and (2) carbon steel coil or strip, clad with aluminum, measuring 1.75 mm (0.069 inches) in thickness, 89 mm or 94 mm (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 20967 (Apr. 26, 2001).

Also excluded from this order are carbon steel flat products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10 mm to a maximum of and including 4.90 mm in overall thickness, a minimum of and including 76.00 mm to a maximum of and including 250.00 mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 7356 (Feb. 19, 2002).

Also excluded from this order are products meeting the following specifications: (1) Diffusion–annealed, non–alloy nickel–plated carbon products, with a substrate of cold–rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10 mm) to 0.030'' (0.762 mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32 - 55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85 - 150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than 0.2; Lankford value ≥1.2.; and (2) next generation diffusion–annealed nickel plate meeting the following specifications: (a) Nickel–graphite plated, diffusion–annealed, tin–nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion–annealed tin–nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel–tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel–tin alloy; having a coating thickness: top side: nickel–graphite, tin–nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel–graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel–graphite, diffusion–annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion–annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel–graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel–graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel–graphite, tin–nickel layer ≥ 1.0 micrometers; nickel–graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion–annealed nickel–graphite plated products, which are cold–rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel–graphite composition; with the strip then annealed to create a diffusion of the nickel–graphite and the iron substrate on the bottom side; with the nickel–graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel–graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel–phosphorous plated diffusion–annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion–annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel–phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel–phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel–phosphorous, nickel layer ≥ 1.0 micrometers; nickel–phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion–annealed, tin–nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion–annealed tin–nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel–tin

alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel–tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel–tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin–nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel–tin layer ≥1 micrometer; tin layer alone ≥0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 47768 (Jul. 22, 2002).

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and (3) a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 57208 (Sept. 9, 2002).

Also excluded from this order are products meeting the following specifications: (1) Flat–rolled products (provided for in HTSUS subheading 7210.49.00), other than of high–strength steel, known as ''ASE Iron Flash'' and either: (A) having a base layer of zinc–based zinc–iron alloy applied by hot–dipping and a surface layer of iron–zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40% by weight of zinc; or (B) two–layer-coated corrosion–resistant steel with a coating composed of (a) a base coating layer of zinc–based zinc–iron alloy by hot–dip galvanizing process, and (b) a surface coating layer of iron–zinc alloy by electro–galvanizing process, having an effective amount of zinc up to 40% by weight, and (2) corrosion resistant continuously annealed flat–rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06% by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two–layer coating composed of a base nickel–iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four–layer coating composed of a base nickel–iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel–phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three–layer coating composed of a base nickel–iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster–agent-added nickel which is not heat–treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three–layer coating composed of a base nickel–iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat–treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 68 FR 19970 (Apr. 23, 2003).

Also excluded from the scope of this order is merchandise meeting the following specifications: (1) Base metal: Aluminum Killed, Continuous Cast, Carbon Steel SAE 1008, (2) Chemical Composition: Carbon 0.08% max, Silicon, 0.03% max., Manganese 0.40% max., Phosphorus, 0.020% max., Sulfur 0.020% max., (3) Nominal thickness of 0.054 mm, (4) Thickness tolerance minimum 0.0513 mm, maximum 0.0567 mm, (5) Width of 600 mm or greater, and (7) Nickel plate min. 2.45 microns per side. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, In Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 70 FR 2608 (Jan. 14, 2005).

Also excluded from the scope of this order are the following 24 separate corrosion–resistant carbon steel coil products meeting the following specifications:

Product 1 Products described in industry usage as of carbon steel, measuring 1.625 mm to 1.655 mm in thickness and 19.3 mm to 19.7 mm in width, consisting of carbon steel coil (SAE 1010) with a lining clad with an aluminum alloy containing by weight 10% or more but not more than 15% of tin, 1% or more but not more than 3% of lead, 0.7% or more but not more than 1.3% of copper, 1.8% or more but not more than 3.5% of silicon, 0.1% or more but not more than 0.7% of chromium

and less than or equal to 1% of other materials, and meeting the requirements of SAE standard 788 for Bearing and Bushing Alloys.

Product 2 Products described in industry usage as of carbon steel, measuring 0.955 mm to 0.985 mm in thickness and 8.6 mm to 9.0 mm in width, consisting of carbon steel coil (SAE 1012) clad with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 0.05% phosphorus, less than 0.35% iron and less than or equal to 1% other materials, and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer containing by weight 13% or more but not more than 17% of carbon, 13% or more but not more than 17% of aromatic polyester, and the remainder (approx. 66–74%) of PTFE.

Product 3 Products described in industry usage as of carbon steel, measuring 1.01 mm to 1.03 mm in thickness and 10.5 mm to 10.9 mm in width, consisting of carbon steel coil (SAE 1010) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 1% zinc and less than or equal to 1% other materials, and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer containing by weight 45% or more but not more than 55% of lead, 3% or more but not more than 5% of molybdenum disulfide, and the remainder made up of PTFE (approximately 38% to 52%) and less than 2% in the aggregate of other materials.

Product 4 Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 43.4 mm to 43.8 mm or 16.1 mm to 1.65 mm in width, consisting of carbon steel coil (SAE 1010) clad with an aluminum alloy that contains by weight 19% to 20% tin, 1% to 1.2% copper, less than 0.3% silicon, 0.15% nickel and less than 1% in the aggregate other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Product 5 Products described in industry usage as of carbon steel, measuring 0.95 mm to 0.98 mm in thickness and 19.95 mm to 20 mm in width, consisting of carbon steel coil (SAE 1010) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 1% of zinc and less than or equal to 1% in the aggregate of other materials and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer consisting by weight of 45% or more but not more than 55% of lead, 3% or more but not more than 5% of molybdenum disulfide and with the remainder made up of PTFE (approximately 38% to 52%) and up to 2% in the aggregate of other materials.

Product 6 Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.98 mm in thickness and 18.75 mm to 18.95 mm in width; base of SAE 1010 steel with a two–layer lining, the first layer consisting of copper–base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35, and other materials less than 1%; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of lead 33 to 37%, aromatic polyester 28 to 32%, and other materials less than 2% with a balance of PTFE.

Product 7 Products described in industry usage as of carbon steel, measuring 1.21 mm to 1.25 mm in thickness and 19.4 mm to 19.6 mm in width; base of SAE 1012 steel with lining of copper base alloy with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1%; meeting the requirements of SAE standard 797 for bearing and bushing alloys.

Product 8 Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.98 mm in thickness and 21.5 mm to 21.7 mm in width; base of SAE 1010 steel with a two–layer lining, the first layer consisting of copper–base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05%, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 with a balance of PTFE.

Product 9 Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.99 mm in thickness and 7.65 mm to 7.85 mm in width; base of SAE 1012 steel with a two–layer lining, the first layer consisting of copper–based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17 and aromatic polyester 13 to 17, with a balance of PTFE.

Product 10 Products described in industry usage as of carbon steel, measuring 0.955 mm to 0.985 mm in thickness and 13.6 mm to 14 mm in width; base of SAE 1012 steel with a two–layer lining, the first layer consisting of copper–based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17, aromatic polyester 13 to 17, with a balance (approximately 66 to 74) of PTFE.

Product 11 Products described in industry usage as of carbon steel, measuring 1.2 mm to 1.24 mm in thickness; 20 mm to 20.4 mm in width; consisting of carbon steel coils (SAE 1012) with a lining of sintered phosphorus bronze alloy with chemical composition (percent by weight): tin 5.5 to 7; phosphorus 0.03 to 0.35; lead less than 1 and other non–copper materials less than 1.

Product 12 Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 43.3 mm to 43.7 mm in width; base of SAE 1010 steel with a lining of aluminum based alloy with chemical composition (percent by weight: tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys.

Product 13 Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 24.2 mm to 24.6 mm in width; base of SAE 1010 steel with a lining of aluminum alloy with chemical composition (percent by weight): tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys.

Product 14 Flat–rolled coated SAE 1009 steel in coils, with thickness not less than 0.915 mm but not over 0.965 mm, width not less than 19.75 mm or more but not over 20.35 mm; with a two–layer coating; the first layer

consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1% and balance copper; the second layer consisting of lead 45 to 55%, molybdenum disulfide (MoS2) 3 to 5%, other materials not over 2%, balance PTFE.

Product 15 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 0.915 mm or more but not over 0.965 mm; width not less than 18.65 mm or more but not over19.25 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1%, balance copper; the second layer consisting of lead 33 to 37%, aromatic polyester 13 to 17%, other materials other than PTFE less than 2%, balance PTFE.

Product 16 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 0.920 mm or more but not over 0.970 mm; width not less than 21.35 mm or more but not over 21.95 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1%, balance copper; the second layer consisting of lead 33 to 37%, aromatic polyester 13 to 17%, other materials (other than PTFE) less than 2%, balance PTFE.

Product 17 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 1.80 mm or more but not over 1.85 mm, width not less than 14.7 mm or more but not over 15.3 mm; with a lining consisting of tin 2.5 to 4.5%, lead 21.0 to 25.0%, zinc less than 3%, iron less than 0.35%, other materials (other than copper) less than 1%, balance copper.

Product 18 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 14.5 mm or more but not over 15.1 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

Product 19 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 1.75 mm or more but not over 1.8 mm; width not less than 18.0 mm or more but not over 18.6 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

Product 20 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 13.6 mm or more but not over 14.2 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, with a balance copper.

Product 21 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 11.5 mm or more but not over 12.1 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

Product 22 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 11.2 mm or more but not over 11.8 mm, with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials less than 1%, balance aluminum.

Product 23 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 7.2 mm or more but not over 7.8 mm; with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials (other than copper) less than 1%, balance copper.

Product 24 Flat–rolled coated SAE 1009 steel in coils with thickness 1.72 mm or more but not over 1.77 mm; width 7.7 mm or more but not over 8.3 mm; with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials (other than copper) less than 1%, balance copper. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 70 FR 5137 (Feb. 1, 2005).

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 30, 2006, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the AD orders on CORE from Australia, Canada, France, Germany, Japan, and South Korea would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Australia.	
Broken Hill Proprietary Company Ltd. (''BHP'')	24.96%
All Others	24.96%
Canada.	
Dofasco, Inc.	11.71%
Stelco, Inc.	22.70%
All Others	18.71%
France.	
Usinor Sacilor	29.41%
All Others	29.41%
Germany.	
Thyssen Stahl AG (''Thyssen'')	10.02%
All Others	10.02%
Japan.	
Kawasaki Steel Corporation (''KSC'')	36.41%
Nippon Steel Corporation (''NSC'')	36.41%
All Others	36.41%
South Korea.	
Pohang Iron and Steel Company, Ltd.	17.70%
All Others	17.70%

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8760 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2004, through April 30, 2005. This review covers imports of certain polyester staple fiber from one producer/exporter. We have preliminarily found that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1174 and (202) 482–3853, respectively.

Background

On May 25, 2000, the Department of Commerce (''Department'') published an antidumping duty order on certain polyester staple fiber (''PSF'') from Taiwan. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000) (''*PSF Orders*''). On May 2, 2005, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 22631 (May 2, 2005). On May 31, 2005, Far Eastern Textile Limited (''FET'') requested an administrative review. On June 30, 2005, the Department published a notice initiating the review for FET. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749, 37756 (June 30, 2005). The period of review (''POR'') is May 1, 2004, through April 30, 2005.

On July 6, 2005, we issued an antidumping questionnaire to FET. We received questionnaire responses from FET on August 5, 2005, and August 30, 2005. In October, November, and December 2005, and March and April 2006, we issued supplemental questionnaires to FET. We received responses to these supplemental questionnaires in November and December 2005, and January, April and May 2006. In February 2006, we requested FET to revise its reported model matching characteristics, as described in the ''Product Comparisons'' section, below. We received FET's response in February 2006.

Scope of the Order

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Fair Value Comparisons

To determine whether FET's sales of PSF to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (''the Act''), we compared the EP of individual U.S. transactions to the weighted-average NV of the foreign like product, where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 773(a)(1)(B) and (C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, *see* the ''Normal Value'' section, below.)

We compared U.S. sales to monthly weighted-average prices of contemporaneous sales made in the home market. Where there were no contemporaneous sales of identical merchandise in the home market, we compared sales made within the window period, which extends from three months prior to the POR until two months after the POR. As directed by section 771(16) of the Act, where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

Further, as provided in section 773(a)(4) of the Act, where we could not determine NV because there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value (''CV'').

During the investigation and this administrative review, classification of PSF products with certain physical characteristics within the model matching hierarchy has been highly contentious. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan* (''*LTFV*

Investigation: PSF from Taiwan''), 65 FR 16877 (March 30, 2000), and accompanying *Issues and Decision Memorandum* at Comments 4, 5, and 15. In this review, the Department received new information in FET's supplemental questionnaire response regarding the physical characteristics of certain PSF products. *See December 28, 2005, Supplemental Questionnaire Response*, Appendix SS–3. These events led the Department to reconsider whether the product matching characteristics established in the investigation accurately reflect the physical characteristics of the PSF products under review. For this administrative review and the concurrent administrative review of PSF from the Republic of Korea (A–580–839), the Department requested comments regarding the adequacy of the model match criteria to reflect the physical characteristics of the merchandise under review. *See* Letter from Julie H. Santoboni to Interested Parties, *2004–2005 Administrative Reviews of the Antidumping Duty Orders on Certain Polyester Staple Fiber from Korea and Taiwan*, dated November 9, 2005, which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building; *see also* Memorandum to File: *Modifications to the Department's November 9, 2005 letter to Interested Parties*, dated November 10, 2005. On November 16, 2005, we received comments from Wellman, Inc. and Invista, S.a.r.l. (collectively, ''the petitioners''), Huvis Corporation (''Huvis''), and FET. On November 28, 2005, we received rebuttal comments from Dongwoo Industry Company, the petitioners, FET, Consolidated Fibers, Inc., and Huvis. On December 8, 2005, we received additional rebuttal comments from FET.

The comments we received and the facts and information on the record of this review lead us to preliminarily conclude that relying on the model matching criteria established in the *LTFV Investigation: PSF from Taiwan* does not provide the best product comparisons because the criteria do not adequately reflect the physical differences exhibited by specialty PSF products. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Certain Polyester Staple Fiber From Taiwan*, 64 FR 60771, 60772 (November 8, 1999); *LTFV Investigation: PSF from Taiwan*, and accompanying *Issues and Decision Memorandum* at Comments 4, 5, and 15; *Structural Steel Beams from Korea; Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 6837 (February 9, 2005), and accompanying *Issues and Decisions Memorandum* at Comment 1 (''It is appropriate to consider changes when additional expertise and knowledge with regard to the market demands and market realities of the products subject to the scope indicate that such changes allow more accurate comparison of U.S. and normal value products.''). Therefore, to account for the new information regarding physical characteristics of PSF and to increase product matching accuracy, the Department has preliminarily modified the matching criteria that were established in the original investigation. Accordingly, for the preliminary results, we matched the merchandise under review based on the physical characteristics reported by the respondent in the following order: loft, specialty fibers, type, grade, cross section, finish, and denier. *See* Letter from Julie H. Santoboni to FET, *2004–2005 Administrative Reviews of the Antidumping Duty Orders on Certain Polyester Staple Fiber from Korea and Taiwan*, dated February 2, 2006, which is on file in the Department's CRU.

Date of Sale

In its questionnaire responses, FET reported invoice date as the date of sale for its home market and U.S. sales. FET has stated that it permits home market and U.S. customers to make order changes up to the date of shipment. According to FET's descriptions, the sales processes in the home market and to the United States are identical. Thus, record evidence demonstrates that FET's invoices establish the material terms of sale. *See* 19 CFR 351.401(i). However, because the merchandise is always shipped on or before the date of invoice, we are using the date of shipment as the date of sale. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998). For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We calculated EP based on the cost, insurance and freight (''CIF'') price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight—plant to port of exportation, brokerage and handling, harbor service fee, trade promotion fee, international freight, and marine insurance.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared the respondent's home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See* 19 CFR 351.412(c)(2); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison market sales were made at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[3] we consider the starting prices before any adjustments. *See Micron Technology, Inc. v. United States, et al.*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

FET reported that it made direct sales to one distributor in the U.S. market and to end users in the home market. FET has reported a single channel of distribution and a single level of trade in each market, and has not requested a LOT adjustment. We examined the information reported by FET regarding the type and level of selling activities performed, and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) across the markets. Based on our analysis, we found a single level of trade in the United States, and a single, identical level of trade in the home market. Thus, it is unnecessary to make a LOT adjustment for FET in comparing EP and home market prices.

C. Cost of Production Analysis

Because FET had sales below the cost of production that were disregarded in the original investigation, there were reasonable grounds to believe or suspect that the respondent made sales of the merchandise under review in its comparison market at prices below the cost of production (''COP'') within the meaning of section 773(b) of the Act.

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondent's costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (''G&A'') expenses, interest expenses, and the costs of all expenses incidental to placing the foreign like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted in FET's cost questionnaire responses, except for the following adjustments:

We adjusted FET's reported cost of manufacturing to account for purchases of purified terephthalic acid (''TPA'') and mono ethylene glycol (''EG'') from affiliated parties at non-arm's-length prices. *See* Memorandum from Team to the File, *Preliminary Results Calculation Memorandum—Far Eastern Textile Limited*, dated May 31, 2006 (''*FET Calculation Memorandum*''), which is on file in the Department's CRU.

We noted significant fluctuations in the costs of direct materials reported in FET's cost database due to (1) The different mix percentages between virgin and recycled polymer or polyester chips, (2) the efficiency factors of the various production lines, and (3) the time of production (reflecting fluctuations in the prices of the inputs, TPA and EG). *See* FET's January 20, 2006, supplemental questionnaire response, at TS–15 and TS–16. To address the resulting distortions to FET's costs, we adjusted the company's reported costs using a weighted-average direct materials cost by specialty fiber and fiber type (*i.e.*, one direct materials cost for regular virgin, one for regular blended, one for virgin of each reported specialty fiber, and one for blended of each reported specialty fiber). *See FET Calculation Memorandum.*

FET produced PSF differing only in grade. The products that differ only in grade have identical material inputs and undergo the same production process, and, therefore, should theoretically have the same cost. However, as reported by FET, they do not have the same cost. To adjust for this distortion in the reported costs, we have weight-averaged the costs to obtain an equal cost for each grade of otherwise identical PSF. *See FET Calculation Memorandum.*

In its net interest expenses calculation, FET excluded interest expenses related to a consolidated subsidiary involved in financial investments. For the preliminary results, we included these expenses because they relate to the consolidated company's overall interest expenses. *See FET Calculation Memorandum.*

2. Test of Home Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

We found that, for certain products, more than 20 percent of the respondent's home market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales of the same product, as the basis for determining NV, in accordance with section 773(b)(1).

D. Calculation of Normal Value Based on Home Market Prices

We relied on FET's submitted home market sales information, except for the following adjustments:

We disregarded FET's reported other discounts because they related to free samples provided to certain home market customers during the POR. Moreover, FET's reported other discounts are accounted for in the G&A expenses ratio. *See FET Calculation Memorandum.*

We reclassified FET's reported warranty expenses as discounts. These expenses are more properly classified as discounts because they related to compensation for a delay in merchandise delivery. *See FET Calculation Memorandum.*

We reclassified FET's reported home market rebates as warranty expenses because these rebates were to satisfy claims regarding product quality defects. We allocated the total warranty expenses incurred in the home market during the POR across all home market sales. *See FET Calculation Memorandum.*

FET applied its calculated indirect selling expenses ratio to the control number-specific total cost of manufacture to obtain the reported per-unit home market indirect selling expenses. We recalculated the per-unit home market indirect selling expenses by applying the indirect selling expenses ratio to the reported home

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and profit for CV, where possible.

market gross unit price net of discounts. *See FET Calculation Memorandum.*

FET reported its U.S. credit expenses based on the New Taiwan Dollar denominated gross unit price. Because FET's U.S. sales were invoiced in U.S. dollars, we recalculated FET's U.S. credit expenses by applying the standard credit formula to FET's reported U.S. dollar denominated gross unit price. *See FET Calculation Memorandum.*

We calculated NV based on the price to unaffiliated customers. We deducted discounts, where applicable, from the gross unit price. We made adjustments for packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale (''COS''), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (*i.e.*, credit expenses and warranties) and adding U.S. direct selling expenses (*i.e.*, credit expenses and other credit expenses).

Preliminary Results of the Review

We find that the following dumping margin exists for the period May 1, 2004, through April 30, 2005:

Exporter/manufacturer	Weighted-average margin percentage
Far Eastern Textile Limited	3.13

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

FET has indicated that it was not the importer of record for any of its sales to the United States during the POR. FET reported the name of its U.S. customer as the importer of record for all U.S. sales. As such, FET did not report the entered value for any of its U.S. sales. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to CBP.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the most recent rate published in the final determination for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 7.31 percent, the ''all others'' rate established in *PSF Orders*.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8762 Filed 6–5–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Final Results of Five–Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2005, the Department of Commerce (''the Department'') initiated the second

sunset review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (''Suspension Agreement'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005) (''*Sunset Initiation*''). On January 17, 2006, the Department determined that it would conduct a full sunset review of the Suspension Agreement. As a result of this review, the Department finds that revocation of the Suspension Agreement on uranium from the Russian Federation (''Russia'') would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Sally Gannon or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0162, or 482–0172, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

According to the June 3, 1992, preliminary determination, the suspended investigation of uranium from Russia encompassed one class or kind of merchandise.[1] The merchandise included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U235 and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U235 or compounds or uranium enriched in U235; and any other forms of uranium within the same class or kind. The uranium subject to this investigation was provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[2] In addition, the Department preliminarily determined that HEU (uranium enriched to 20 percent or greater in the isotope uranium–235) is not within the scope of the investigation. On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Russia and an amendment of the preliminary determination.[3] The notice amended the scope of the investigation to include HEU.[4] Imports of uranium ores and concentrates, natural uranium compounds, and all other forms of enriched uranium were classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.10.50.[5]

In addition, Section III of the Suspension Agreement provides that uranium ore from Russia that is milled into U3O8 and/or converted into UF6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Suspension Agreement, regardless of any subsequent modification or blending.[6] In addition, Section M.1 of the Suspension Agreement in no way prevents Russia from selling directly or indirectly any or all of the HEU in existence at the time of the signing of the agreement and/or LEU produced in Russia from HEU to the Department of Energy (''DOE''), its governmental successor, its contractors, or U.S. private parties acting in association with DOE or the USEC and in a manner not inconsistent with the Suspension Agreement between the United States and Russia concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia.

There were three amendments to the Suspension Agreement on Russian uranium. In particular, the second amendment to the Suspension Agreement, published on November 4, 1996, provided for, among other things, the sale in the United States of the natural uranium feed associated with the Russian LEU derived from HEU and included within the scope of the Suspension Agreement Russian uranium which has been enriched in a third country prior to importation into the United States.[7]

On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation (collectively, ''USEC'') requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the Russian Suspension Agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five–year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in CFR Part 351 (1999) in general.

Background

On April 3, 2006, the Department of Commerce (''Department'') published in the **Federal Register** a notice of preliminary results of the full sunset review of the Suspension Agreement pursuant to Section 751(c) of the Tariff Act of 1930, as amended (''the Act'') (63 FR 16560) (*Preliminary Sunset Notice*). This notice was accompanied by the ''Issues and Decision Memo for the Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Preliminary Results,'' from Joseph A. Spetrini, Deputy Assistant Secretary for Policy and Negotiations, to David M. Spooner, Assistant Secretary for Import Administration, (March 24, 2006), which can be found at http://

[1] The Department based its analysis of the comments on class or kind submitted during the proceeding and determined that the product under investigation constitutes a single class or kind of merchandise. The Department based its analysis on the ''Diversified''' criteria (*see Diversified Products Corp. v. United States, 6 CIT 1555 (1983); see also Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23382 (June 3, 1992).

[2] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

[3] *See Antidumping; Uranium from Kazakhstan, Kyrgyszstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[4] *See* Id. at 49235.

[5] *See* Id.

[6] *See* Id. at 49235.

[7] *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996). According to the amendment, the latter modification remained in effect until October 3, 1998.

ia.ita.doc.gov/frn/summary/russia/E6–4738–1.pdf. In our preliminary results, we found that revocation of the antidumping duty Suspension Agreement on uranium from Russia would likely lead to a continuation or recurrence of dumping at the weighted–average margin of 115.82 percent for all producers/exporters from Russia.

On April 17, 2006, we received case briefs on behalf of Power Resources, Inc. (''PRI'') and Crow Butte Resources, Inc. (''Crow Butte''); USEC Inc. and United States Enrichment Corporation (collectively, ''USEC''); the Ad Hoc Utilities Group (''AHUG''); and AO Techsnabexport (''Tenex'').[8] On April 24, 2006, we received rebuttal briefs on behalf of Power Resources and Crow Butte, USEC, and AHUG. On April 26, 2006, USEC requested that the Department reject AHUG's rebuttal brief because it contained new information not permissible under the Department's regulations. On May 24, 2006, the Department notified AHUG that it was returning AHUG's rebuttal brief because it contained information not timely filed under the regulations and offered AHUG the opportunity to redact the new information and to re–submit the brief to the Department within two days. On May 26, 2006, AHUG re–submitted its rebuttal brief; however it failed to redact all references to the new information that appeared in its May 24, 2006 rebuttal brief. We requested again that AHUG re–submit its rebuttal brief without the references to the new information, by the close–of-business on May 30, 2006. On, May 30, 2006, AHUG filed its rebuttal brief and redacted all new information. Additionally, on May 26, 2006, AHUG submitted a letter to the Department which also contained new and untimely filed information. On May 30, 2006, the Department notified AHUG that it was returning this additional May 26, 2006 letter because it contained information not timely filed under the Department's regulations. No interested party requested a hearing in this sunset review.

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Final Results'' from Joseph A. Spetrini, Deputy Assistant Secretary for Policy and Negotiations, to David M. Spooner, Assistant Secretary for Import Administration (May 30, 2006) (''Final Results Decision Memorandum''), which is adopted by this notice. The issues discussed in the Final Results Decision Memorandum include the likelihood of continuation or recurrence of dumping, scope of the subject merchandise, and the magnitude of the margins likely to prevail were the Suspension Agreement to be terminated. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the Final Results Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Final Results Decision Memorandum are identical in content.

Final Results of Review

We determine that termination of the Suspension Agreement on uranium from Russia would likely lead to a continuation or recurrence of dumping at the following percentage weighted–average margin:

Exporter/manufacturer	Weighted–average margin (percent)
Russia–Wide	115.82

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8758 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–S

[8] We note that Tenex did not file either a waiver of intent to participate in this sunset review pursuant to Section 351.218(d)(2) of the Department's sunset regulations or a complete substantive response to the notice of initiation pursuant to Section 351.218(d) (3).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the second five-year sunset review of the countervailing duty order on certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (''Korea''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Reviews,* 70 FR 65884 (November 1, 2005) (''*Second Sunset Review*''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, and an inadequate response from respondent interested parties (in this case, no response), the Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–5439, respectively.

SUPPLEMENTARY INFORMATION:

Background

The countervailing duty order which covers CORE from Korea, was published in the **Federal Register** on August 17, 1993. *See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea,* 58 FR 43752 (August 17, 1993). On November 1, 2005, the Department initiated the second sunset review of the

countervailing duty order on CORE from Korea, pursuant to section 751(c) of the Act. *See Second Sunset Review.* The Department received notices of intent to participate from Nucor Corporation (''Nucor''), Mittal Steel USA ISG Inc. (''Mittal Steel USA'') and Ispat-Inland (''Ispat''); United States Steel Corporation (''U.S. Steel''); (collectively, ''domestic interested parties''); and on behalf of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''USW''), within the deadline specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties and the USW claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers and a certified union engaged in the manufacture, production, or wholesale of CORE in the United States.

On December 1, 2005, the Department received a substantive response from domestic interested parties within the deadline specified in section 19 CFR 351.218(d)(3)(i). The Department did not receive any responses from any respondent interested party to this proceeding. In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), the Department notified the International Trade Commission (''ITC'') that respondent interested parties provided an inadequate response to the Notice of Initiation of Five-Year (''Sunset'') Review.[1] The Department, therefore, is conducting an expedited sunset review of the countervailing duty order, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(2).

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995, the effective date of the Uruguay Round Agreements Act), as is the case in this proceeding. As such, the Department determined that the sunset review of the countervailing duty order on CORE from Korea is extraordinarily complicated and required additional time for the completion of the final results of review. In accordance with section 751(c)(5)(B) of the Act, the Department extended the time limit for completion of the final results of CORE from Korea until no later than May 30, 2006. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea: Extension of Time Limits for Final Results of Expedited Sunset Reviews,* 71 FR 10006 (February 28, 2006).

[1] *See* December 21, 2005 letter to ITC, Robert Carpenter, Director of Investigations, from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, Import Administration.

Scope of the Order

The merchandise covered by this order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties in this sunset review are addressed in the *Issues and Decision Memorandum for Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from Korea* (''*Decision Memo*''), from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 30, 2006, which is hereby adopted by this notice. The issues discussed in the *Decision Memo* include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rate likely to prevail if the order were revoked.

Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendation in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Department's Web page at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the *Decision Memo* are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order on CORE from Korea is likely to lead to continuation or recurrence of countervailable subsidies at the following countervailing duty rate:

Manufacturer/exporter	Net subsidy margin (percent)
All Producers/Exporters from Korea [2]	1.15

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.303 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8754 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–P

[2] Union Steel was excluded from the order on the basis of a *de minimis* net subsidy rate. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Amended Final Affirmative Countervailing Duty Determinations in Accordance with Decision Upon Remand,* 66 FR 16656 (March 27, 2001).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on certain cut-to-length carbon steel plate from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Reviews,* 70 FR 65884 (November 1, 2005). On the basis of notices of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties, and an inadequate response from respondent interested parties (in this case, no response), the Department is conducting an expedited sunset review pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Brandon Farlander, AD/CVD Operations, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–2209 or 202–482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on certain cut-to-length carbon steel plate from Mexico pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews,* 70 FR 65884. In November 2005, the Department received notices of intent to participate on behalf of Nucor Corporation (''Nucor''); IPSCO Steel Inc. (''IPSCO''); Oregon Steel Mills (''Oregon Steel''); Mittal Steel USA ISG Inc. (''Mittal Steel USA''); and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''USW'') (collectively, ''domestic interested parties''). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic producers of a like product, or a union engaged in the production of subject merchandise in the United States. The Department received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive a substantive response or a rebuttal response from any foreign respondents. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited sunset review of this CVD order.

Scope of the Order

The products covered by this order are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this administrative review is grade X–70 plate. HTSUS subheadings are provided for convenience and customs purposes. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''*Issues and Decision Memorandum for the Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results*'' (*''Decision Memorandum''*) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration to David M. Spooner, Assistant Secretary for Import Administration, dated May 30, 2006, which is hereby adopted by this notice. The issues discussed in the *Decision Memorandum* include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rate likely to prevail if the order were revoked.

Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in

this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order on certain cut-to-length carbon steel plate from Mexico would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/exporter	Net countervailable subsidy (percent)
AHMSA	28.32
All Others	20.25

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 06–5144 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–351–818)

Cut–to-Length Carbon Steel Plate from Brazil: Final Results of Expedited Five-year (''Sunset'') Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the second five-year sunset review of the countervailing duty order on certain cut–to-length carbon steel plate (''CTL Plate'') from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 65884 (November 1, 2005)(''Second Sunset Review''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, and an inadequate response from respondent interested parties (in this case, no response), the Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(B) of the Department's regulations. As a result of this sunset review, the Department finds that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Martha Douthit or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

The countervailing duty order which covers CTL Plate from Brazil was published in the **Federal Register** on August 17, 1993. *See Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From Brazil*, 58 FR 43751 (August 17, 1993). On November 1, 2005, the Department initiated the second sunset review of the countervailing duty order on CTL Plate from Brazil, pursuant to section 751(c) of the Act. *See Second Sunset Review*. The Department received notices of intent to participate from IPSCO, Inc., Mittal Steel USA ISG, Inc., Nucor Corporation, Oregon Steel Mills, Inc., and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO-CLC (''USW'') (collectively, ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i).[1] Domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers and a certified union engaged in the manufacture, production, or wholesale of CTL Plate in the United States.

On November 30, 2005, the Department received a substantive response from domestic interested parties within deadline specified in 19 CFR 351.218(d)(3)(i).[2] The Department did not receive any responses from any respondent interested party to this proceeding. In accordance with 19 CFR 351.218(e)(1)(ii)(C)(1), the Department notified the International Trade Commission (''ITC'') that respondent interested parties provided an inadequate response to the Notice of Initiation of Five-year (''Sunset'') Reviews.[3] The Department, therefore, has conducted an expedited sunset review of the countervailing duty order, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(2).

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995, the effective date of the Uruguay Round Agreements Act), as is the case in this proceeding. As such, the Department determined that the sunset review of the countervailing duty order on CTL Plate from Brazil, is extraordinarily complicated and requires additional time for the completion of final results of review. In accordance with section 751(c)(5)(B) of the Act, the Department extended the time limit for completion of the final results of CTL Plate from Brazil until no later than May 30, 2006. *See Cut–to-Length Carbon Steel Plate from Brazil and Spain; Extension of Time Limits for Final Results of Expedited Five-year (''Sunset'') Reviews*

[1] Domestic interested parties note that Mittal, IPSCO, and Oregon Steel Mills, were the petitioners or successors to petitioners in the original investigation and that they have participated in the first sunset review.

[2] On December 1, 2005, the Department received a letter from domestic interested parties regarding an amendment to their November 30, 2005 substantive response to the Department's initiation of the sunset review on CTL Plate from Brazil. In the letter, domestic interested parties included United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (''USW'') to the November 30, 2005 substantive response.

[3] *See* December 21, 2005 letter to Robert Carpenter, Director of Investigations, ITC, from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, Import Administration.

of Countervailing Duty Orders; 71 FR 7018 (February 10, 2006).

Since the publication of its results in the first sunset review (*see Cut–to-Length Carbon Steel Plate from Brazil; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18065 (April 6, 2000) (''First Sunset Review'')), there have been no administrative reviews of this order.

Scope of the Order

The products covered by this countervailing duty order include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included within the scope are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling''); for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

Since the completion of the first sunset review, the Department has determined that continuous cast steel slab is outside the scope of this order. *See Notice of Scope Rulings and Anti–circumvention Inquiries*, 68 FR 36770 (June 19, 2003).

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the *Issues and Decision Memorandum for Final Results of Expedited Five-year (''Sunset'') Review of the Countervailing Duty Order on Certain Cut–to-Length Steel Plate from Brazil*, (''Decision Memo'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 30, 2006, which is hereby adopted by this notice. The issues discussed in the *Decision Memo* include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rate likely to prevail if the order were the order revoked.

Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendation in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Department's Web page at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order on CTL Plate from Brazil would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailing duty rates:

Manufacturer/Exporter	Net Subsidy Rate (percent)
Usinas Siderurgicas de Minas Gerais S.A. (''USIMINAS'')	5.44
Companhia Siderurgica Paulista (''COSIPA'')	48.64
All others	23.10

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8756 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–469–804)

Cut–to-Length Carbon Steel Plate from Spain: Final Results of Expedited Five-year (''Sunset'') Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the second five-year sunset review of the countervailing duty order on certain cut–to-length carbon steel plate (''CTL Plate'') from Spain, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 65884 (November 1, 2005) (''Second Sunset Review''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, and an inadequate response from respondent interested parties (in this case, no response), the Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(B) of the Department's regulations. As a result of this sunset review, the Department finds that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–2371 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

The countervailing duty order which covers CTL Plate from Spain, was published in the **Federal Register** on August 17, 1993. *See Countervailing Duty Order: Certain Steel Products from Spain*, 58 FR 43761 (August 17, 1993). On November 1, 2005, the Department initiated the second sunset review of the countervailing duty order on CTL Plate from Spain, pursuant to section 751(c) of the Act. *See Second Sunset Review*. The Department received notices of intent to participate from IPSCO, Inc., Mittal Steel USA ISG, Inc., Nucor Corporation, Oregon Steel Mills, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO-CLC (''USW'') (collectively ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i).[1] Domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers and a certified union engaged in the manufacture, production, or wholesale of CTL Plate in the United States.

On November 30, 2005, the Department received a substantive response from domestic interested parties within the deadline specified in section 19 CFR 351.218(d)(3)(i).[2] The Department did not receive any responses from any respondent interested party to this proceeding. In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), the Department notified the International Trade Commission (''ITC'') that respondent interested parties provided inadequate response to the Notice of Initiation of Five-year (''Sunset'') Review.[3] The Department, therefore, is conducting an expedited sunset review of the countervailing duty order, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(2).

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e*, an order in effect on January 1, 1995, the effective date of the Uruguay Round Agreements Act), as is the case in this proceeding. As such, the Department determined that the sunset review of the countervailing duty order on CTL Plate from Spain is extraordinarily complicated and required additional time for the completion of the final results of review. In accordance with section 751(c)(5)(B) of the Act, the Department extended the time limit for completion of the final results of CTL Plate from Spain until no later than May 30, 2006. *See Cut–to-Length Carbon Steel Plate from Brazil and Spain; Extension of Time Limits for Final Results of Expedited Five-year (''Sunset'') Reviews of Countervailing Duty Orders*; 71 FR 7018 (February 10, 2006).

Since the publication of its results in the first sunset review, *see Cut–to-Length Carbon Steel Plate from Spain; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18307 (April 7, 2000) (''*First Sunset Review*''), the Department has conducted two proceedings pursuant to Section 129 of the Uruguay Round Agreements Act (URAA). *See Final Results of Expedited Sunset Review of Cut–to-Length Carbon Steel Plate from Spain (''First Section 129 Review'')*, from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 24, 2003; and *Second Section 129 Determination on the Sunset Review of the Countervailing Duty Order on Certain Cut–to-Length Carbon Steel Plate from Spain (''Second Section 129 Review'')*, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 26, 2006. The *First Section 129 Review* was conducted pursuant to a WTO ruling that found the Department must modify its privatization methodology and apply that revised methodology to the *First Sunset Review*. The Department modified its methodology but determined it unnecessary to reach the privatization issue in the *First Section 129 Review* in view of its conclusion on recurring, non–allocable subsidies. The WTO, however, disagreed and directed the Department to conduct a second 129 proceeding to apply its modified privatization methodology.

In the *Second Section 129 Review*, the Department determined that the privatization of Aceralia did not extinguish the non–recurring, allocable subsidies provided to Aceralia prior to its privatization. The Department further determined that it had been provided substantial evidence that demonstrated the termination of programs under Royal Decree 878/81 that were originally found countervailable in the investigation. However, because countervailable programs continued to exist, the Department determined that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy.

Scope of the Order

The products covered by this countervailing duty order, include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included within the scope are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling''); for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties in this sunset review are addressed in the *Issues and*

[1] Domestic interested parties note that Mittal, IPSCO, and Oregon Steel Mills, were the petitioners or successors to petitioners in the original investigation and that they have participated in subsequent reviews.

[2] On December 1, 2005, the Department received a letter from domestic interested parties amending their November 30, 2005 substantive response to the Department's initiation of the sunset review on CTL Plate from Spain, to include United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (''USW'').

[3] *See* December 21, 2005 letter to ITC, Robert Carpenter, Director of Investigations, from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, Import Administration.

Decision Memorandum for Final Results of Expedited Five-year (''Sunset'') Review of the Countervailing Duty Order on Cut–to-Length Steel Plate from Spain (''Decision Memo''), from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 30, 2006, which is hereby adopted by this notice. The issues discussed in the *Decision Memo* include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rate likely to prevail if the order were revoked.

Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendation in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Department's Web page at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order on CTL Plate from Spain is likely to lead to continuation or recurrence of countervailable subsidies at the following countervailing duty rate:

Manufacturer/Exporter	Net Subsidy Margin (percent)
All Producers/Exporters from Spain	33.68

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.303 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8757 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Advanced Technology Program Business Reporting System

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 August 7, 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 the attention of Barbara Lambis/Advanced Technology Program Senior Policy and Operations Advisor/ 100 Bureau Drive, Stop 4700, Gaithersburg, MD 20899–4700/301–975–4447/*barbara.lambis@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission under the Paperwork Reduction Act represents a request for extension of a currently approved collection by the Department of Commerce's National Institute of Standards and Technology. The Advanced Technology Program (ATP) provides cost-shared multi-year funding to single companies and to industry-led joint ventures to accelerate the development of challenging, high-risk technologies that promise significant commercial payoffs and widespread benefits for the nation. This government-industry partnership aids companies in accelerating the development of emerging or enabling technologies that lead to revolutionary new products and industrial processes and services that can compete in rapidly changing world markets. ATP challenges the research and development community to take on higher technical risk with commensurately higher potential payoffs for the nation than they would otherwise pursue. This request is for the information collection requirements associated with completing project surveys once an award is granted. The intent of the collection is to meet statutory requirements for ATP, as well as compliance with 15 CFR part 14 and the Government Performance and Results Act.

II. Method of Collection

The baseline, quarterly, anniversary, and closeout business reports are submitted in a Web-based survey instrument. The post-project survey report is conducted as a telephone survey interview and supplemented with a Web-based survey instrument.

III. Data

OMB Number: 0693–0009.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and not-for-profit institutions.

Estimated Number of Respondents: 425.

Estimated Time per Response: 5 Hours.

Estimated Total Annual Respondent Burden Hours: 2,125.

Estimated Total Annual Respondent Cost Burden: $212,500.

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: June 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 06–5140 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Socioeconomic Monitoring Program for the Channel Islands National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 August 7, 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 and instructions should be directed to Dr. Vernon R. (Bob) Leeworthy, 301–713–3000, extension 138, or *Bob.Leeworthy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to give users of the Channel Islands National Marine Sanctuary fair representation in monitoring the socioeconomic impacts of a network of marine reserves (no take areas) in the Channel Islands by implementing a 3-year monitoring program. The proposed information collection is a follow-up to the previous efforts that established baseline estimates of socioeconomic activities in the Channel Islands National Marine Sanctuary. The baseline information was used to estimate the expected impacts of implementing proposed marine reserves. The new information will be used in a monitoring program to test whether, and to what extent, the estimated ''expected'' socioeconomic impacts actually occur.

II. Method of Collection

Respondents complete paper forms, assisted by a NOAA data collector.

III. Data

OMB Number: 0648–0408.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; not-for-profit institutions.

Estimated Number of Respondents: 815.

Estimated Time per Response: Interviews with commercial fishermen, wholesale processors, for hire recreation vessel owners/operators: 2 hours; and interviews with customers of for hire recreation vessels: 50 minutes.

Estimated Total Annual Burden Hours: 1,235.

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: June 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–8755 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081604C]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Summer Meeting

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

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2006 ICCAT meeting, the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) will have a closed-session, summer meeting.

DATES: The meeting will be held June 26–27, 2006.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kelly Denit, Office of International Affairs, 301–713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in a closed session to consider information on stock status of highly migratory species. The purpose of this meeting is to discuss sensitive information relating to upcoming international negotiations.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kelly Denit at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: May 31, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–8747 Filed 6–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 31, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision of a currently approved collection.

Title: Quick Information Survey System (QRIS) .

Frequency: Other: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 9591.

Burden Hours: 7193.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for public and private teachers, schools, districts, libraries and the Postsecondary Education Quick Information System (PEQIS) for postsecondary institutions. Surveys covered under QRIS are intended to be short, one-time, policy-relevant surveys collecting information that is not available from other sources.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 03130. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–8695 Filed 6–5–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Collection; Comment Request

AGENCY: Department of Education.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2007–2008 award year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2007–2008 award year FAFSA.

DATES: Interested persons are invited to submit comments on or before August 7, 2006.

ADDRESSES: Comments may be submitted electronically through e-mail to: *FAFSAComments@ed.gov.*

Written comments and requests for copies of the proposed information collection requests should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700.

In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov*

(2) Scroll down to ''Current Publications''

(3) Click on ''FAFSAs and Renewal FAFSAs''

(4) Click on ''By 2007–2008 Award Year''

(5) Click on ''Draft FAFSA Form/Instructions''

(6) Scroll down and select ''2007–2008 Draft Form in PDF Format''

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's Web site: *http://www.adobe.com.*

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, ''in cooperation with agencies and organizations involved in providing student financial assistance,'' to ''produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance * * *'' under the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance. On February 8, 2006, President Bush signed the Higher Education Reconciliation Act of 2005 (HERA), Public Law 109–171. The HERA made changes to the HEA that affect student eligibility and need analysis. The HERA changes impact the FAFSA in the following ways: (1) New questions are added for a student (and spouse) or a student and parents asking whether they received benefits from any of five means-tested Federal benefit programs in 2006. Receipt of means-tested Federal benefits during the preceding calendar year (2006 for the 2007–2008 award year) is an alternative to the current question about whether the student or parent filed or was required to file an IRS 1040 Form as one of the criteria used to determine who qualifies for an automatic zero EFC or a simplified needs test. (2) A new dependency question is added to ensure that a member of the U.S. Armed Forces on active duty for other than training purposes is considered an independent student. (3) The question regarding a student's convictions for drug-related offenses has been modified. A student is ineligible for Title IV, HEA financial assistance only if the conviction for a Federal or State offense involving the possession or sale of a controlled substance is for conduct that occurred during a period of enrollment for which the student was receiving Title IV, HEA

financial assistance. The ineligibility period is provided in the HEA. (4) New instructions have been added to clarify that Coverdell savings accounts, 529 college savings plans, and the refund value of 529 or State prepaid tuition plans should be reported as an asset of the account owner (unless the owner is a dependent student). (5) In addition, the FAFSA instructs applicants to exclude the value of a small business that the family owns and controls and that has 100 or fewer full-time or full-time equivalent employees. The following data elements have been deleted from the FAFSA because of space constraints on the paper form: Questions 27 and 28 regarding the student's interest in student loans or work-study and questions 94–97 representing a fifth and sixth college choice. Question numbers refer to the 2006–2007 FAFSA. The Secretary requests comments on these proposed changes to wording, as well as suggestions for ways to further simplify the application for students, parents, and schools. In particular, the Secretary is interested in comments regarding the best manner in which to construct a simplified form for applicants who qualify for an automatic zero or simplified needs test EFC calculation, including applicants who now qualify based on receipt of benefits from a Federal means-tested benefit program. The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**. In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 31, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 15,400,321.

Burden Hours: 7,779,593.

Abstract: The FAFSA collects identifying and financial information about a student applying for Title IV, HEA program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used for determining a student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 03129. When you access the information collection, click on ''Download attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be e-mailed to *ICDocketMgr@ed.gov* or faxed to: (202) 245–6623. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

[FR Doc. E6–8707 Filed 6–5–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act; Notice of Meeting

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Thursday, June 15, 2006, 10 a.m.–12 Noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005. (Metro Stop: Metro Center).

AGENDA: The Commission will receive presentations on developing management guidelines for implementing new voting systems and administering elections. The Commission will receive reports on other administrative matters.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–5181 Filed 6–2–06; 12:58 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–277–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

May 31, 2006.

Take notice that on May 10, 2006, CenterPoint Energy Gas Transmission Company (CEGT), 111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP06–277–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, for authorization to abandon, in place and by sale, certain facilities located in Harrison County, Texas and Caddo Parrish, Louisiana. CEGT further requests a finding that certain facilities to be sold to Waskom Gas Processing Company (Waskom Gas), would be exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also 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, call (202) 502–8659 or TTY, (202) 208–3676.

Specifically, CEGT proposes to abandon its Line F–1–F and appurtenant facilities, two compressor units located at its Buckley Compressor Station. In addition, in conjunction with the proposed abandonment of Line F–1–

F, CEGT proposes to sell an approximately 13 mile segment of Line F–1–F to Waskom Gas to be used to gather natural gas into Waskom Gas' plant.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director—Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 (*http://www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: June 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8746 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–368–000]

El Paso Natural Gas Company; Notice of Request for Waivers

May 31, 2006.

Take notice that on May 24, 2006, El Paso Natural Gas Company (EPNG) filed proposals to waive the application of Maximum Delivery Obligation and Maximum Hourly Obligation Violation penalties in non-Critical Operating Conditions should a delivery point operator take gas on a basis not provided for in its Operator Point Aggregation Service Agreement during the months of June and July 2006. EPNG states that it proposes to waive the tariff provisions applicable to scheduling transportation service at the contract level so as to continue the use of Scheduling Accounts for the months of June and July 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 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 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 June 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8741 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–360–004]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

May 31, 2006.

Take notice that on May 24, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendices A, B and C to filing, which tariff sheets are proposed to be effective on January 1, 2005, October 1, 2005, and June 1, 2006, respectively.

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 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. E6–8745 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–46–000, et al.]

Aquila, Inc., et al.; Electric Rate and Corporate Filings

May 30, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Aquila, Inc.; Mid-Kansas Electric Company, LLC

[Docket No. EC06–46–000]

Take notice that on March 21, 2006, Aquila, Inc. (Aquila) tendered for filing copies of the proposed accounting entries for the transfer of certain facilities from Aquila to Mid-Kansas Electric Company, LLC under section 203 of the Federal Power Act.

Comment Date: 5 p.m. Eastern Time on June 9, 2006.

2. DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL05–63–004]

Take notice that on May 18, 2006, Midwest Independent Transmission System Operator, Inc. filed a refund report in compliance with the Commission's Orders issued November 29, 2005 and January 6, 2006.

Comment Date: 5 p.m. Eastern Time on June 8, 2006.

3. MidAmerican Energy Company; MidAmerican Energy Company

[Docket Nos. ER96–719–012; ER96–719–014; Docket Nos. ER96–719–006; EL05–59–000]

On May 19, 2006, MidAmerican Energy Company (MidAmerican) submitted for Commission approval in Docket Nos. ER96–719–006 and EL05–59–000 an uncontested offer of settlement. According to MidAmerican, the offer of settlement would dispose of all of the pending issues concerning MidAmerican's Sales Tariff, including its rates under Schedule A of that tariff.

The settlement agreement also constitutes an amendment to the pending compliance filing submitted by MidAmerican on April 3, 2006 in Docket Nos. ER96–719–012 and ER96–719–014.

Comment Date: 5 p.m. Eastern Time on June 12, 2006.

4. The City of Tacoma, a Municipal Electric Utility of the State of Washington, and the City of Seattle, a Municipal Electric Utility of the State of Washington, v. South Columbia Basin Irrigation District, an Electric Utility of the State of Washington, East Columbia Basin Irrigation District, an Electric Utility of the State of Washington, Quincy Columbia Basin Irrigation District, an Electric Utility of the State of Washington, and Grand Coulee Project Hydroelectric Authority, an Electric Utility of the State of Washington

[Docket No. TX06–3–000]

Take notice that on May 18, 2006, the City of Tacoma, Washington, Department of Utilities, Light Division, dba Tacoma Power and the City of Seattle, Washington, City Light Department (the cities) filed an application for Commission Order Directing Interconnections of South Columbia Basin Irrigation District, The East Columbia Irrigation District, Quincy Columbia Basin Irrigation District, and Grand Coulee Project Hydroelectric Authority to their Main Canal and Summer Falls hydroelectric project facilities, pursuant to sections 210 and 212 of the Federal Power Act. The cities also request expedited consideration and waiver of fees.

Comment Date: 5 p.m. Eastern Time on June 19, 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. E6–8734 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

May 31, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2468–191.

c. *Date Filed:* May 10, 2006.

d. *Applicant:* Consumers Energy Company (Consumers).

e. *Name of Project:* Croton.

f. *Location:* The project is located on Muskegon River in Newaygo County, Cadillac, Michigan. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Neustifter, Consumers Energy Company, One Energy Plaza, Jackson, MI 49201. Phone: (517) 788–2974.

i. FERC Contact: Gina Krump, *gina.krump@ferc.gov*, 202–502–6704.

j. *Deadline for filing comments and or motions:* June 30, 2006.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. Please reference ''Croton Hydroelectric Project, FERC Project No. 2468–191'' on any comments or motions filed.

k. *Description of the Application:* Consumers requests Commission approval to permit the dredging of sediment, and the excavation of a sediment trap in the Little Muskegon River arm of Croton reservoir. Specifically, the proposed dredging would cover an underneath area of approximately 1,300 feet (ft) x 48 ft, and the proposed excavation area would cover an underwater 300 ft x 50 ft the excavated sediment trap would be 8 ft deep. The submerged land involved in the dredging/excavation proposal is owned in fee by Consumers.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8743 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM06–16–000]

Mandatory Reliability Standards for the Bulk-Power System; Notice of Technical Conference

May 31, 2006.

On May 11, 2006, the Commission released a Staff Assessment of the North American Electric Reliability Council's (NERC) current reliability standards. The Staff Assessment is a preliminary evaluation intended to assist in developing the public record in anticipation of Commission action on NERC's April 4, 2006 petition for approval of reliability standards.

Take notice that the Federal Energy Regulatory Commission will hold a Technical Conference to consider NERC's April 4, 2006 petition and to address issues raised in the Staff Assessment. This Technical Conference will be held on July 6, 2006, in the offices of the Commission, 888 First Street, NE., Washington, DC, from approximately 9 a.m. until approximately 4 p.m. (EST). This conference will be held in the Commission Meeting Room on the second floor of the Commission. All interested persons may attend, and registration is not required. This will be a staff conference, but Commissioners may attend.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system and the calendar posting for this event seven calendar days after the Commission receives the transcript.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts; and offers access to the open meetings via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 (*sarah.mckinley@ferc.gov*).

Magalie R. Salas,

Secretary.

[FR Doc. E6–8744 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–301–000; ER06–301–001]

Xcel Energy Services, Inc.; Notice of Technical Conference

May 31, 2006.

Take notice that the Commission will convene a technical conference on Monday, June 12, 2006, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The technical conference will explore the issues raised by Xcel Energy Services, Inc.'s proposed Services H and I, as discussed in the Commission's order issued on May 5, 2006.[1] Those issues include why the transfer price proposed in Service Schedule H is different from the transfer price proposed in Service Schedule I, and why Xcel needs both service schedules.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Donna Brent at (202) 502–6646 or e-mail *donna.brent@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–8742 Filed 6–5–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Xcel Energy Services, Inc., 115 FERC ¶ 61,148 (2006).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0340; FRL–8180–3]

Draft Boutique Fuels List Under Section 1541(b) of the Energy Policy Act and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Energy Policy Act of 2005 includes a number of provisions addressing the issue of boutique fuels. Section 1541(b) of this Act requires EPA, in consultation with the Department of Energy, to determine the total number of fuels approved into all state implementation plans (SIPs) as of September 1, 2004, under section 211(c)(4)(C) of the Clean Air Act (CAA). The EPAct also requires us to publish a list of such fuels, including the states and Petroleum Administration for Defense District (PADD) in which they are used for public review and comment. Today we are publishing the draft list along with an explanation of our rationale in developing it. The list consists of seven different types of SIP boutique fuels.

DATES: Comments must be received on or before August 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0340, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2006–0340.
- Mail: Air Docket, Attention Docket ID No. EPA–HQ–OAR–2006–0340, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: USEPA, Air Docket, 1301 Constitution Ave, NW., Room B102, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2006–0340. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0340. Our policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means we 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 us without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD you submit. If we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, should not use any form of encryption, and should be free of any defects or viruses. For additional information about our public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Environmental Protection Agency, MC 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; e-mail address: *pastorkovich.anne-marie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit CBI to us through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD that you mail to EPA, mark the outside of the disk or CD as CBI and then identify electronically within the disk or CD the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rule or notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR part 2.

II. Publication of the Boutique Fuels List

A. Background

Under the Clean Air Act (CAA),[1] state fuel programs respecting a fuel characteristic or component that we have regulated under section 211(c)(1) are preempted. EPA may waive preemption through approval of the fuel program into a State Implementation Plan (SIP). Approval into the SIP requires a demonstration that the state fuel program is necessary to achieve the National Ambient Air Quality Standards (NAAQS)[2] that the plan implements. ''Necessary'' means that no other measures exist that would bring about timely attainment or that other measures exist and are technically possible to implement, but are unreasonable or impracticable.[3] These state fuels programs are often referred to as ''boutique'' fuels programs because they differ from the Federal fuel required in the area, and have been adopted by the state to address a specific local air quality issue. The issue presented by boutique fuels is that when events (such as hurricanes or pipeline and refinery breakdowns) lead to fuel supply shortages, varying fuel standards can complicate the process of quickly solving the problem. The Energy Policy Act of 2005 (EPAct) amends the CAA and places three additional restrictions on our authority to waive preemption by approving a state fuel into the SIP. These restrictions are:

- First, we may not approve a state fuel program into the SIP if it would cause an increase in the ''total number of fuels'' approved into SIPs as of September 1, 2004.[4] To implement this provision, we are required to determine the total number of fuels approved as of that date and to publish a list identifying the fuels, including the states and PADD in which they are used. We may remove a fuel from the list if it ceases to be included in the SIP, or if it is identical to a Federal fuel control. This removal does not reduce the total number of fuels authorized under the list, but in effect ''makes room'' for potential approval of state fuel programs that were not on the list as of September 1, 2004.[5]
- Second, in cases where our approval would not increase the total number of fuels on the list because the total number of fuels in SIPs at that point is below the number of fuels as of the September 1, 2004, then our approval requires a finding that the new fuel will not cause supply or distribution problems or have significant adverse impacts on fuel producibility in the affected or contiguous areas.[6]
- Third, we may not approve a state fuel unless that fuel is already approved in at least one SIP in the applicable PADD.[7]

In this **Federal Register** notice, we provide our provisional interpretation of the EPAct provisions and our determination of the total number of fuels approved under CAA section 211(c)(4)(C) as of September 1, 2004, based on this interpretation, and the resulting draft list of these fuels. We invite comment on all of these matters and after evaluating all comments we will issue a final list.

B. Fuel Type Versus State Specific Interpretation and Our Recommended Approach

The first step in determining the total number of fuels approved under section 211(c)(4)(C) is to interpret what is meant by the term ''total number of fuels.'' The EPAct does not define this term, and the legislative history is relatively limited and does not resolve what Congress meant. We believe that the central term ''total number of fuels'' is ambiguous and could potentially be interpreted in one of two basic ways:

- *Fuel Type Interpretation*—Each type or kind of fuel could be considered a separate fuel, without respect to the number of different state implementation plans that include such fuel. For example, all state fuels with a Reid Vapor Pressure[8] of 7.8 pounds per square inch (psi) could be considered one fuel in determining the total number of fuels approved as of September 1, 2004. While several states had a 7.8 psi RVP program on that date, they would not be treated as different fuels in determining the ''total number of fuels,'' but as different states using a single fuel type. For ease of reference this will be called ''the fuel type interpretation.'' This would result in seven (7) different fuel types.
- *State Specific Interpretation*—As an alternative to the ''fuel type interpretation,'' each individual state using a type or kind of fuel in a SIP could be considered a separate fuel. For example, each state having 7.8 psi RVP in its SIP could be treated as having a separate fuel for purposes of determining the ''total number of fuels.'' For ease of reference, this will be called ''the state specific interpretation.'' The state specific interpretation would lead to as many fuels as there are state fuel programs in the various PADDs and would result in 15 different fuels.

The two interpretations would lead to different results when considering approval of future state fuel programs. For example, under the fuel type interpretation, a state RVP program of 7.8 or 7.2 psi could generally be approved under the EPAct provisions, as long as that same RVP program was already in a SIP within that PADD. Under the fuel type interpretation, approval of that state RVP program would not increase the total number of

[1] See CAA section 211(c)(1), 42 U.S.C. 7545(c)(1).

[2] NAAQS are standards for ambient levels of certain air pollutants (e.g. ground-level ozone) and are designed to protect public health and welfare.

[3] See CAA section 211(c)(4)(C)(i), 42 U.S.C. 7545(c)(4)(C)(i).

[4] See CAA section 211(c)(4)(C)(v)(I), 42 U.S.C. 7545(c)(4)(C)(v)(I).

[5] See CAA section 211(c)(4)(C)(v)(II)–(III), 42 U.S.C. 7545(c)(4)(C)(v)(II)–(III).

[6] See CAA section 211(c)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(IV).

[7] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V). As discussed later in this notice, there is an exception to the PADD restriction for a 7.0 psi RVP program.

[8] Reid Vapor Pressure is the common measure of fuel volatility. Volatility is the tendency of fuel to evaporate.

approved fuels because that type of RVP program is already on the list. It would expand the number of states using that fuel type, but would not increase the number of fuel types. However, under the state specific fuel interpretation, the same state RVP program could not be approved unless some other state fuel program had been removed from the list, in effect ''making room'' for the newer program.

EPA recognizes that a few states had a 9.0 psi RVP fuel program in their SIP as of September 1, 2004. We do not believe that state RVP programs that require 9.0 psi should be included in the boutique fuels list required by EPAct. Beginning in 1989, we set RVP standards under CAA section 211(c) for gasoline sold during the summertime, in two phases (Phase I and II). Generally, under Phase I, which was effective in the summer of 1989, we set the RVP level at 10.5 psi in the northern states, and under Phase II, which was effective in the summer of 1992, we set RVP levels at 9.0 psi in the northern states. Between 1989 and 1992, we also approved state 9.0 psi RVP fuel programs into the SIPs for several northeastern states, under CAA section 211(c)(4)(C). These fuel programs continue to be included in the state SIPs. As earlier mentioned, the EPAct requires that we publish a list based on the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004.[9] We are also required to remove a fuel from the published list if the fuel is ''identical to a Federal fuel formulation implemented by the Administrator.''[10] Because the current Federal RVP requirement in all of these northeastern states is 9.0 psi RVP, reading these provisions literally would require EPA to include 9.0 psi RVP on the list but to remove it from the list at the same time. We believe, however, that Congress would not have intended this somewhat illogical approach, and we also do not believe that 9.0 psi RVP would be viewed as contributing to the proliferation of ''fuel islands'' that Congress was concerned about in enacting this new provision. We believe the appropriate way to reconcile these apparently conflicting provisions are not to include the current state 9.0 psi RVP programs on the list.

In evaluating these two interpretations, we also looked to the EPAct provisions related to the boutique fuels list. The EPAct requires that we publish a list based on the total number of fuels approved into SIPs as of September 2004, identifying usage by state and PADD.[11] Under the state specific fuel interpretation, the requirement to ''includ[e] the states * * * in which they are used'' in the published list of fuels would appear to be redundant, as under that interpretation the identification of the fuel is by definition state specific. Under the fuel type interpretation, the requirement to provide usage by state and PADD is logically included for informational purposes.

We must remove a fuel from the published list if the fuel is removed from ''a [SIP]'' or if ''a fuel in a [SIP]'' is identical to a federal fuel.[12] Under the state specific interpretation, the use of the word ''a'' would mean that modification of a single SIP program would affect the list of fuels, regardless of fuel type. Under the fuel type interpretation, ''a [SIP]''would have to be read to mean all SIPs. A fuel type would be removed from the list only if it was removed from all SIPs with that type of fuel program.

The EPAct refers to a ''new fuel.''[13] Specifically, it provides that before approving a ''new fuel'' into a SIP, where there is room on the list for additional fuels, we must make a finding concerning impact on fuel supply, distribution, and producibility. Under the state specific fuel interpretation, a ''new fuel'' would be a new state specific fuel that EPA has not already approved into a SIP. Under the fuel type interpretation, the term ''new fuel'' is problematic. A new fuel type would be a fuel type that is not already on the list. However, the PADD restriction[14] would already preclude the approval of a new fuel type, because a new fuel type would not already be approved into a SIP in a PADD. There is, however, an exception to the PADD restriction, for a 7.0 psi RVP program, such that there are limited circumstances that would give meaning to the term ''new fuel'' under the fuel type interpretation.

The EPAct constrains our approval of ''any fuel unless that fuel'' was already approved into at least one SIP in the applicable PADD.[15] Under the state specific fuel interpretation, a state fuel could not be approved unless ''that fuel'' had already been approved into another state's SIP. In that context, ''that fuel'' would have to refer to the type of fuel, not the state specific fuel, as the state specific fuel could not be already approved into another state's SIP. Under the fuel type interpretation, this provision requires that at least one SIP in the PADD already have a program for that fuel type.[16]

We believe that the EPAct boutique fuels provisions are ambiguous and are susceptible to two plausible interpretations. However, the fuel type interpretation appropriately balances the concerns at the heart of the EPAct provision by preserving some flexibility for states to adopt state fuel programs that can be useful in attaining the NAAQS, while limiting the potential for fuel supply and distribution concerns by controlling the growth in state boutique fuel programs.[17] We recognize that the PADD restriction[18] places a strong constraint on future approval of state specific fuels under either interpretation because it effectively limits state fuels to the types currently in existence and to the PADDs in which they are currently found. For a state fuel program to be approved into a SIP in the future, the fuel type must have been approved into a SIP in that PADD as of September 1, 2004 (with the one exception for 7.0 psi RVP programs). Under the fuel type interpretation, states could generally adopt fuels programs but only in those limited cases where that fuel type is already found in their PADD. This addresses the ''fuel islands'' concerns, while preserving an important degree of state flexibility in developing a state's air pollution control program. Under the state specific interpretation there is little, if any, opportunity for a state to adopt a fuel program in the future. This is because, in addition to the PADD restriction, some other state's fuel program would have to be removed from the list to make room for addition of the new state fuel program.

We believe the fuel type interpretation is the more appropriate of the two interpretations from the standpoint of state flexibility in establishing air pollution control programs. Our suggested interpretation would also strictly limit the burden of new state fuel programs upon regulated

[9] See CAA section 211(c)(4)(C)(v)(II), 42 U.S.C. 7545(c)(4)(C)(v)(II).

[10] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[11] See CAA section 211(c)(4)(C)(v)(II), 42 U.S.C. 7545(c)(4)(C)(v)(II).

[12] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[13] See CAA section 211(c)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(IV).

[14] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

[15] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

[16] As noted above, Congress exempted 7.0 psi RVP programs from this PADD restriction. While the other EPAct provisions on boutique fuels do apply to 7.0 psi RVP programs, the specific limitation on PADD usage in section 211(c)(4)(C)(v)(V) does not apply. This is the case under either interpretation.

[17] See 51 Cong. Rec. H6949–01, 6968–6969.

[18] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

industry, including small businesses. The fuel type interpretation, combined with the PADD restriction, clearly limits the introduction of new boutique fuels, avoiding future pressure on the production, distribution and storage of fuels, including small entities involved in those industries. We believe that issuing this list will reduce future burdens on all parties in the fuel production and distribution system, whether large entities or small entities. We believe that issuing this list will have no adverse impact on any such parties.

For the reasons described above, we are issuing a draft list of seven (7) fuel types, as described in the following section.

C. Draft Boutique Fuel List

A list of the seven (7) fuel types approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, the states, and the PADD they are used in is set forth in the following Table:

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004

[Draft based upon fuel type interpretation]

Type of fuel control	PADD	Region—state
RVP of 7.8 psi	1	1—ME (May 1–Sept. 15).
	1	3—PA
	2	5—IN
	2	5—MI
	3	6—TX (May 1–Oct. 1)
RVP of 7.2 psi	2	5—IL
RVP of 7.0 psi	2	7—KS
	2	7—MO
	3	4—AL
	3	6—TX
	5	9—AZ (June 1–Sept. 30).
RVP of 7.0 psi with sulfur provisions	1	4—GA
Low Emission Diesel	3	6—TX
Cleaner Burning Gasoline	5	9—AZ
Winter Gasoline (aromatics & sulfur)	5	9—NV

We would use this recommended list in implementing the three EPAct criteria for approval of a state fuel into a SIP. Specifically:

- We could not approve a state fuel if it would cause an increase in the total number of fuel types on the list.[19]
- We would remove a fuel from the list if that fuel type either ceased to be included in any SIP or if it became identical to a Federal fuel. Removal of a fuel type from the list, however, would not change or impact the total number of fuel types authorized.[20]

Our authority to approve a state fuel is limited to fuel types that are already in a SIP in that PADD.[21] This restriction would not extend to the 7.0 psi RVP fuel type. EPA's approval of a 7.0 psi RVP program would, however, be subject to the other EPAct provisions.

We are not recommending a state specific interpretation, as explained above. However, we have generated the following table to illustrate the list under that alternative:

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004 ALTERNATE APPROACH

[Draft based upon state specific interpretation]

Type of fuel control	PADD	Area/state
RVP of 7.0 psi	2	Kansas City, MO (3 counties).
RVP of 7.0 psi	2	Kansas City, KS (2 counties).
RVP of 7.0 psi	3	El Paso, TX (El Paso County).
RVP of 7.0; extended summer season from June 1 to September 30.	5	Phoenix, AZ (Maricopa County).
RVP** of 7.0 psi; includes a provision addressing sulfur content	1	Atlanta, GA (45 county area).
RVP of 7.0 psi; sulfur content and crediting provision expired in 2004, when overtaken by Federal Tier 2 limit.	3	Birmingham, AL (2 counties).
RVP of 7.2 psi	2	E. St. Louis, IL (3 counties near St. Louis, MO).
RVP of 7.8 psi	1	Pittsburgh, PA (7 county area).
RVP of 7.8 psi	2	Clark & Floyd, IN (2 counties near Louisville, KY).
RVP of 7.8 psi	2	Detroit, MI (7 counties).
RVP of 7.8 psi; extended summer season from May 1 to September 15.	1	Southern, ME (7 county area).
RVP of 7.8; extended summer season from May 1 to October 1	3	Central & Eastern, TX (95 county area).
Low emission diesel fuel with maximum 10% volume aromatic hydrocarbon content and minimum cetane of 48 required. (Allows substitute Plans w/equivalent NO_X reductions).	3	Houston & Dallas, TX.
Cleaner Burning Gasoline; similar to Federal RFG or California RFG in summer; in winter similar only to California RFG.	5	Phoenix, AZ (Maricopa County).

[19] See CAA section 211(c)(4)(C)(v)(I), 42 U.S.C. 7545(c)(4)(C)(v)(I).

[20] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[21] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V) and footnote 14.

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004 ALTERNATE APPROACH—Continued

[Draft based upon state specific interpretation]

Type of fuel control	PADD	Area/state
Winter gasoline controls on aromatic hydrocarbons and sulfur	5	Las Vegas, NV.

We invite comment on all elements of this notice, especially with regard to the recommended and alternate lists and our interpretation of the relevant provisions of the EPAct. Interested parties should submit comments according to the guidelines described at the beginning of this notice. After fully considering comments received, we will generate and publish a final list in the **Federal Register**.

Dated: May 31, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–8726 Filed 6–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8180–5]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National Advisory Committee (NAC) and the Governmental Advisory Committee (GAC) to the U.S. Representative to the Commission for Environmental Cooperation (CEC). Vacancies on these two committees are expected to be filled by November, so we encourage nominations to be submitted by July 14, 2006.

ADDRESSES: Submit nominations to: Oscar Carrillo, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601–E), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, U.S. Environmental Protection Agency (1601–E), Washington, DC 20004; telephone (202) 233–0072; fax (202) 233–0060; e-mail *carrillo.oscar@epa.gov.*

SUPPLEMENTARY INFORMATION: The National Advisory Committee and the Governmental Advisory Committee advise the EPA Administrator in his capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), the North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the (NAAEC). The National Advisory Committee consists of 12 representatives from environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local, and tribal governments. Members are appointed by the EPA Administrator for a two-year term with the possibility of reappointment. The Committees usually meet 3 times annually and the average workload for Committee members is approximately 10 to 15 hours per month. Members serve on the Committees in a voluntary capacity. However, EPA provides reimbursement for travel expenses associated with official government business. The following criteria will be used to evaluate nominees:

- Extensive professional knowledge of the subjects the Committees examine, including trade and the environment, the NAFTA, the NAAEC, and the CEC.
- Represent a sector or group that is involved in the issues the Committees evaluate.
- Senior-level experience that fills a need on the Committees for their particular expertise.
- A demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.

Nominees will also be considered with regard to the mandates of the Federal Advisory Committee Act that require the Committees to maintain diversity across a broad range of constituencies, sectors, and groups. Nominations for membership must include a cover letter and a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: May 16, 2006.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. E6–8724 Filed 6–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0384; FRL–8081–6]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of human subjects' research.

DATES: The public meeting will be held June 28–30, 2006 from 8:30 a.m. to approximately 5 p.m., eastern time.

Location: One Potomac Yard, 2777 Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the Designated Federal Officer (DFO) at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Paul I. Lewis, Designated Federal Officer (DFO), EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8381; fax: (202) 564–2070; e-mail addresses: *lewis.paul@epa.gov.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2006–0384, by one of the following methods:

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

E-mail: *ORD.Docket@epa.gov.*

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2006–0384. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0384. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by mid June 2006. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov website and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support your views.

d. Provide specific examples to illustrate your concerns.

e. 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.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2006–0384 in the subject line on the first page of your request.

a. *Oral comments.* Requests to present oral comments will be accepted up to June 21, 2006. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, June 21, 2006, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the

organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.*, overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least 5 business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, June 21, 2006. You should submit your comments using the instructions in Unit 1.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

EPA will be presenting for HSRB review the results of a completed study involving intentional exposure of human subjects to the pesticide active ingredient, chloropicrin. In addition, EPA will be seeking the Board's advice on: Draft guidelines for conducting research on the efficacy of insect repellent products; insect repellent human studies protocols and pesticide agricultural handler human studies protocols. EPA will also be providing an informational presentation of its proposed workshop on Best Practices for EPA, National Exposure Research Laboratory Observational Human Exposure Measurement Studies. Finally, the Board may be reviewing draft HSRB reports for subsequent Board approval.

Dated: June 1, 2006.

George Gray,

Science Advisor.

[FR Doc. E6–8725 Filed 6–5–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 8, 2006, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- May 11, 2006 (Open and Closed).

B. New Business

- Texas Land Bank, FLCA–ACA Conversion.

C. Reports

- Loan Syndications Status Report.
- FCS Building Association Quarterly Report.

Closed Session*

- Office of Secondary Market Oversight.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: June 1, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–5161 Filed 6–2–06; 9:04 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for the National Faith-Based and National Community Cardiovascular Disease Prevention Programs for High-Risk Women

AGENCY: Office on Women's Health, Office of Public Health and Science, Office of the Secretary, DHHS.

Announcement Type: Competitive Cooperative Agreement FY 2006 Initial announcement.

Funding Opportunity Number: Not applicable.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number is pending.

DATES: Letter of Intent: June 21, 2006.

Application Deadline: July 6, 2006.

Anticipated Award Date: October 4, 2006.

SUMMARY: The Office on Women's Health (OWH) and the Office of Minority Health (OMH) within the Office of Public Health and Science, and the Office of Research on Women's Health (ORWH) within the National Institutes of Health (NIH), Department of Health and Human Services (DHHS), are interested in establishing national faith-based and/or national community cardiovascular disease (CVD) prevention programs.

The purpose of the programs is to reduce CVD mortality and morbidity among high-risk women in the United States through medical screening and risk behavior modification. The CVD prevention programs will be targeted towards high-risk racial and ethnic minority women, aged 40 years and older; however, all high-risk women shall be eligible to participate in the programs regardless of race, religion, or age.

Each grantee shall implement one program in 10 faith-based or community-based sites across the United States, including urban and rural areas. The main goal will be for program participants to increase their level of physical activity and establish or maintain a healthy weight over the course of the program. The educational phase of the program shall consist of eight bi-weekly sessions that shall counsel women on all of the major risk factors for CVD—smoking, Type 2

diabetes, hypertension, cholesterol, obesity, and physical inactivity—while primarily focusing on controlling weight and increasing physical activity. The maintenance phase of the project shall consist of regularly scheduled, interactive maintenance sessions that shall be designed by program participants. During both phases, participants will be screened for all six major CVD risk factors. All counseling and maintenance sessions shall include small group discussions and a physical activity component focused on reducing risk.

These awards focus on President Bush's agenda to broaden Federal efforts to work with faith-based and community organizations. As such, each applicant must either: (1) Be a national faith-based or national community organization that has a network of at least 10 sites across the United States with large populations of high-risk racial and ethnic minority women, aged 40 years and older, or (2) partner with a national faith-based or national community organization that has a network of at least 10 sites across the United States with large populations of high-risk racial and ethnic minority women, aged 40 years and older. Non-profit and for profit organizations that meet the above criteria are eligible to apply. Faith-based organizations, community-based organizations, tribal entities, educational institutions, community health centers, and government entities that meet the above criteria are also eligible and encouraged to apply.

I. Funding Opportunity Description

1. Authority

This program is authorized by 42 U.S.C. 300u–2(a) and 42 U.S.C. 287d.

2. Purpose

This cooperative agreement shall fund national faith-based and/or national community cardiovascular disease (CVD) clinical prevention programs to reduce cardiovascular disease mortality and morbidity among high-risk women in the United States through counseling and risk behavior modification. The CVD prevention programs will be targeted towards high-risk racial and ethnic minority women, aged 40 years and older, however, all high-risk women shall be eligible to participate in the programs regardless of race, religion, or age. Each grantee shall implement one program in 10 faith-based or community-based sites across the United States, including urban and rural areas. The main goal will be for program participants to increase their level of physical activity and establish or maintain a healthy weight over the course of the program.

3. Requirements

A. Sites and Populations

This cooperative agreement grant announcement focuses on President Bush's agenda to broaden Federal efforts to work with faith-based and community organizations. For more information on the Administration's Faith-Based Initiative, please see the following Web site: *http://www.whitehouse.gov/government/fbci/index.html*.

The grantee shall select 10 faith-based or community-based sites with large populations of high-risk racial and ethnic minority women where the program shall be implemented. The grantees' access to these population(s) through the faith-based or community-based sites should be demonstrated by a history of collaboration or direct programmatic delivery. All sites should be chosen from within the network of the National faith-based or National community organization. Examples of sites include community health centers, retirement centers, group counseling session centers, child care centers, fitness and/or recreation centers, community clinics, and places of worship. The 10 sites must not be located in only one section of the country; they must be geographically dispersed throughout the United States, including urban and rural areas. The grantee shall sign an MOU with each site that describes the expectations and duties of each party.

The grantee shall target high-risk women aged 40 years and older who are members of at least one racial and ethnic minority population; however, all high-risk women shall be eligible to participate in the program, regardless of race, religion, or age.

B. Phase I: Program Planning, Development, and Recruitment

i. Post-Award Orientation

The grantee shall send two or three representatives to a two-day post-award orientation meeting in Washington, DC. This meeting shall occur within 2 months of grant award. The project manager of the program and a representative who holds a leadership position in the national faith-based or national community organization must attend the meeting. Travel funds for this meeting must come out of the total award funding and should be included in the applicant's cost proposal.

The purpose of the post-award orientation meeting will be to clarify tasks and requirements and answer any questions that grantees may have. Grantees shall also share their program plans, approaches, and best practices with each other through presentations and round table discussions.

ii. Curriculum Development

A multi-disciplinary planning committee shall be formed consisting of representatives from the national faith-based or national community organization, health care professionals and counselors, and high-risk women in the community. The grantee will consult with the planning committee to design eight educational sessions that shall counsel women on all of the major risk factors for CVD (smoking, Type 2 diabetes, hypertension, cholesterol, obesity, and physical inactivity), ways to modify risk, and the benefits associated with risk modification. The prevention of stress and the signs/symptoms of heart attack and stroke in women shall also be addressed. The format of the health sessions will be specified in subsequent sections of this funding opportunity description.

Existing curriculum from successfully tested and evaluated CVD clinical prevention intervention programs should be obtained and adapted for this program. The OWH and ORWH/NIH will not provide the grantee with curriculum. The curriculum and group counseling session materials must be both culturally competent and women-centered (see section VIII.2 for definitions).

iii. Site Leaders and Site Leader Training

One site leader from each of the 10 sites will be designated to promote, coordinate, and facilitate the clinical prevention program at his/her particular site. This person will be a faith-based or community leader or a health professional affiliated with the site. Each site shall be given a stipend for their involvement; this stipend shall include compensation for the site leader. The stipend will not exceed $5,000 per site.

All site leaders shall be required to attend a one-day training course, developed and administered by the grantee. This course must take place in one location and site leaders must attend in person. The training course will introduce site leaders to the goals, structure, and subject matter of the program. The training session will also equip site leaders with the materials, strategies, and resources necessary to implement the program at their sites. Upon completion of training, each site leader will receive a training certificate.

After receiving training, site leaders will coordinate and host all group counseling sessions and maintenance sessions at their specific sites.

iv. Recruitment and Retention

Each site leader will be responsible for promoting the prevention program and clinical speakers and participants at her site. Each site shall aim to recruit an average of 20 to 50 participants. High-risk racial and ethnic minority women aged 40 years and older shall be targeted; however, all high-risk women shall be eligible to participate in the program, regardless of race, religion, or age. All participants must read and sign a written consent form before starting the program. The grantee shall prepare the draft consent form in lay-language and the multi-disciplinary planning committee must review and approve this form. The grantee shall also obtain appropriate institutional IRB approval, if applicable. The grantee will also create postcard reminders (or e-mail reminders if participants have easy access to the Internet) for each group counseling session and maintenance session. Each site leader will mail or e-mail the reminders to each participant. The site leader will also make reminder phone calls as necessary.

All counseling sessions and maintenance sessions shall be focused on mutual support for participants in their efforts to reduce the risk associated with increased weight and physical inactivity. Site leaders will obtain and distribute incentives for attendance (*e.g.,* door prizes) and incentives to motivate participants to modify risk factors during the course of the program. Prizes will be offered to the participants who achieve their individualized risk modification goals for each session. Positive reinforcement and open communication as well as a healthy sense of competition must be encouraged. Incentives and prizes may be solicited as donations from private sources.

v. Resource Establishment

The grantee must assist site leaders in compiling a local directory of cardiovascular resources (cardiologists, dieticians, Type 2 diabetes experts, weight loss and exercise programs, public health screening and diagnosis information) available in the community of each site, including health care alternatives for the uninsured and under insured women. The grantee shall establish a national Web site or enhance an existing organization's Web site to provide cardiovascular support and information online. These Web sites shall be linked to the OWH's For Your Heart Web site at *http://www.4women.gov/hhs* and the National Heart, Lung and Blood Institute's Heart Truth Campaign Web site *http://www.nhlbi.nih.gov/health/hearttruth/*.

The grantee shall publish a print and/or Web-based newsletter to promote the program, provide additional cardiovascular disease information, and highlight progress made by individual sites and participants. The newsletter will be distributed to all 10 sites on a monthly basis.

C. Phase II: Group Counseling Sessions

i. Overview

Each faith-based or community-based site will host eight bi-weekly group counseling sessions over a period of four months. The sessions can be physically located at the faith-based or community-based site or at any other appropriate clinical facility in the community. These sessions shall address the six major risk factors for CVD (smoking, Type 2 diabetes, hypertension, cholesterol, obesity, and physical inactivity), ways to modify risk, and the benefits associated with risk modification. The prevention of stress and the signs/symptoms of heart attack and stroke in women shall also be addressed during at least one of the eight group counseling sessions. Sessions may include medical screening, clinical lectures, health demonstrations, video presentations, activities, etc. Each session must also incorporate some form of low to moderate physical activity (such as walking, yoga, or aerobics). Participants shall be encouraged and organized to meet in groups at least once a week to engage in some form of physical activity.

Additionally, each session shall include a small group counseling discussion component that will focus on encouraging participants to incorporate weight control strategies and physical activity into their daily lives. Participants shall be divided into small counseling groups according to criteria chosen by the grantee. These criteria may be based on Prochaska's Stages of Change model (1), demographics, risk factor profiles, etc. During the group discussion component, participants should discuss self-monitoring efforts and establish risk modification goals. The grantee will consult and utilize qualified cardiologists, endocrinologists, nurses, dieticians, physical exercise and other health professionals in the development and implementation of the curriculum and small group discussions.

ii. Group Counseling Sessions—Session #1: Screening and Program Introduction

During the first group counseling session, screening for all six major CVD risk factors shall be conducted for each participant (weight measurements should be kept confidential) to establish baseline measurements. (**Note:** Fasting blood tests must be used to screen for cholesterol and Type 2 diabetes.) The grantee may solicit local health care organizations, drug stores, and/or other private sources to donate or loan screening equipment, giving proper acknowledgment for their assistance. Additionally, health professionals who volunteer to present at counseling sessions can be asked to bring equipment with them and help conduct the screenings. Alternatively, grantees may use grant funds to purchase screening equipment and supplies.

The importance of weight control and physical activity will be introduced and emphasized as the primary goal of the program. Daily weight and physical activity self-monitoring materials (diaries, logs, etc.) will be distributed and explained. The site leader should also discuss the reward system for reaching risk modification goals. Moreover, the first session should include a basic orientation on how to use the Internet. The orientation shall include instruction on how participants who do not own computers can access computers that are available for public use. The format of the orientation may include a hands-on demonstration, pictorial diagrams, and/or written instruction. This award shall not pay for computers.

During the first counseling session, each participant shall also be administered a test to determine baseline knowledge of CVD and its risk factors. Additionally, each participant shall assess her own personal CVD risk profile and Stage of Change (1) for the six major CVD risk factors. One tool that can be used to assess a woman's Stage of Change for each major CVD risk factor can be found on the DHHS/OWH's For Your Heart Web site at *http://www.4women.gov/hhs.* Information from this Web site can also be incorporated into the curriculum for subsequent sessions.

iii. Group Counseling Sessions #2–7: Risk Factors

After the first introductory group counseling session, the following six group counseling sessions will be devoted to counseling participants about one CVD risk factor, so that all six of the major risk factors' smoking, Type 2 diabetes, hypertension, cholesterol,

obesity, and physical inactivity are covered. In addition, key lessons learned at previous sessions will be reviewed at each of the following sessions to reinforce risk factor knowledge.

iv. Group Counseling Session #8: Screening and Wrap-up

During the eighth and final group counseling session, participants shall be screened again for all six major CVD risk factors and each participant shall assess her own personal CVD risk profile and Stage of Change. Each participant shall also be administered an intake form to determine knowledge of CVD and its risk factors. Additionally, participants shall be asked to provide feedback regarding their experience in the program and evaluate the program. Responses will be used to aid participants in designing the maintenance phase of the program. Participants will also decide on a plan of action for follow-up maintenance sessions.

D. Phase III—Maintenance Sessions

The maintenance sessions will take place over a period of three months directly following the group counseling sessions (Phase II). With the aid of the site leader, participants shall decide on the number, frequency, and format of the maintenance sessions. These sessions may include any or all of the following: Additional group counseling seminars, screenings, testimonials, personal counseling, field trips (*e.g.,* trips to fitness centers or trips to grocery stores and restaurants to practice selecting healthy foods), etc. However, each session must include a physical activity and a small group discussion component. In addition, participants shall be encouraged and organized to meet in smaller groups at least once a week to engage in some form of physical activity.

At each site, the format of each maintenance session should be clearly outlined and documented by the site leader (what type of activity, duration of activity, material covered, location etc.). During the last maintenance session, participants will be screened again for all six major CVD risk factors and each participant shall assess her own personal CVD risk profile and Stage of Change. Each participant shall also be administered a test to determine knowledge of CVD and its risk factors. Additionally, participants shall be asked to give feedback and evaluate the program.

E. Phase IV—Program Evaluation/Write-up

Screening, knowledge, Stage of Change (1), and personal health risk profile data shall be obtained from three assessment points the first (baseline) and last group counseling session and the last maintenance session. (**Note:** Fasting blood tests must be used to screen for cholesterol and Type 2 diabetes during these three assessment points.) Data shall also be obtained from self-monitoring materials and from feedback and evaluation forms. Grantees may choose to use any appropriate assessment tools, survey instruments, self-monitoring and evaluation materials to collect data. All data collection materials must be reviewed and approved by the multi-disciplinary planning committee. In addition, grantees shall be required to include a core set of screening and evaluation items that will be prescribed by the OWH. These items will be determined during and after the post-award orientation meeting and will most likely consist of items developed by one or more of the grantees.

The grantee shall design one centralized database, collect all participant data from the site leaders, and enter data into the database. This data shall be kept confidential through use of unique identifying numbers. Baseline and follow-up data must be analyzed to quantitatively evaluate the program's effectiveness at two different intervals—after the end of the group counseling sessions and after the end of the maintenance sessions. The program evaluation must be able to demonstrate, at minimum, the following desired program outcomes:

Primary Outcome Measures:

1. Increase the proportion of participants who are aware that heart disease is the #1 killer of women.

2. Increase the proportion of participants who are aware of the early warning symptoms and signs of a heart attack and the importance of accessing rapid emergency care by calling 911.

3. Increase the proportion of participants who know the major risk factors for CVD and how to modify those risk factors.

4. Increase the participant's knowledge of CVD resources in the community.

5. Decrease the proportion of participants who are obese.

6. Decrease the proportion of participants who are overweight.

7. Increase the proportion of participants who engage regularly in moderate physical activity (outside of program sessions).

8. For each CVD clinical risk factor, move 50% of participants up at least one Stage of Change (1).

Secondary Outcome Measures:

1. Decrease the proportion of participants who smoke.

2. Increase the proportion of participants with Type 2 diabetes at baseline whose Type 2 diabetes is under control.

3. Increase the proportion of participants with high blood pressure at baseline whose blood pressure is under control.

4. Decrease the proportion of participants with high total blood cholesterol.

The evaluation should also address the following questions:

1. Did participants evaluate the program favorably?

2. Did the program meet the needs and expectations of the participants?

3. What changes do the participants suggest?

Emphasis should be placed on aligning program outcomes and targets with the objectives and targets of Healthy People 2010. More information on the Healthy People 2010 objectives may be found at *http://www.health.gov/healthypeople.* Each grantee should also take into account the baseline characteristics of the potential program participants when setting outcome targets.

The Time Chart below summaries each phase of the CVD program.

Phases	Activity	Description	Duration (months)
	CVD Program	National Faith-Based and National-Community Cardiovascular Disease Prevention Programs for High-Risk Women (CVD).	18

Phases	Activity	Description	Duration (months)
Phase I	Program Planning & Recruitment.	Orientation Session, Program Development, Formation of a Multi-disciplinary Planning Committee. Selection of Site Leaders, Site Leader Training, Recruitment and Retention. Resource Establishment, Develop DataBase.	1–8
Phase II	Group Counseling Sessions.	Host eight group counseling sessions: Group Counseling Session No. 1—Screening and Program Introduction. CVD Pre-knowledge test administered to all program participants. Group Counseling Session Nos. 2–7—CVD Risk Factors discussion. Group Counseling Session No. 8—Participants screened again for all six CVD risk factors. Participants will assess their own personal CVD risk profile and Stage of Change, Post CVD knowledge test administered to all participants. Participants prepare an evaluation of the program.	9–12
Phase III	Maintenance Sessions.	Site leaders will assist participants to design a format for maintenance sessions Screening of all participants for all six CVD risk factors Assessment of risk profile and Stage of Change. CVD post knowledge test administered. Program Evaluation completed.	13–15 (six sessions.)
Phase IV	Program Evaluation and Write-Up.	Data entered into centralized database. Data analyzed to evaluate the program's effectiveness. Incorporate mutually agreed upon edits from the DHHS/OWH into final copy. Submit second financial status report as an appendix to the final report Participate in a committee with other grantees and DHHS/OWH staff to prepare a joint manuscript. Prepare a draft of the final report.	16–18

OWH shall site visit at least 4 sites per grantee during Phases II and/or Phase III. The grantee shall participate in monthly conference calls with the OWH and other grantees. The grantee shall also host a separate monthly conference call with all site leaders and make additional contact with individual sites as necessary via e-mail and phone calls. The grantee shall prepare a progress report that outlines the status and progression of the project every 3 months (there will be a total of 5 progress reports). The grantee shall prepare a final report that describes the results from the program evaluation and all project activities for the entire 18-month period of the program. OWH shall provide an outline of the final report format and templates for required tables. A draft of the final report must be submitted electronically and in hard copy format six weeks prior to the end date of the award. OWH will review the draft. Suggested revisions will be discussed individually during a conference call with each grantee. The mutually agreed upon revisions must be incorporated into the final report by the end date of the award.

Finally, the grantee shall assign one authorized staff member to participate in a committee with other grantees and OWH to prepare a joint manuscript suitable for publication in a peer-reviewed journal. This manuscript shall combine and summarize data from all programs into one final evaluation.

II. Award Information

Under this announcement, OWH and ORWH/NIH anticipate making, through the cooperative agreement grant mechanism, one or two new 18-month awards by October 4, 2006. Approximately $500,000 in FY 2006 funds is available to make awards up to $100,000 total cost (direct and indirect) for an 18-month period. The actual number of awards made will depend upon the quality of the applications received and amount of funds available for the program. The government is not obligated to make any awards as a result of this announcement.

Under this cooperative agreement, the duties of the grantee and the Federal Government are described below. The OWH will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of program activities. This program will be a model; as such, the Federal Government may replicate the clinical prevention program and/or use the intervention materials both during and after the period of performance. The grantee may copyright any work that is developed, or for which ownership was purchased, under the award, but DHHS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. In addition, the grantee and the national faith-based or community partner are encouraged to sustain the program after the end of award and expand it to other sites within its network.

The grantee shall complete the requirements described in the Funding Opportunity Description. Specifically, the grantee will:

- Submit a work plan, task outline, and schedule of activities within one month of award.
- Attend a two-day post-award orientation meeting in Washington, DC within two months of grant award. (Travel funds for this meeting must come out of the total award funding and should be included in the applicant's budget justification.)
- Participate in monthly conference calls with the OWH and other grantees.
- Host a monthly conference call with all site leaders and make additional contact with individual sites as necessary via e-mail and phone calls.
- Prepare and submit progress reports that outline the status and progression of the program every 3 months.
- Form a multi-disciplinary planning committee consisting of representatives from the national faith-based and/or national community organization, health care professionals and counselors, and high-risk women in the community.
- Select 10 faith-based or community-based sites in both urban and rural areas throughout the United States that are willing to participate in the program, and sign an MOU with each site.
- Select site leaders at each site.
- Establish and promote a national Web site or enhance an existing

organization's Web site to provide cardiovascular support and information online.

• Consult with the planning committee to develop eight group counseling sessions that address all of the major risk factors for coronary heart disease and stroke. Curriculum should be adapted from existing models of CVD prevention intervention curriculum that have been successfully tested and evaluated.

• Prepare or obtain group counseling session materials for the eight group counseling sessions (*e.g.,* instructional manual, educational sessions and/or exercise videos, booklets, etc.).

• Develop small group discussion format for each session focusing on encouraging participants to incorporate weight control strategies and physical activity into their daily lives.

• Develop instructional manual for the physical activity component of each educational session and maintenance session.

• Develop self-monitoring risk modification materials (logs, diaries, etc.) that are user-friendly and allow participants to track regular physical activity and weight control behaviors.

• Develop pre- and post-evaluation materials and survey instruments (*e.g.*, knowledge tests, screening data collection forms, risk factor profile assessment tools, and qualitative feedback forms).

• Prepare a draft consent form in lay-language, obtain appropriate institutional IRB approval, if applicable, and obtain consent from all program participants.

• Develop program promotional materials (*e.g.*, flyers, pamphlets, etc.).

• Develop postcard or e-mail reminders for each counseling session and maintenance session.

• Design one-day site leader training course.

• Develop materials for one-day site leader training course (training manual, certificates, etc.).

• Transport site leaders to the training session and execute training session.

• Reproduce all group counseling sessions, self-monitoring, and evaluation materials and deliver copies to each site leader.

• Reproduce reminder postcards/e-mails, consent document and promotional materials and deliver to each site leader.

• Design a print and/or web-based newsletter.

• Distribute newsletter to each site on a monthly basis.

• Assist site leaders in compiling a local directory of cardiovascular resources available in the community for each site.

• Assist site leaders in scheduling counseling sessions at each site.

• Assist site leaders in obtaining medical screening equipment, obtain clinical personnel, and participation incentives.

• Assist site leaders in coordinating medical screenings and administering evaluation materials.

• Assist site leaders in obtaining clinical speakers for the sessions (*e.g.*, nurses, physicians and other health care professionals) and conducting Web site training.

• Assist site leaders with resources necessary to support the format of the maintenance sessions chosen by the participants.

• Collect all participant data using standard data collection forms.

• Enter all data obtained from each site into centralized database using unique identifiers for each participant.

• Analyze data using appropriate statistical software and submit a draft of the FINAL REPORT six weeks prior to the end date of the grant award.

• Incorporate mutually agreed upon edits from the OWH into FINAL REPORT by the end date of the award.

• Assign one staff member to participate in a committee with other grantees and OWH and prepare a joint manuscript suitable for publication in a peer-reviewed journal.

• Adhere to all program requirements specified in this announcement and the Notice of Grant Award.

• Submit two Financial Status Reports. Financial Status Report number one is to be submitted to the Project Officer on the first anniversary date of the grant award. Financial Status Report number two is to be submitted to the Project Officer as an appendix to the final grant report.

• Adhere to the guidelines under the American with Disabilities Act when planning and implementing seminars. Specifics will be discussed during the one-day course.

The Federal Government will:

• Review and approve work plan, task outline, and schedule of activities.

• Review quarterly progress reports.

• Conduct the monthly conference calls with grantees.

• Conduct the two-day post-award orientation meeting in Washington, DC within two months of award.

• Review and approve list of 10 faith-based and/or community sites and the MOUs with each site.

• Site visit at least 4 sites per program during Phases II and/or Phase III.

• Review, suggest names, and approve membership of the multi-disciplinary planning committee.

• Review and approve all group counseling sessions and instructional materials for the eight group counseling sessions.

• Provide the grantee with government group counseling sessions' materials on CVD, such as *The Heart Truth for Women: A Speaker's Kit, The Healthy Heart Handbook for Women* (22), etc.

• Provide all site leaders with guidelines for the Americans with Disabilities Act and ensure that those guidelines are followed during the planning and implementation of the CVD program.

• Review and approve materials for the one-day leader training course; and,

• Review self-monitoring materials, evaluation materials and survey instruments that must be used by each grantee (core set of screening and evaluation items).

• Review and approve informed consent document and program promotional materials to ensure adherence to DHHS policies.

• Review the design and content of program Web site(s).

• Review and provide information for newsletters.

• Provide an outline of the final report format and templates for required tables.

• Review draft of the final report and provide comments and edits to be incorporated into the final document.

• Participate in a committee with grantees to prepare a joint manuscript suitable for a peer-reviewed journal and secure appropriate government publication clearance.

III. Eligibility Information

1. Eligible Applicants

These awards focus on President Bush's agenda to broaden Federal efforts to work with faith-based and community organizations. As such, each applicant must either: (1) Be a national faith-based or national community organization that has a network of at least 10 sites across the Continental United States and its territories with large populations of high-risk racial and ethnic minority women, aged 40 years and older, or (2) partner with a national faith-based or national community organization that has a network of at least 10 sites across the United States with large populations of high-risk racial and ethnic minority women, aged 40 years and older. If a partnership is established, the applicant and the national faith-based or national community organization must sign a Memorandum of Understanding (MOU) that describes the partnership, including

the expectations and duties of each partner. This MOU must be included in the application. If the document is not provided, the application may not be considered. Please see section VIII.2 for a definition of partnership, national faith-based organization, and national community organization. For more information on the Administration s Faith-Based and Community Initiatives please see the following Web site: *http://www.whitehouse.gov/government/fbci/index.html.*

Non-profit and for-profit organizations that meet the above criteria are eligible to apply. Faith-based organizations, community-based organizations, tribal entities, educational institutions, community health centers, and government entities that meet the above criteria are also eligible and encouraged to apply.

Any organization currently receiving funding or support from the Centers for Disease Control and Prevention's (CDC) WISEWOMAN program is not eligible to apply to this grant announcement. These organizations have been deemed ineligible to prevent the overlapping of the OWH and the CDC's cardiovascular disease prevention programs and the possible contamination of current WISEWOMAN program results.

If funding is requested in an amount greater than the ceiling of the award range ($100,000 total cost for an 18-month period), 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 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. An organization may submit no more than one proposal for the program announced in this notice of funding availability. Organizations submitting more than one proposal will be deemed ineligible. The proposal will be returned without comment.

2. Cost Sharing or Matching Funds

Cost sharing and matching funds are not a requirement of this grant; however applicants may solicit private sources for donations and/or loans of screening equipment, screening personnel, and participation incentives.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested by calling (240) 453–8822 or writing to: OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Requests may also be submitted by fax at (240) 453–8823. Application kits are also available online through the OPHS electronic grants management Web site at *https://egrants.osophs.dhhs.gov* and Grants.gov at *http://www.grants.gov.*

2. Content and Form of Application Submission

A. Letter of Intent

A Letter of Intent (LOI) is encouraged from all potential applicants for the purpose of planning the competitive review process. The LOI should be no more than one page, double-spaced, printed on one side, with one-inch margins, and 12-point font. LOIs should include the following information: (1) Program announcement title and number; (2) name of the applicant agency or organization, the official contact person and that person's telephone number, fax number, and mailing and e-mail addresses (3) name and address of the partnering national faith-based or national community organization if the applicant is not a national faith-based or national community organization. Do not include a description of your proposed project.

B. Application

Applications must be submitted using the Form OPHS–1 (Revised 8/04) and in the manner prescribed in the application kit. Applicants are required to submit an original ink-signed and dated application and 2 photocopies. The application should be organized in accordance with the format presented in the Program Guidelines. The original and each copy must be stapled and/or otherwise securely bound. All pages must be numbered clearly and sequentially. The application must be typed on plain 8½″ × 11″ white paper, using a 12 point font, and contain 1″ margins all around. The Project Narrative, excluding the appendices, is limited to a total of 50 pages, the fronts and backs of 10 pieces of paper. The first 50 pages of the proposal will be considered; any pages exceeding this length will be removed from the proposal and will not be evaluated. Staff resumes, letters of support, memorandums of understanding (MOUs), budget justifications, samples of existing curriculum, samples of survey instruments and data collection forms, and research results and references may be included as part of an appendix and will not count toward the 50 pages limit. The application must also include a detailed budget justification, including a narrative and computation of expenditures for one year. The budget justification does not count toward the 50 pages limit.

An outline for the minimum information to be included in the ''Project Narrative'' section is presented below.

i. Program Plan

The applicant must describe, in detail, its approach for accomplishing each of the requirements identified in the funding opportunity description. The program plan must reference each requirement, and the material should be presented in the order in which it appears in the funding opportunity description. The applicant should demonstrate a full understanding of the need for the program, anticipating, prioritizing, and presenting likely components that will achieve overall goals and desired outcomes. The applicant should also identify potential problems and intended solutions. The applicant is free to recommend and describe other procedures that it believes will more effectively achieve the stated objectives, but needs to carefully relate alternatives and rationales to the approach recommended in the funding opportunity description.

The proposal should include curriculum outlines and sample agendas for one or more of the group counseling sessions described in the funding opportunity description. The applicant must provide a detailed description of the existing curriculum that will be adapted and used for the group counseling sessions. In addition, samples of the existing curriculum and results from any pilot or demonstration projects that used the curriculum should be provided. These samples and results may be included as part of the appendices.

The proposal should describe the criteria for selecting sites and provide a potential list of sites or locations of sites. The proposal should describe its plan for maintaining contact with each site on a regular basis. The proposal should also include letters of support from each site selected, if possible. Letters of support may be included as part of the appendices.

C. Experience and Commitment of Key Personnel

The applicant must identify key personnel involved in the project based on the requirements described in funding opportunity description and other personnel adequate to support the administrative, logistical, financial, and scientific coordination aspects of the project within the time limits of the grant. The applicant must provide information on which task(s) each of the key personnel will perform and the rationale for that assignment. Resumes for all proposed personnel must be submitted with the application in the appendices.

D. Management Plan

The applicant should develop and propose a Management Plan. This plan includes a program schedule that lays out tasks and a time-line and identifies significant milestones for the accomplishment of the project. Specific staff responsibilities must be detailed in this schedule along with the number of hours that each person will devote to each task. The plan must provide, at a minimum, details pertaining to the four program phases (Phase I: Program Planning, Development, and Recruitment; Phase II: Group Counseling Sessions; Phase III: Maintenance Sessions; Phase IV: Program Evaluation/Write-Up) as they are outlined in the funding opportunity description.

E. Past Performance

Each applicant should describe its organization's relevant experience and success in managing this type of project. The applicant should also include a description of itself, the experience of its support personnel, and information about grantees, partners, and quality of cooperation between organization, staff, key personnel, and clients. Specific descriptions of relevant previous experience that the organization has performed within the past five years must be included. Include period of performance, dollar amount, name of program sponsor, and a letter of support from at least three different program sponsors. Letters of support may be included as part of the appendices.

Relevant previous experience may include, but is not limited to, the development of: Comprehensive interventions or group counseling sessions programs aimed at improving the health of women and/or men, health behavior modification programs, programs delivered in faith-based or community settings, cardiovascular disease prevention and risk modification programs, and previous collaborations with a national faith-based or national community organization.

F. Appendices

Include documentation and other supporting information in this section, including staff resumes, letters of support, memorandums of understanding (MOUs), samples of existing curriculum, samples of survey instruments and data collection forms, and research results and references. If the applicant is not a national faith-based or national community organization, an MOU between the applicant and a national faith-based or national community organization confirming that a partnership has been established must be included in the appendices. The applicant should also include an MOU between the applicant and any other organization or entity with which it intends to collaborate/partner.

3. Submission Dates and Times

The LOI must be received by the OPHS Office of Grants Management by 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. If an applicant does not submit an LOI by the established due date and time, the application will not be eligible for the review process. Submit the LOI to: OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

Submission Mechanisms

The OPHS provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must

contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

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 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.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. 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.

4. Intergovernmental Review

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, community-based and faith-based, non-governmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one-page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based or faith-based, non-governmental organizations within their jurisdictions.

Community-based and faith-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OWH.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State

Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* The due date for State process recommendations is 60 days after the application deadline. The OWH 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

Grant funds may be used to cover costs of:

- Personnel.
- Consultants.
- Office supplies and software.
- Group counseling sessions, promotional and evaluation materials.
- Screening supplies and equipment.
- Grant related travel (domestic only).
- Other grant related costs.

Grant funds may not be used for:

- Building alterations or renovations.
- Computers.
- Construction.
- Food.
- Fund raising activities.
- Medical treatment or therapy.
- Political education and lobbying.
- Other activities that are not grant related.

Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kits. The allowability, allocability, reasonableness and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Counseling); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.* In order to claim indirect costs as part of a budget request, an applicant organization must have an indirect cost rate, which has been negotiated with the Federal government. The Health and Human Services Division of Cost Allocation (DCA) Regional Office that is applicable to your State can provide information on how to receive such a rate. A list of DCA Regional Offices is included in the application kit for this announcement. Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kits.

6. Other Submission Requirements

All applicants are required to obtain a Data Universal Numbering System (DUNS) number as preparation for doing business electronically with the Federal Government. The DUNS number must be obtained prior to applying for OWH funds. The DUNS number is a nine-character identification code provided by the commercial company Dun & Bradstreet, and serves as a unique identifier of business entities. There is no charge for requesting a DUNS number, and you may register and obtain a DUNS number by either of the following methods:

Telephone: 1–866–705–5711.
Web site: *https://www.dnb.com/product/eupdate/requestOptions.html.*

Be sure to click on the link that reads, ''DUNS Number Only'' at the right hand, bottom corner of the screen to access the free registration page. Please note that registration via the Web site may take up to 30 business days to complete.

V. Application Review Information

1. Criteria

The technical review of applications will consider the following 5 factors:

A. Factor 1: Program Plan (40 Points)

This factor will be evaluated by rating the applicant's approach to accomplishing each of the requirements identified in the funding opportunity description as demonstrated by the following:

- Demonstrated understanding of the scope, goals, and objectives of the work required and the applicability and clarity of the overall approach.
- Discussions detailing how each of the requirements will be performed and the appropriateness of all proposed methodologies and analyses.
- Identification of potential problems and intended solutions.
- Discussions detailing the criteria used for selecting sites, list of selected sites or locations of sites, and letters of support from each site, if possible.
- Discussions of curriculum, including samples of the existing curriculum that will adapted for the program and preliminary outlines and sample agendas for one or more of the group counseling sessions described in the funding opportunity description.
- Potential for the success of the proposed program plan to improve the cardiovascular health status of the targeted population.

B. Factor 2: Management Plan (30 Points)

The applicant's staffing, scheduling, and logistics plans will be evaluated for their effectiveness in committing personnel and resources to provide high-quality service and products within the time frames set-forth. This evaluation is based on the following:

- Realism of the proposed time line and the personnel and resources assigned to complete each requirement.
- Appropriateness of the proposed number of hours estimated for each requirement and each staff member.
- Adequacy of organizational structure.
- Adequacy of proposed plan to identify and solve potential problems.
- Adequacy of proposed plan to monitor and report on program progress and ensure effective communication between program staff members and the OWH.

C. Factor 3: Experience and Commitment of Key Personnel (20 Points)

This factor covers the qualifications of key personnel proposed to perform the work assigned to them and the amount of effort estimated for each person. This evaluation is based on the following:

- Experience, counseling, and professional credentials of proposed key personnel on similar projects and in related fields (similar projects must convey similarity in topic, dollar value, workload, duration, and complexity).
- Appropriateness of each person's skills and experience for performing the requirements in the funding opportunity description.

D. Factor 4: Past Performance (10 Points)

This factor will evaluate the applicant's experiences and success in implementing and managing similar projects in number, size, complexity. The applicant should describe its experiences and successes that will reflect the following:

- Relevant previous experience may include, but is not limited to, the development and implementation of a comprehensive campaign or group counseling program aimed at improving the health of women and/or men, or

health behavior modification program, a cardiovascular disease prevention and risk modification program delivered in a national faith-based or national community organization.

• Training received by its staff members on how to implement a cardiovascular program for minority women with high-risk for heart disease.

• Applicant's adherence to schedules and budgets, effectiveness of program management, willingness to cooperate when difficulties arise, general compliance with the terms of the grants, and acceptability of delivered products.

2. Review and Selection Process

Applications will be screened upon receipt. Those that are judged to be incomplete or arrive after the deadline will be returned without review or comment. If funding is requested in an amount greater than the ceiling of the award range ($100,000 for an 18-month budget period), 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.

The OPHS Office of Grants Management will notify applicants that are judged to be in compliance. Accepted applications will be evaluated based on the criteria listed in Section V.1 and reviewed for technical merit in accordance with DHHS policies. Applicants are advised to pay close attention to the specific program requirements and general instructions in the application kit and to the definitions provided in this notice.

Applications will be evaluated by a technical review panel composed of experts in the fields of program management, cardiovascular disease, minority community outreach and health counseling, and community-based research. Consideration for award will be given to applicants that best demonstrate the potential to design a program that achieves the program goals stated in this announcement.

The Federal government may conduct pre-award site visits of applicants with scores in the funding range prior to final selection. References may also be requested from these applicants and contacted to better evaluate prior relevant experience. Any applicant who believes the Government will find derogatory information as a result of checking the past performance record may provide an explanation and any remedial action taken by its company to address the problem. Funding decisions will be made by the OWH, and will take into consideration the recommendations and ratings of the review panel, pre-award site visits and references, program needs, geographic location, and stated preferences.

VI. Award Administration Information

1. *Award Notices:* The OWH does not release information about individual applications during the review process until final funding decisions have been made. When final funding decisions have been made, the applicant's authorized representative will be notified of the outcome of their application electronically via the eGrants system and followed up by postal mail. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award signed by the Grants Management Officer, which specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

2. *Administrative and National Policy Requirements:* The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (DHHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

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, 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:* Grantees will submit five progress reports, a final report, and two final Financial Status Reports in the format established by the OWH, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance'', 45 CFR parts 74 and 92. The purpose of the progress reports and final report is to provide accurate and timely program information to program managers and to respond to Congressional, Departmental, and public requests for information about the program. Grantees shall prepare a progress report that outlines the status and progression of the project every 3 months. Grantees will be informed of the exact progress report due dates and means of submission after the award is made. The final report must describe all project activities for the entire 18-month period of the program including data analysis and program evaluation. The financial reports will be submitted to the Project Officer by the first anniversary date of the award and the final financial report will be included as an appendix to the grant's final report no later than 90 days after the close of the Project Period. OWH shall provide an outline of the final report format and templates for required tables. A draft of the final report must be submitted six weeks prior to the end date of the award. OWH will review the draft. Suggested revisions will be discussed individually during a conference call with each grantee. The mutually agreed upon revisions must be incorporated into the final report by the end date of the award.

The grantee shall assign one staff member to participate in a committee with other grantees and OWH to prepare a joint manuscript suitable for a peer-reviewed journal. This manuscript shall combine and summarize data from all programs into one final evaluation. The jointly prepared manuscript must be submitted two weeks prior to the end date of award.

VII. Agency Contact(s)

For application kits and information on budget and business aspects of the application, please contact: Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20857. Telephone: 240–453–8822.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of the ''Project Narrative'' should be directed in writing to: Dr. Suzanne Haynes, Senior Science Advisor, Office on Women's Health, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Rm 719E, Washington, DC 20201. Telephone: 202–205–2623. E-mail: *shaynes@osophs.dhhs.gov.*

VIII. Other Information

1. Background

A. Agencies

The OWH coordinates the efforts of all the DHHS agencies and offices involved in women's health. OWH works to improve the health and well being of women and girls in the United States through its innovative programs by educating health professionals and motivating behavior change in consumers through the dissemination of health information. To that end, the OWH has established public/private partnerships that address the major killer of women—cardiovascular disease (CVD). One such partnership is with the National Heart, Lung, and Blood Institutes (NHLBI), which is targeting women aged 40–60 years and their health care providers, through a national educational campaign called the Heart Truth Campaign.

The Office of Research on Women's Health at the National Institutes of Health (ORWH/NIH) promotes, stimulates, and supports efforts to improve the health of women through biomedical and behavioral research. ORWH/NIH works in partnership with the NIH institutes and centers to ensure that women's health research is part of the scientific framework at NIH and throughout the scientific community. Both the OWH and the ORWH/NIH are committed to reducing the death and disability due to heart disease and stroke.

The Office of Minority Health (OMH) mission is to improve and protect the health of racial and ethnic minority populations through the development of health policies and programs that will eliminate health disparities. The OMH will provide expert and technical support to the OWH during the performance of this grant.

B. Women and Cardiovascular Disease

Cardiovascular disease (CVD), which includes both heart disease and stroke, is the leading cause of death for women in the United States (2). Compared to men, women have higher CVD mortality, higher morbidity following a heart attack or stroke, lower awareness of CVD, and a higher prevalence of most major risk factors for CVD.

- Since 1984, the number of CVD deaths for females has exceeded those for males in the United States (3).
- In 2002, about 60,000 more U.S. women died of CVD than men (3).
- Each year about 40,000 more women than men have a stroke (3).
- Thirty-eight percent of women die within one year of having a heart attack compared to 10% of men who have heart attacks (2).
- About 35% of women and 18% of men heart attack survivors will have another heart attack within six years (2).
- About 46% of women become disabled with heart failure within 6 years of having a heart attack compared to 22% of men (2).
- Some evidence indicates that women suffer more short and long-term disability after having a stroke than men (4, 5).
- Perioperative complications and mortality after percutaneous angioplasty and coronary artery bypass surgery are also higher in women than in men (6).
- More women than men in the United States have the following five major risk factors for CVD: high blood pressure, high cholesterol, Type 2 diabetes, physical inactivity, and obesity (3).

Some experts speculate that the difference in CVD outcomes and risk factor prevalence between women and men may be due, in part, to a lack of awareness among women and their physicians of the risks for CVD in women (6, 7).

- A 2003 national survey conducted by the American Heart Association found that 35% of women cite breast cancer as their greatest health threat while only 13% of women believe that their greatest health threat is heart disease (8). However, more women die of heart disease than of all cancers combined.
- The majority of women fail to identify the risk factors for heart disease, such as high blood pressure and high cholesterol (8).
- Physicians tend to rate women as being at lower risk for heart disease than men even when the men and women have very similar risk profiles (9).
- A study of over 29,000 routine physician office visits found that women were counseled less often than men about exercise, nutrition, and weight reduction (10).
- The results of the 2003 national survey found that only 38% of women reported that their doctors had ever discussed heart disease with them (8).

Women and health care providers are often ill informed about the differences between male and female signs, symptoms, and risk factors for heart disease (7, 8, 11, 12).

- The most common heart attack symptoms in women are different than those in men; women are more likely than men to experience ''atypical'' symptoms such as nausea, indigestion, palpitations, dyspnea and fatigue, and they are less likely than men to experience chest pain (13).
- The association between Type 2 diabetes and heart disease is stronger in women than in men; Type 2 diabetes increases a woman's risk of developing heart disease by 3 to 7 times, compared to 2 to 3 times in men (14).
- New evidence indicates that C-reactive protein may be a stronger risk factor in men than in women (15).
- The Women's Health Initiative study found that a common menopausal hormone therapy offered to women—estrogen plus progestin—increased the risk of heart disease in postmenopausal women (16).

C. High-Risk Groups

Some groups of women have higher rates of CVD mortality than other women and/or a higher prevalence of factors that increase the risk of CVD mortality and morbidity. These high-risk groups of women include women aged 40 years and older and racial and ethnic minority women.

i. Women Aged 40 Years and Older

A woman's risk of CVD starts to rise between the ages of 40 and 60; thus, behavioral modification programs that target women aged 40 years and older have the potential to prevent CVD from developing.

- The incidence of CVD increases with age, and over 97% of people who die of CVD are age 40 years or older (17).
- CVD risk factors including obesity, high blood pressure, high LDL cholesterol levels and Type 2 diabetes often develop around the ages of 40 to 60 (17)
- After menopause, heart disease rates in women are 2 to 3 times that of women the same age before menopause (3).
- The risk of high blood pressure also increases with age; women age 45–54 years have double the risk of high blood pressure as women under age 45 years (17).
- About 80% of women age 65 years and older have high blood pressure (18).
- Only 18% of women age 65 years and older report engaging in regular leisure time physical activity compared to 59% of the total population of women (19).

ii. Racial and Ethnic Minority Women

African American women have the highest age-adjusted heart disease and stroke death rates of any female race/ethnicity group in the United States. Compared to white women, racial and ethnic minority women have a higher prevalence of many major risk factors for CVD. CVD awareness is also lower among racial and ethnic minority

groups of women than among white women.

• In 2002, the heart disease death rate was 263.2 per 100,000 for African American women compared to 192.1 per 100,000 for white women and 197.2 per 100,000 for all women combined (17).

• In 2002, the stroke death rate was 71.8 per 100,000 for African American women compared to 53.4 per 100,000 for white women and 55.2 per 100,000 for all women combined (17).

• About 57% of Hispanic/Latino women, 56% of American Indians/Alaska Native women, 42.6% of Asian/Pacific Islander women and 55% of African American women do not exercise, compared to 38% of white women (3, 20–22).

• About 72% of Mexican-American women, 77% of African American women and 61% of American Indians/Alaska Native women are overweight or obese, compared to 57% of white women (3, 20, 21).

• About 37% of American Indians/Alaska Native women smoke compared to 21% of white women (3, 21).

• Other CVD risk factors such as Type 2 diabetes mellitus and high blood pressure are also more prevalent among minority women than among white women (3, 20, 21).

• About 26% of Hispanic/Latino women and 27% of Asian American women have not had a blood pressure screening in the past 12 months, compared to 20% of white women (23).

• In the 2003 national survey conducted by the American Heart Association, fewer African-American and Hispanic women than white women correctly cited heart disease as the leading cause of death among women (8).

• The survey also showed that white women were more likely than women in other racial/ethnic groups to correctly identify the major risk factors and warning signs of heart attack and stroke (8, 24).

D. Cardiovascular Disease Interventions

Cardiovascular disease (CVD) prevention programs that target high-risk women, particularly racial/ethnic minority women age 40 years and older, have the potential to reduce CVD incidence and mortality in the United States. Counseling is an essential component of cardiovascular health promotion efforts, and many programs aiming to prevent CVD focus on counseling as their primary goal. However, risk behavior modification, the process of translating knowledge into practice, is pivotal to achieving improved health outcomes. In particular, interventions that encourage women to establish a healthy weight and increase their levels of physical activity could dramatically affect CVD rates in the United States.

Targeted CVD behavioral modification interventions have been successful in modifying cardiovascular risk behaviors in women. Such CVD interventions have been administered at various venues, including churches, community health centers, community health clinics, YMCAs and other health clubs, schools, Head Start facilities, etc (10–33). Studies indicate that several aspects of targeted CVD intervention programs are particularly effective in modifying the CVD risk behaviors of women (1, 10, 26, 34–39). These include:

• Personalized risk assessment and screening.

• Daily self-monitoring (log-sheets, exercise diaries, etc.).

• Program and group counseling sessions materials tailored to a woman's stage of the lifecycle, readiness to change, needs and subgroup affiliation (*e.g.* racial group, low socioeconomic status, obese, etc.).

• Behavioral reinforcement strategies such as contracts, verification procedures, incentives, lotteries and team building.

• Group sessions that incorporate physical activity.

• Frequent contact via mail and phone.

• CVD resource library.

E. Faith-Based and Community Organizations

Faith-based and community organizations have a long history of providing an array of clinical information and screening to people and communities in the United States. These groups have unique strengths that government cannot duplicate. They hold the trust of their community neighbors and leaders and have great understanding of the needs of the community and its systems. Furthermore, the sense of mission from which these organizations work often translates into a unique approach to service delivery, a dedication of service to others, and a cultural awareness specific to their surrounding communities.

In recognition of this history and ability, President Bush believes it is in the public's interest to broaden Federal efforts to work with faith-based and community organizations, and he has made improving funding opportunities for such organizations a priority. The program described in this announcement is a part of this effort to enhance and expand the participation of faith-based and community groups in serving racial and ethnic minority women who do not regularly receive clinical information and screening.

2. Definitions

For the purposes of this cooperative agreement program, the following definitions are provided:

Community-based: The locus of control and decision-making powers is located at the community level, representing the service area of the community or a significant segment of the community.

Culturally competent: Information and services provided at the educational level and in the language and cultural context that are most appropriate for the individuals for whom the information and services are intended.

High-risk women: Groups of women that have higher rates of heart disease mortality than other women and/or a higher prevalence of factors that increase the risk of heart disease mortality and morbidity. Major risk factors for heart disease include smoking, high blood pressure, high LDL cholesterol, obesity, Type 2 diabetes, physical inactivity, age, and family history of heart disease. Information on high risk or risks for heart disease can be found online at *http://circ.ahajournals.org/cgi/content/full/109/5/672* and *http://www.guidelines.gov/summary/summary.aspx.doc_id=3487&nbr=2713&string=lipid.*

Partnership: A collaboration where both parties (the grantee and the national faith-based or national community organization) play a substantive role during all stages of the program including development, implementation and evaluation. Both parties must also be included and consulted when decisions are made on all aspects of the program.

National faith-based organization: The national organizing, representational, policy making or leadership entity for several faith-based member units/sites (*e.g.*, churches, synagogues, etc.) that are located in communities in multiple states across the United States. It is a non-profit organization that has a grassroots network of contributing members.

National community organization: The national organizing, representational, policy making or leadership entity for several community-based member units/sites (*e.g.,* health centers, recreational centers, sorority chapters, etc.) that are located in communities in multiple states across the United States. It is also a non-profit organization that has a

grassroots network of contributing members.

Racial and Ethnic Minority Women: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Target: Put forth effort to ensure that members of a specific group of women are aware of the program and that components of the program are designed to be effective in reaching those populations. This includes creating program materials that are culturally competent for that specific group of women. This also includes training staff and health professionals to understand the unique needs, behaviors, cultures and concerns of members of the specific group of women. Targeting does not mean excluding other groups of women from the program.

Women-centered: (1) Taking into account the differences between heart disease in men and women and (2) addressing the needs and concerns of women in a way that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and counseling.

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Dated: May 24, 2006.

Frances Ashe-Goins,

Acting Director for Health (Women's Health).

[FR Doc. 06–5135 Filed 6–5–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0298]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Home and Hospice Care Survey (NHHCS)(OMB No. 0920–0298)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention.

Background and Brief Description

The NHHCS was conducted in 1992, 1993, 1994, 1996, 1998, and 2000. NHHCS data describe a major segment of the long-term care system and are used extensively for health care research, health planning and public policy. NHHCS provides data on the characteristics of home health and hospice agencies (*e.g.* Medicare and Medicaid certification, ownership, membership in chains, nursing home, or hospital systems); patients (*e.g.* demographics, functional status, services received, diagnoses, or sources of payment); and staff (*e.g.* staffing mix, turnover, benefits, training, or education).

The survey provides detailed information on utilization and staffing patterns, and quality of care variables that are needed to make accurate assessments of the need for and effects of changes in the provision and financing of long-term care for the elderly and disabled. The availability and use of long-term care services are becoming an increasingly important issue as the number of elderly increases and persons with disabilities live longer. Equally as important is ensuring the adequacy and availability of the long-term care workforce. The 2007 NHHCS will include a supplement on home health aides. The upcoming survey has been redesigned and expanded to better meet the data needs of researchers and health care planners working to ensure that quality long-term care will be available for the nation's growing senior population. The survey will utilize both computer-assisted personal interviewing (CAPI) and computer-assisted telephone interviewing (CATI) systems. These computerized systems speed the flow of data, making it possible to release information on a timelier basis and easier for respondents to participate in the survey.

Users of NHHCS data include the National Immunization Program, and the National Center for Injury Prevention and Control CDC; the Congressional Research Office; the Bureau of Health Professions, Health Resources and Services Administration; the Office of the Assistant Secretary for Planning and Evaluation; the Agency for Healthcare Research and Quality; the National Association for Health Care; the National Hospice and Palliative Care Organization; American Health Care Association; Centers for Medicare and Medicaid Services; Bureau of the Census, and the American Association for Retired People. Other users of these data include universities, many in the private sector, foundations, and a variety of users in the print media.

NCHS plans to conduct the next NHHCS in August–December 2007 and during the same months in 2008. These two national surveys follow a pretest of the forms and procedures in August-September 2006. The data collection procedures and content have been extensively revised from those of the previous NHHCS. There is no cost to respondents other than their time to participate. The burden tables below include the average annual burden for the pretest and the national survey. The total estimated annualized burden hours are 6,088.

ESTIMATED ANNUALIZED BURDEN HOURS—PRETEST

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Agency level data collection (CAPI)	17	1	30/60
Agency Staff Questionnaire	17	1	50/60
Current or Discharge Patient Sampling (CAPI)	17	1	20/60
Current Home Health Patient Data Collection (CAPI)	8	4	25/60
Hospice Discharge Patient Data Collection (CAPI)	9	4	25/60
Home Health Aide Sampling (CAPI)	17	1	15/60
Home Health Aide Data Collection (CATI)	133	1	40/60

ESTIMATED ANNUALIZED BURDEN HOURS—NATIONAL SURVEY

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Agency level data collection (CAPI)	820	1	30/60
Agency Staff Questionnaire	820	1	50/60
Current or Discharge Patient Sampling (CAPI)	820	1	20/60
Current Home Health Patient Data Collection (CAPI)	410	8	25/60
Hospice Discharge Patient Data Collection (CAPI)	410	8	25/60

ESTIMATED ANNUALIZED BURDEN HOURS—NATIONAL SURVEY—Continued

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Home Health Aide Sampling (CAPI)	433	1	15/60
Home Health Aide Data Collection (CATI)	2,598	1	40/60

Dated: May 31, 2006.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–8702 Filed 6–5–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0463x]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Assessment of Healthcare-associated Adverse Events—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP) disseminates notices and alerts through a voluntary electronic mail subscriber list (*i.e.*, Rapid Notification System) to inform healthcare personnel about healthcare-associated disease outbreaks and clusters or adverse events that may be of national importance and recommendation for preventing infections and antimicrobial resistance.

DHQP is occasionally involved in gathering information to determine if a recognized adverse event (*e.g.*, an infection following the use of a particular product, type of equipment, or with a microorganism that has rarely been reported) has occurred on a national level in healthcare facilities. The information gained from this assessment will be used to target corrective actions or educational strategies to improve the public's health by preventing future adverse events.

To rapidly determine the scope of adverse events at the time soon after a public health notification or product recall, DHQP seeks to conduct short surveys using OMB approved questions among participants in the Rapid Notification System, National Nosocomial Infection Surveillance (NNIS), and other CDC networks (*e.g.*, partners in healthcare working on innovative infection reduction projects such as the Pittsburgh Healthcare Regional Initiative and the Prevention Epidemiology Centers). The survey will also be posted on the DHQP website to reach additional healthcare professionals. The number of questions in each survey will range from 5 to 10. Data will be collected using a Web-based data collection form.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 67.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden hours
Healthcare professionals	400	1	10/60

Dated: May 15, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–8714 Filed 6–5–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting:

Name: Task Force on Community Preventive Services.

Times and Dates: 8 a.m.–6 p.m., June 14, 2006. 9 a.m.–1:30 p.m., June 15, 2006.

Place: Centers for Disease Control and Prevention, Roybal Campus, Tom Harkin Global Communications Center, Room 232 (Auditorium B), 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 639–3311.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish the Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

Matters To Be Discussed: Agenda items include: Seating of five new Task Force members, briefings on administrative information, violence prevention, adolescent sexual behavior, worksite health promotion and the assessment of health risks with

feedback, communicating economic findings, adolescent health, and dissemination activities and projects in which the Community Guide is utilized.

Agenda items are subject to change as priorities dictate.

Persons interested in reserving a space for this meeting should call Detrice Sherman, MPH at (404) 498–0979 by close of business on June 9, 2006.

Contact Person for Additional Information: Randy Elder, PhD, Community Guide Branch, Coordinating Center for Health Information and Service, National Center for Health Marketing, Division of Health Communication and Marketing Strategy, 4770 Buford Highway, M/S E–69, Atlanta, GA 30333; (404) 498–0953.

Dated: May 26, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–8703 Filed 6–5–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Interim Final Rule for the Reauthorization of the Temporary Assistance for Needy Families Program.

OMB No.: New Collection.

Description: The Interim Final Rule for the Reauthorization of the Temporary Assistance for Needy Families Program imposes some new requirements and replaces others. They are:

- A new requirement that States establish documentation, verification and internal control procedures to ensure valid work-participation rates, based on regulatory specifications. States will be required to submit the procedures to the Department of Health and Human Services no later than September 30, 2006. The Administration for Children and Families (ACF) will review the procedures and approve them if they meet the requirements. If the procedure fail to address or meet the requirements, States will be given 60 days to revise and correct them. If a State fails to establish, submit or correct the procedures within specified timeframes, the State will be liable for a full five percent penalty for the year.
- A modification/reduction and replacement of the predecessor caseload reduction credit information collection based on the recalibration of the caseload reduction credit.
- A modification and replacement of the predecessor reasonable cause/corrective compliance information collection based on the requirements of the participation rate verification procedures.
- A modification and replacement of the predecessor TANF Data Report and the SSP–MOE Data Report based on how we define work-eligible individuals, especially with regard to child-only cases.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Preparation and Submission of Data Verification Procedures—§ 261.60–§ 261.63	54	1	640	34,560
Caseload Reduction Documentation Process, ACT–202—§ 261.41 & § 261.44	54	1	120	6,480
Reasonable Cause/Corrective Compliance Documentation Process—§ 262.4, 262.6, & 262.7; § 261.51	54	2	240	25,920
TANF Data Report—Part 265	54	4	2,193	473,688
SSP–MOE Data Report—Part 265	29	4	714	82,824
Estimated Total Annual Burden Hours				623,472

Additional Information: ACF is requesting that OMB grant a 180-day approval for this information collection under procedures for emergency processing by June 28, 2006. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. E-mail address: *rsargis@acf.hhs.gov*.

Comments and questions about the information collection described above should be directed to the following address by June 28, 2006: Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project, Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: May 30, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–5116 Filed 6–5–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor Control Ordinance of the Eastern Shawnee Tribe of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Eastern Shawnee Tribe of Oklahoma (Tribe). The Ordinance regulates and controls the possession, sale and consumption of liquor within the tribal lands of the Tribe. The tribal lands are located on trust land and this Ordinance allows for possession and sale of alcoholic beverages within their exterior boundaries. This Ordinance will increase the ability of the Tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Head, Tribal Government Services Officer, Eastern Oklahoma Regional Office, 3100 W. Peak Blvd., Muskogee, OK 74402, Telephone: (918) 781–4685, Fax (918) 781–4649; or Ralph Gonzales, Office of Tribal Services, 1849 C Street, NW., Mail Stop Room 4513–MIB, Washington, DC 20240; Telephone: (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Business Committee of the Eastern Shawnee Tribe of Oklahoma (Business Committee) adopted its Liquor Ordinance by Resolution No. 011806–R–03 on January 18, 2006. This Liquor Ordinance will be the first published in the **Federal Register** for the Tribe. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within tribal lands of the Tribe. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Eastern Shawnee Tribe of Oklahoma was duly adopted by the Business Committee on January 18, 2006.

Dated: May 30, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Eastern Shawnee Tribe of Oklahoma Liquor Ordinance reads as follows:

Eastern Shawnee Tribe of Oklahoma Liquor Control Ordinance

Section 1. Declaration of Public Policy and Purpose

a. The Eastern Shawnee Business Committee, in accordance with Article IX, section 1 of the Constitution of the Eastern Shawnee Tribe of Oklahoma, is authorized to enact resolutions, ordinances, and act on behalf of the Eastern Shawnee Tribe.

b. The Eastern Shawnee Business Committee finds that tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use on tribal lands, and to achieve maximum economic benefit to the Tribe.

c. The introduction, possession and sale of liquor on tribal lands is a matter of special concern to the Eastern Shawnee Business Committee.

d. The Eastern Shawnee Business Committee finds that a complete ban on liquor on tribal lands is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions on tribal lands because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution and consumption of liquor

e. Federal law forbids the introduction, possession, and sale of liquor in Indian country except when the same is in conformity both with the laws of the State and the Tribe, 18 U.S.C. 1161. As such, compliance with this ordinance shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma.

f. This ordinance governs the sale, purchase, and distribution of alcohol on Tribal lands within the exterior boundaries of the Tribe's former reservation.

Section 2. Definitions

As used in this ordinance, the following words shall have the following meanings unless the context clearly require otherwise:

a. *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

b. *Alcoholic beverage.* This term is synonymous with the term liquor as defined in paragraph (f) of this Section.

c. *Bar.* Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

d. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

e. *Business Committee.* The governing body of the Eastern Shawnee Tribe of Oklahoma, as defined in the Tribal Constitution.

f. *Liquor.* All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one half of one percent of alcohol.

g. *Liquor Control Board.* The Eastern Shawnee Liquor Control Board as established by Section 3 of this Ordinance.

h. *Liquor store.* Any store at which liquor is sold and, for the purpose of this Ordinance, includes stores where only a portion of which are devoted to sale of liquor or beer.

i. *Malt liquor.* Beer, strong beer, ale, stout or porter.

j. *Package.* Any container or receptacle used for holding liquor.

k. *Public place.* Federal, state, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

l. *Sale and sell.* The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

m. *Spirits.* Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

n. *Tribal Court.* Refers to the Eastern Shawnee Tribal Court or, in accordance with Article X of the Constitution of the Eastern Shawnee Tribe of Oklahoma, the Court of Indian Offenses, more specifically designated for purposes of this Ordinance as 25 CFR Court located at the Miami Agency of the Bureau of Indian Affairs in Miami, Oklahoma.

o. *Tribal lands.* Any or all land over which the Tribe exercises governmental power and that is either held in trust by the United States for the benefit of the Tribe or individual members of the Tribe, or held by the Tribe or individual members of the Tribe subject to

restrictions by the United States against alienation.

p. *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

Section 3. Eastern Shawnee Liquor Control Board

a. There is hereby established an Eastern Shawnee Liquor Control Board, composed of a Chairperson, Vice-Chairperson, Secretary, Treasurer and three (3) additional members.

b. The Eastern Shawnee Liquor Control Board shall consist of the officers and members of the Eastern Shawnee Business Committee.

c. Officers and members of the Eastern Shawnee Business Committee shall hold the same positions on the Eastern Shawnee Liquor Control Board as such officers and members hold on the Business Committee. The Chief shall serve as the Liquor Control Board Chairperson; the Vice-Chief shall serve as the Liquor Control Board Vice-Chairperson; the Business Committee Secretary shall serve as Secretary of the Liquor Control Board; and the Business Committee Treasurer shall serve as Treasurer of the Liquor Control Board.

d. The Eastern Shawnee Liquor Control Board shall meet on call, but not less than once each calendar quarter, provided ten (10) days public notice of its meetings is given. The Chairman of the Eastern Shawnee Liquor Control Board shall call meetings of the Liquor Control Board.

e. A quorum of the Board shall consist of five (5) members and no fewer members are required to transact business.

Section 4. Powers and Duties of the Eastern Shawnee Liquor Control Board

a. *Powers and Duties.* In furtherance of this ordinance, the Liquor Control Board shall have the following powers and duties:

(1) Publish and enforce rules and regulations adopted by the Eastern Shawnee Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages on tribal lands.

(2) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Liquor Control Board to perform its function.

(3) Issue licenses permitting the sale or manufacture or distribution of liquor on tribal lands.

(4) Hold hearings on violations of this Ordinance or for the issuance of revocation of licenses hereunder.

(5) Bring suit in the Tribal Court or other appropriate court to enforce this Ordinance as necessary.

(6) Determine and seek damages for violation of this Ordinance.

(7) Make such reports as may be required by the Eastern Shawnee Business Committee.

(8) Collect taxes and fees levied or set by the Eastern Shawnee Business Committee and keep accurate records, books and accounts.

(9) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

b. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Liquor Control Board and its individual members shall not:

(1) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(2) Waive the immunity of the Eastern Shawnee Tribe of Oklahoma from suit without the express written consent and resolution of the Business Committee.

c. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Liquor Control Board and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Section 5. Sales of Liquor

a. *License Required.* A person or entity who is licensed by the Eastern Shawnee Tribe of Oklahoma may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Section shall also be allowed. All other purchases and sales of liquor on tribal lands shall be prohibited. Sales of liquor and alcoholic beverages on tribal lands may only be made at businesses that hold an Eastern Shawnee Liquor License.

b. *Sales for Cash.* All liquor sales on tribal lands shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

c. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages on tribal lands is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage on tribal lands and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Eastern Shawnee Tribe of Oklahoma as set forth herein.

Section 6. Licensing and Application

a. *Procedure.* In order to control the proliferation of establishments on tribal lands that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor on tribal lands must apply to the Eastern Shawnee Liquor Control Board for a license to sell or serve liquor.

b. *Application.* Any enrolled member of the Eastern Shawnee Tribe twenty-one (21) years of age and older, or an enrolled member of a federally recognized tribe twenty-one (21) years of age and older, or other person twenty-one years of age and older, may apply to the Liquor Control Board for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor on tribal lands must fill in the application provided for this purpose by the Eastern Shawnee Tribe of Oklahoma and pay such application fee as may be set from time to time by the Liquor Control Board. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

c. *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Liquor Control Board that he/she is a person of good character, having never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors; that he/she has never been convicted of violating any of the gambling laws of this state, or any other state of the United States, or of this or any other Tribe; that he/she has not had, preceding the date of his/her application for a license, a felony conviction of any of the laws commonly called ''prohibition laws''; and that he/

she has not had any permit or license to sell any intoxicating liquors revoked in any county of this state, or any other state, or of any Tribe; and that at the time of his/her application for a license, he/she is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor.

d. *Processing of Application.* The Liquor Control Board shall receive and process applications and related matters. All actions by the Liquor Control Board shall be by majority vote. A quorum of the Liquor Control Board is that number of members set forth in Section 3, paragraph (e) of this Ordinance. The Liquor Control Board may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

e. *Issuance of License.* The Liquor Control Board may issue a license if it believes that such issuance is in the best interests of the Eastern Shawnee Tribe of Oklahoma. The purpose of this Ordinance is to permit liquor sales and consumption at facilities located on designated tribal lands. Issuance of a license for any other purposes will not be considered to be in the best interests of the Eastern Shawnee Tribe of Oklahoma.

f. *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance.

g. *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Ordinance; provided however, that the Liquor Control Board may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Eastern Shawnee Tribe of Oklahoma.

h. *Revocation of License.* The Liquor Control Board may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

i. *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Board under this Ordinance, the licensee may deliver to the Liquor Control Board a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Board and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Ordinance shall be in accord with due process of law.

j. *Non-transferability of Licenses.* Licenses issued by the Liquor Control Board shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

Section 7. Taxes

a. As a condition precedent to the conduct of any operations pursuant to a license issued by the Liquor Control Board, the licensee must obtain from the Eastern Shawnee Tribal Tax Commission such licenses, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Eastern Shawnee Tribal Tax Commission or otherwise showing compliance with the tax laws of the Tribe.

b. In addition to any other remedies provided in this Ordinance, the Liquor Control Board may suspend or revoke any licenses issued by it upon the failure of the licensee to comply with the obligations imposed upon the licensee by the General Revenue and Taxation Act of the Eastern Shawnee Tribe of Oklahoma, or any rule, regulation, or order of the Eastern Shawnee Tribal Tax Commission.

Section 8. Rules, Regulations and Enforcement

a. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

b. Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Ordinance shall be subject to civil damages assessed by the Liquor Control Board.

c. Any person within the boundaries of tribal lands who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

d. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Section, shall be guilty of a violation of this Ordinance.

e. Any person who knowingly sells liquor to a person who is obviously intoxicated or appears to be intoxicated shall be guilty of a violation of this Ordinance.

f. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Ordinance.

g. No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

h. Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each sale or drink provided.

i. Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Ordinance.

j. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Ordinance.

k. Any person who is convicted or pleads guilty to a violation of this ordinance shall be liable to pay the Eastern Shawnee Tribe of Oklahoma the amount of up to $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance.

l. When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(1) Driver's license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military identification card; or

(3) Passport.

m. The consumption or possession of liquor on premises where such consumption or possession is contrary

to the terms of this Ordinance will result in a declaration that such liquor is contraband. Any tribal agent, employee or officer who is authorized by the Liquor Control Board to enforce this Ordinance shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of the ordinance, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Eastern Shawnee Tribe of Oklahoma.

Section 9. Abatement

a. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

b. The Chairman of the Liquor Control Board, or if the Chairman fails or refuses to do so, the Liquor Control Board, by a majority vote, shall institute and maintain an action in the Tribal Court in the name of the Eastern Shawnee Tribe of Oklahoma to abate and perpetually enjoin any nuisance declared under this Section. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable tribal laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Tribe under this Ordinance.

Section 10. Severability and Effective Date

a. If any provision under this Ordinance is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

b. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register.**

c. Any and all previous liquor control enactments of the Business Committee which are inconsistent with this Ordinance are hereby rescinded.

Section 11. Amendment and Construction

a. This Ordinance may only be amended by vote of the Eastern Shawnee Business Committee.

b. Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Eastern Shawnee Tribe or its Tribal Government other than the due process provision at Section 6(i), which provides that licensees whose licenses have been revoked or suspended may seek review of that decision in Tribal Court.

Certification

The foregoing Liquor Control Ordinance of the Eastern Shawnee Tribe of Oklahoma was duly amended, enacted and approved by the Business Committee of the Eastern Shawnee Tribe of Oklahoma this 18th day of January 2006, by a vote of: 4 FOR; 0 AGAINST; 0 ABSTAINING; 1 ABSENT.

Charles Enyart,

Chief, Eastern Shawnee Tribe of Oklahoma.

Attest:

Glenna J. Wallace,

Eastern Shawnee Tribe of Oklahoma.

[FR Doc. E6–8692 Filed 6–5–06; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 13, 2006.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 21, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ALASKA

Kenai Peninsula Borough-Census Area

Hoben Park, 401 Railway Ave., Seward, 06000515

CALIFORNIA

Plumas County

Warner Valley Major Developed Area Historic District, (Lassen Volcanic National Park MPS) Head of Warner Valley, Chester, 06000526

Shasta County

Lassen Volcanic National Park Highway Historic District, (Lassen Volcanic National Park MPS) NPS Route 1, CA 89, Mineral, 06000527

Manzanita Lake Campground Comfort Station at Camp Store, (Lassen Volcanic National Park MPS) 39489 CA 44, Shingletown, 06000528

Manzanita Lake Campground Comfort Station, Loop C, (Lassen Volcanic National Park MPS) 39489 CA 44, Shingletown, 06000529

Manzanita Lake Naturalist's Services Historic District, (Lassen Volcanic National Park MPS) 39489 CA 44, Shingletown, 06000525

DISTRICT OF COLUMBIA

District of Columbia

Washington and Georgetown Railroad Car House, (Streetcar and Bus Resources of Washington, DC MPS) 770 M St. SE, Washington, 06000516

INDIANA

Blackford County

Hartford City Courthouse Square Historic District, Roughly bounded by Franklin, Walnut, Water and Monroe Sts., Hartford City, 06000522

Dubois County

Huntingburg Commercial Historic District, Roughly bounded by Geiger, 4th, Jackson and Market Sts., Huntingburg, 06000517

Fayette County

Fayette County Courthouse, 401 Central Ave., Connersville, 06000518

Morgan County

Morgantown Historic District, Approx. 4.5 blks centered on Washington St., bet. Marion St. and E of Church St., Morgantown, 06000519

Putnam County

Brown, Samuel, House, 1558 E. Cty Rd. 1100 N, Roachdale, 06000520

Wabash County

Lewis, Thomas J., House, 105 S. Arnold St., Roann, 06000521

MASSACHUSETTS

Hampden County

Brimfield Center Historic District, Main St., Brookfled, Wales, Sturbridge and Warren Rds., Brimfield, 06000524

Middlesex County

Center School, 13 Bedford St., Burlington, 06000523

[FR Doc. E6–8690 Filed 6–5–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 20, 2006. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 21, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

MISSOURI

St. Louis Independent city

Autocar Sales and Service Building, (Auto-Related Resources of St. Louis, Missouri MPS) 2745 Locust, St. Louis (Independent City), 06000530

MONTANA

Lewis and Clark County

Alice Creek Historic District, USDA Forest Service, Helena National Forest, Lincoln, 06000531

NORTH DAKOTA

Bottineau County

Main, North Dakota School of Forestry, Old, Alexander St. (N of terminus with 2nd St.), Bottineau, 06000532

Grand Forks County

Grand Forks Near Southside Historic District (Boundary Increase), 1216 Belmont Rd., Grand Forks, 06000533

VERMONT

Washington County

Kents Corner Historic District, Kent Hill Rd., Old West Church Rd., Robinson Cemetery Rd., Fowler Rd. Bliss Pond Rd., Calais, 06000534

[FR Doc. E6–8701 Filed 6–5–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for High Growth Job Training Initiative Grants for the Advanced Manufacturing Industry

Announcement type: Notice of Solicitation for Grant Applications.

Funding Opportunity number: SGA/DFA PY 05–07.

Catalog of Federal Assistance number: 17.261.

Key Dates: The closing date for receipt of applications under this announcement is July 25, 2006. Applications must be received at the address below no later than 5 p.m. (Eastern Time).

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $10 million in grant funds for new and innovative approaches to meeting the workforce challenges of the advanced manufacturing industry under the President's High Growth Job Training Initiative. ETA defines ''advanced manufacturing'' as the use of technology or other productivity-enhancing business processes in the manufacturing enterprise and/or value-added supply chain. These advanced manufacturing technologies and processes may be used in a variety of industry sectors.

The President's High Growth Job Training Initiative (HGJTI) is a strategic effort to prepare workers for new and increasing job opportunities in high-growth, high-demand, and economically vital industries and sectors of the American economy. Through the initiative, ETA identifies high-growth, high-demand industries, evaluates their skill needs, and funds local and national partnership-based demonstration projects that: (a) Address workforce challenges identified by employers; and (b) prepare workers for good jobs with career pathways in these rapidly expanding or transforming industries. The products, models, and effective approaches that result from HGJTI investments will be broadly disseminated to employers, education and training providers, and the workforce system to build their capacity to respond to employers' workforce needs.

Grant funds awarded under this Solicitation for Grant Applications (SGA) should be used to develop and implement innovative and industry-driven training solutions that address the advanced manufacturing industry's critical workforce challenges. Each solution must take place in the context of a strategic partnership between the workforce investment system, business and industry representatives, and education and training providers such as community colleges. The projects selected for funding under this SGA are intended to complement and enhance existing ETA investments for the advanced manufacturing industry available on ETA's Web site at *http://www.doleta.gov/BRG/Indprof/Manufacturing.cfm.*

Applicants may be public, private for-profit, and private non-profit organizations. It is anticipated that individual awards will fall within the range of $750,000 to $1.5 million.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Grant Officer, Reference SGA/DFA PY–05–07, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. Applicants may apply online through Grants.gov (*http://www.grants.gov*) and further information about applying online can be found in Part IV(3) of this solicitation. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

- Part I describes the funding opportunity, provides background information on ETA's demand-driven workforce investment strategies and the President's High Growth Job Training Initiative, and highlights the critical elements and special emphases for this solicitation.
- Part II describes the award amount and performance period of the award.
- Part III describes eligible applicants and other grant specifications.

- Part IV provides information on the application and submission process and various funding restrictions.
- Part V describes the criteria against which applications will be reviewed and explains the proposal review and selection process.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.

I. Funding Opportunity Description

Section 1 of this part provides background information on the Employment and Training Administration's demand-driven workforce investment strategies. Section 2 describes ETA's implementation of the President's High Growth Job Training Initiative (HGJTI) and describes the specific challenges and potential solutions identified for the advanced manufacturing industry as part of the HGJTI process. Section 3 describes critical elements of HGJTI grants. Section 4 describes areas of emphasis particular to this SGA.

1. The Employment and Training Administration's Demand-Driven Workforce Investment Strategies

Each year, the federal government invests billions of dollars in a state and local workforce investment network to assist businesses in recruiting, training, and retaining a skilled workforce. This network is called the workforce investment system, and consists of state and local workforce investment boards, state workforce agencies, and One-Stop Career Centers and their cooperating partners. Although these federal investments have in the past supported a set of standard menu-driven services for employers and workers, the realities of today's rapidly changing global economy make it imperative that the workforce investment system support customized activities that are driven by local employer demand. This demand-driven approach to workforce development is necessary to prepare workers to take advantage of new and increasing job opportunities in high-growth, high-demand, and economically vital industries and sectors of the American economy.

In a demand-driven workforce investment system, state and local workforce investment boards should invest strategically in workforce development activities that are relevant to the skill requirements of local industry and prepare individuals to compete in a global economy through better access to post-secondary education and training. To maximize the impact of workforce development activities, workforce investment boards partner with entities critical to the development of America's workforce: Employers and education and training providers.

Within the context of these strategic partnerships, communities should use a solutions-based approach to workforce development, in which the partnering entities work through the cycle of: (1) Collecting and analyzing information about local workforce needs and critical capacity constraints; (2) incorporating a business or demand-driven perspective into issue identification and solutions development; (3) ensuring that the right strategic partners are at the table; (4) working collaboratively to explore, frame, and implement solutions; and (5) assessing how the products and outcomes of the project can be effectively deployed and replicated. The goal of this process is to ensure that workforce system dollars help workers get skills training that aligns with local industry-identified needs.

2. Background on the President's High Growth Job Training Initiative

ETA first modeled the role of strategic partnerships in demand-driven workforce investment through the President's High Growth Job Training Initiative (HGJTI). This initiative is a strategic effort to prepare workers for new and increasing job opportunities in high-growth, high-demand, and economically vital industries and sectors of the American economy. Through the initiative, ETA identifies high-growth, high-demand industries, evaluates their skill needs, and funds local and national partnership-based demonstration projects that provide workforce solutions to ensure that individuals can gain the skills to get good jobs with career pathways in these rapidly expanding or transforming industries.

The foundation of this initiative is partnerships between the publicly funded workforce investment system, business and industry representatives, and the continuum of education. These partnerships engage each partner in its area of strength. Industry representatives and employers define workforce challenges facing the industry and identify the competencies and skills required for the industry's workforce. Education and training providers, such as community colleges, assist in developing competency models and curricula and train new and incumbent workers. The workforce investment system analyzes local labor market information, accesses human capital (youth, unemployed, underemployed, and dislocated workers), provides funding to support training for qualified individuals, and connects trained workers to good jobs.

ETA is modeling the power of these partnerships at the national level through investments in demonstration projects in 14 high-growth, high-demand industries. Each of the 14 industries was selected because it meets one or more of the following criteria: (1) Is projected to add substantial numbers of new jobs to the economy; (2) has a significant impact on the economy overall; (3) impacts the growth of other industries; (4) is being transformed by technology and innovation requiring new skills sets for workers; or (5) is a new and emerging business that is projected to grow. The 14 industries are:

- Advanced Manufacturing
- Aerospace
- Automotive Services
- Biotechnology
- Construction
- Energy
- Financial Services
- Geospatial Technology
- Healthcare
- Homeland Security
- Hospitality
- Information Technology (IT) & IT Business-Related Services
- Retail
- Transportation

For each industry, ETA follows a three-step process to identify workforce challenges and solutions and to demonstrate solutions nationally. First, ETA conducts an environmental scan to understand the economic conditions and workforce challenges facing the industry. Second, ETA convenes a series of meetings to offer leaders in business and industry an opportunity to share their current and future workforce needs with the workforce system. Using the information gathered at these meetings, ETA convenes another round of meetings with industry and workforce investment system representatives to verify workforce challenges and devise solutions. The results of these meetings are published in a comprehensive industry report. These reports are made available to the public via ETA's Web site at *http://www.doleta.gov/BRG/JobTrainInitiative*, as the HGJTI process is completed for each industry.

Based on the numerous industry-specific solutions identified during the HGJTI process, ETA identified a core set of workforce challenges that are common to all 14 target industries. These elements include:

- Developing a pipeline of young workers with foundational academic skills in math, science, and language;
- Expanding post-secondary training alternatives including apprenticeships

and workforce development programs at community colleges;

- Expanding the capacity of educational institutions;
- Helping workers keep up with the rapid pace of changing skills requirements due to innovation and technology;
- Developing new and innovative learning methodologies;
- Developing strategies for growing and retaining a skilled workforce, including developing career ladders and lattices for new and incumbent workers and updating the skills of incumbent workers;
- Accessing new and/or untapped labor pools;
- Transitioning workers from declining industries;
- Providing improved career guidance information and tools to students and jobseekers;
- Ensuring that educational models reflect the structure of today's workplace;
- Building models to help address a lack of industry defined competencies; and
- Engaging small businesses.

The third and final step of the HGJTI process is a series of federal investments in unique, innovative, and industry-driven projects that demonstrate training initiatives and capacity building strategies to address the industry's unique workforce challenges and reflect one or more of the twelve elements outlined above. Together, these projects contribute to a demand-driven workforce system by making up a solution set tailored to each industry's specific needs. The products, models, and effective approaches that result from this solution set are broadly disseminated to employers, education and training providers, and the workforce system to build their capacity to respond to employers' workforce needs.

ETA has completed the three-step HGJTI process for the advanced manufacturing industry. Over the past two years, ETA has made investments in forty projects totaling over $80 million that support the advanced manufacturing industry. The projects selected for funding under this SGA are intended to complement and enhance the existing solution sets for the advanced manufacturing industry.

To assist applicants in understanding this industry and to provide context for the industry specific emphases detailed in Section 4 of this part, a brief description of the advanced manufacturing industry and its workforce challenges is provided below. Additionally, applicants are encouraged to familiarize themselves with the full industry reports and current investments.

The Advanced Manufacturing Industry and Its Workforce Challenges

The U.S. manufacturing industry accounts for 14 percent of the U.S. Gross Domestic Product and employs 14 million workers, 11 percent of total U.S. employment. However, today's manufacturing industry is undergoing a dramatic transformation, with profound implications for the new and incumbent manufacturing workforce. To increase productivity and remain globally competitive, U.S. manufacturers are incorporating process improvement strategies, adopting quality management systems, and overhauling their production facilities with advanced technology. In order to operate a modern production facility, manufacturers require workers with advanced skills.

Advanced manufacturing was included in the HGJTI because of its importance to the U.S. economy, the transformation in technology and skill requirements, and the difficulty that manufacturers report in hiring skilled workers. ETA defines ''advanced manufacturing'' as the use of technology or other productivity-enhancing business processes in the manufacturing enterprise and/or value-added supply chain. This definition is not synonymous with ''high-tech manufacturing,'' as the emphasis is on the processes used in production and related activities, rather than the output of high-tech products. These advanced manufacturing technologies and processes can be used in a variety of industry sectors such as aerospace. In addition to actual production and assembly activities, this definition includes product design, process engineering, quality control, and software support, as well as product packaging, shipping (though not the actual transportation), inventory management, and maintenance of capital equipment. ETA believes that a primary goal of the HGJTI in advanced manufacturing, and of the broader public workforce system, should be to encourage and assist more manufacturers to adopt advanced manufacturing techniques, with workforce training as a critical ingredient for that transformation.

Over the course of a series of Executive Forums, ETA met with senior executives from more than 50 manufacturing firms, representing a broad cross-section of the manufacturing industry. The industry executives identified numerous critical workforce development challenges, and applicants are encouraged to address one or more of these challenges and/or those included in the areas of emphasis described in Section 4 of this part of the SGA:

- *Training for Innovation:* Manufacturers need workers who are continually focused on innovating products and services, as well as production and business processes.
- *Pipeline Development:* Too few young people consider the possibility of manufacturing careers and are unaware of the necessary skills. Similarly, students do not always graduate from high school equipped with the necessary skills or educated about manufacturing career opportunities.
- *Limited English-Speaking Workforce:* The manufacturing workforce is increasingly foreign-born, meaning that English language skills are becoming a prominent challenge for the industry. Employers have experienced difficulty finding English language programs that suit their particular needs.
- *Foundational Skills:* Manufacturers experience difficulty finding and hiring workers with basic technical skills.
- *Small Business Challenges:* Many small- and medium-sized manufacturers report a variety of obstacles to organizing training programs for their workers, such as a lack of expertise, staff, or resources.
- *Matching Training Providers to Business Needs:* Manufacturers experience difficulty finding training providers that align with their particular needs, for example: Coordination of work and training schedules, transportation of workers, and finding programs that meet specific technology or process needs.
- *Incumbent Worker Training:* Manufacturers report a need for alternative methods by which current employees can improve their skills. Competency models and career ladders need to be clearer in order to provide career development opportunities for incumbent workers.
- *Training the Supply Chain:* Manufacturers increasingly need integrated training programs for workers throughout the supply chain. Initiating improvements and making investments in training and education may not benefit a company if the suppliers to that company are not achieving similar levels of improvement.
- *Industry Capacity/Lack of Skilled Workforce:* New manufacturing processes, such as nanotechnology, and new product demand, such as the specialized equipment needed for the construction of nuclear power plants in

the U.S., require domestic manufacturing capacity that may not exist today. A significant component of this challenge is the need for a skilled workforce.

In a series of Workforce Solutions Forums, attendees identified more than 300 potential solutions to these challenges. Examples of the identified solutions include, but are not limited to:

- Creating an information and education sharing model to distribute knowledge, technology, and training assets across an industry supply chain.
- Providing convenient and flexible training through distance learning opportunities and self-paced training, along with other delivery options.
- Creating and deploying industry-driven skills certifications that are sector specific, nationally recognized, and promote career ladders.

3. Critical Elements of High Growth Job Training Initiative Grants

HGJTI funded grants are expected to contain at least six critical elements. These elements consist of: (A) Innovative solutions to industry identified workforce challenges; (B) strategic partnerships; (C) leveraged resources; (D) sustainability; (E) replication of successful models for broad distribution, and (F) clear and specific outcomes. Each of these characteristics will be reflected in the ratings criteria in Part V and is described in further detail below.

A. Innovative Solution(s) to Industry Identified Workforce Challenges

As previously mentioned in Part I(1), the HGJTI employs a solutions-based approach to addressing the needs of the 21st Century workforce. Grants funded under this SGA should demonstrate how a demand-driven workforce system can more efficiently serve the workforce needs of business while at the same time helping workers find good jobs with good wages and promising career pathways. ETA also expects these grants to demonstrate innovation in effectively meeting the workforce needs of the advanced manufacturing industry. When considering the innovative aspects of workforce solutions proposed by applicants, ETA may look to the creativity of the content of the training or product being delivered, the form and style in which the training or product is delivered, the manner of managing and executing the development of the training or product, including the types of partners engaged or the roles partners play in the activities, and the adaptation of existing solutions to new contexts and industries. Innovative solution elements may be identified in part by articulating how proposed workforce solution(s) relate to the growing body of knowledge from public, private, and governmental sources about effective demand-driven workforce development practices in a variety of sectors.

Applicants are not limited in the strategies and approaches they may employ to implement solutions provided the strategy is well developed, meets industry and local area workforce challenges, delivers training to workers, and is not duplicative of any existing efforts. Examples of previously funded advanced manufacturing industry solutions include:

- A program designed to increase the skills of workers in a large manufacturer's supply chain so those workers could incorporate new required composite materials technology to remain competitive in the aerospace industry.
- A program led by a state workforce investment board to provide technology transfers from state universities on modern plastics industry manufacturing technology, and to train workers to allow them to take advantage of this new technology.

B. Strategic Partnerships

ETA believes that strategic partnerships between the workforce investment system, business and industry entities, and education and training providers such as community colleges need to be in place in order to implement effective demand-driven training and capacity building strategies. Strategic partnerships between these three entities are a required component of proposals submitted under this SGA, as detailed in Part III(3)(a), and they may have a local, regional, or statewide focus.

In addition, partnerships that include a broader consortium of partners, such as Manufacturing Extension Partnership (MEP) centers, Advanced Technology Education (ATE) centers, and others, are also important to implementing effective demand-driven strategies. These strategic partnerships should focus broadly on the workforce challenges of the advanced manufacturing industry, which may include cross industry challenges, and should work collaboratively to identify and implement a wide range of solutions. Therefore, the HGJTI investment in training solutions would be one of many strategies that evolve from the partnership. While ETA welcomes applications from newly formed strategic partnerships, applicants are advised that grant funds may not be used for partnership development.

In order to maximize the long-term success of the proposed solution and to keep pace with the rapid changes in the economy and the nature of the skills and competencies necessary for work in these industries, these partnerships need to be substantial and sustained. ETA encourages partners to plan for the partnership's sustainability beyond the HGJTI investment period to enable ongoing assessment of industry workforce needs and collaborative development of solutions on a continual basis.

Within the context of the broader strategic partnership, and as it relates to the HGJTI, each collaborative partner should have clearly defined roles. The exact nature of these roles may vary depending on the issue areas being addressed and the scope and nature of the activities undertaken. However, ETA expects that each collaborative partner will, at minimum, significantly contribute to one or more aspects of the project. For example, employers must be actively engaged in the project and may contribute to many aspects of grant activities including defining the program strategy and goals, identifying needed skills and competencies, and, where appropriate, hiring qualified training graduates. Education and training providers from the continuum of education, which includes K–12, community and technical colleges, four year colleges and universities, and other training entities, should assist in developing industry-driven workforce education strategies in partnership with employers including competency models, curricula, and new learning methodologies.

The workforce investment system may play a number of roles, including identifying and assessing candidates for training, providing wrap-around support services and training funds for qualified individuals, where appropriate, and connecting qualified training graduates to employers that have existing job openings.

Partnerships with faith-based and community organizations are also encouraged. Grantees may elect to sub-award funds to faith-based and community organizations to perform a variety of grant services such as case management, mentoring, and English language programs, among others. Faith-based and community organizations can also provide wrap-around holistic and comprehensive support services where appropriate, such as employability training and career awareness activities.

C. Leveraged Resources

HGJTI investments leverage funds and resources from key entities in the

strategic partnership. Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) It allows for the pursuit of resources driven by the strategy; (2) it increases stakeholder investment in the project at all levels including design and implementation phases; and (3) it broadens the impact of the project itself.

Leveraged resources include both federal and non-federal funds and may come from many sources. Businesses, faith-based and community organizations, economic development entities, education systems, and philanthropic foundations often invest resources to support workforce development. In addition, other federal, state, and local government programs may have resources available that can be integrated into the proposed project. Examples of such programs include other Department of Labor programs such as registered apprenticeship and Job Corps, as well as non-DOL One-Stop partner programs such as Vocational Rehabilitation and Adult Education. ETA encourages HGJTI grantees and their partners to be entrepreneurial as they seek out, utilize, and sustain these resources when creating effective solutions to the workforce challenges identified by the industry.

D. Sustainability

The HGJTI investment should be considered seed funding. Therefore, HGJTI grantees should develop strategies to sustain the project or related partnership activities after the federal investment ends. Financial resources are an important part of any sustainability strategy; however, they are not the only component. Sustainability is also strengthened by the partnerships formed before and during the grant term; systems, strategies, and processes put in place during the grant period; and the experience gained through implementing a HGJTI grant. All of these may provide the foundation for developing long-term systemic solutions to workforce challenges in high-growth, high-demand industries.

E. Replication of Successful Models for Broad Distribution

HGJTI grantees are expected to develop the learning and achievement that result from their projects into solution models that can be shared with and implemented by the workforce investment system, industry leaders, and education and training community. To support the replication and distribution of solution models, ETA has developed an integrated web space called *www.workforce3one.org.* Workforce[3] One offers the public workforce system, employers, economic development professionals, and education professionals an innovative knowledge network designed to create and support a demand-driven community, one that responds directly to business needs and prepares workers for good jobs in the fastest growing careers. By supporting replicable proposals that can be implemented in multiple areas and industries, ETA is able to maximize the investment by expanding the grant's impact beyond the initial grant site and helping additional workers in other areas and industries.

F. Clear and Specific Outcomes

HGJTI grants are results-oriented and demonstrate clear and specific outcomes that are appropriate to the nature of the solution and the size of the project and that indicate progress towards the workforce challenges identified by the partnership. Because HGJTI grants invest in customized strategies to address local workforce challenges and skill shortages, ETA recognizes that outcomes will vary from project to project based on the specific activities proposed. HGJTI grants should demonstrate the effectiveness of training activities by creating appropriate benchmarks and measuring against them on a regular basis.

Training outcomes must include those tracked by the Common Measures such as earnings increases, job placements, and job retention. Common Measures are the OMB-approved uniform evaluation metrics for job training and employment programs. A detailed description of ETA's policy on the Common Measures can be found on the Common Measures/Individual Program Performance Web page at *http://www.doleta.gov/Performance/quickview/IPPMeasures.cfm.*

Grants that have capacity building components should track the impact of products, models, and activities. Outcomes and impacts of the proposed project should satisfactorily address the industry-identified workforce needs and capacity constraints identified by the partnership.

4. ETA Emphases for This SGA

In addition to the critical elements described above, ETA has developed three areas of emphasis for advanced manufacturing projects funded through this SGA: (A) Addressing advanced manufacturing industry identified workforce challenges; (B) integrating Workforce Investment Act funding into the project; and (C) integrating the project into regional economic development activities.

A. Addressing Advanced Manufacturing Industry Identified Workforce Challenges

Based on the scope and nature of investments made in previous funding rounds, ETA has identified specific workforce challenges for emphasis in this SGA. These are a subset of the challenges described earlier in Section 2 of this Part, and although applicants are encouraged to develop proposals that address the specific challenges listed below, all unique and innovative proposals providing solutions to identified industry workforce challenges in advanced manufacturing will be considered and reviewed.

As applicants describe their solutions to the workforce challenges below or other industry challenges, they should describe how their project relates to the framework of competencies included in Attachment A. This framework has been developed by industry, and is designed to provide prospective workers, educators, the public workforce system, and businesses with a common understanding of the basic competencies necessary for a career in advanced manufacturing. A more detailed description of the framework, its purpose, and how to use it can be found in Attachment A.

Please note that ETA is particularly interested in projects that provide workers with the technical competencies necessary to succeed in an advanced manufacturing environment. Tiers 4 through 7 of the framework address these technical competencies. Although applicants may include efforts that promote personal effectiveness, workplace, academic, and management competencies as an element of their projects, these efforts should not be the primary focus of the project.

As applicants explain how the proposed models fit within the framework, a description of how the various tools and materials to be developed under the proposal, such as new curricula, certifications, or standards, should be included.

• *Enterprise and Supply Chain Transformation:* Applicants are encouraged to submit projects that promote the comprehensive transformation of a manufacturing enterprise, or of a manufacturing value-added supply chain that involves a number of separate companies producing a final good. Because the manufacturing industry is being transformed into a high tech industry using advanced manufacturing

processes, industries and workforce systems need the ability to constantly re-skill workers as innovation and technology change the nature of the work. An enterprise or supply chain transformation model would demonstrate how the project partners would provide a suite of workforce development offerings for multiple levels of an enterprise or supply chain, in order to promote agility of both production and business processes to respond to changing market conditions. Although the overall project may address the training needs of administrative and supervisory personnel, the primary focus of the grant funding should be directed toward workers associated with the manufacturing process.

- *Career Lattice Models:* Applicants are encouraged to submit projects that develop comprehensive career lattice models for advanced manufacturing. The key elements of such models are: Skills assessments, multiple entry-exit points, modularized curricula, multi-delivery options, and multi-level certifications. The model should allow for entry by various populations and under-utilized labor pools, including but not limited to youth, older workers, displaced workers, workers transitioning between industries, welfare recipients, ex-offenders, veterans, workers with limited English proficiency, incumbent workers, and/or persons with disabilities.
- *Innovative Learning Methodologies:* Applicants are strongly encouraged to develop and utilize learning methodologies in their projects that: Facilitate and accelerate knowledge transfer through innovative, interactive, and integrated technologies; are flexible without constraints regarding time and place; and are responsive to the different types of potential users of these technologies. As information technology rapidly becomes a defining element of today's dynamic work environment and an integral part of motivating and supporting effective learning, training models and methodologies that may have been adequate in the past may not be able to meet the demands of the workforce challenges of today. Meeting these challenges will require new and creative approaches to workforce development. Examples of such methods may include the use of gaming or virtual simulations, just in time learning, distance learning and blended learning solutions. Applicants are encouraged to demonstrate the impact of innovative learning methodologies on a variety of training outcomes such as wage gains and retention.
- *Increasing the Capacity for Training to Industry-Wide Technical Competencies:* Applicants are encouraged to submit projects that address the need for qualified instructors who can teach the full range of industry-wide technical competencies described in Tier 4 of the Advanced Manufacturing Competencies Framework, and included in Attachment A. Similarly, applicants are encouraged to develop curricula and/or other training materials for the industry-wide technical competencies that may be disseminated nationwide. Applicants should develop these materials for industry-wide technical competencies at both the entry level and the technician level.

B. Integrating Workforce Investment Act Funding

Applicants are encouraged to integrate Workforce Investment Act (WIA) funding at the state and local level into their proposed project. Integrating WIA funds ensures that the full spectrum of assets available from the workforce system is leveraged to support the HGJTI solution. The wide variety of WIA programs and activities provide both breadth and depth to the proposed solution offered to both businesses and individuals. In addition, the use of WIA funds helps integrate the grant's solutions-based activities into the local or regional workforce investment system, which serves to strengthen the system's ability to become more demand-driven and supports long-term sustainability.

The integration of WIA funds may take many forms. For example, HGJTI funds may be used for the development of curriculum materials and training for incumbent workers, while WIA resources are used to fund Individual Training Accounts (ITAs) that provide training for adults and dislocated workers. In addition, other WIA resources may be used to provide supportive services (such as transportation or child care) to training recipients. Applicants may wish to consider the appropriateness of a variety of WIA funds such as Job Corps (WIA Title 1, Subtitle C), Youth (WIA Section 129), Adults and Dislocated Workers (WIA Section 133), Native Americans (WIA Section 166), Migrant and Seasonal Farm Workers, (WIA Section 167), Demonstrations and Pilot Projects (WIA Section 171), and National Emergency Grants (WIA Section 173).

Please note that all federal requirements will continue to apply to WIA integrated funds used for the proposed solution. However, selected applicants will be encouraged to work with states to identify available waivers of statutory and regulatory requirements as authorized under Section 189 of WIA.

C. Integrating the Project Into State and Regional Economic Development Activities

ETA recognizes that workforce development is a key factor in our nation's economic competitiveness. To stay ahead of global competition, we must identify strategies to further integrate workforce and economic development with education at the state and regional level—where companies, workers, researchers, entrepreneurs and governments come together to create competitive advantage. Therefore, ETA encourages applicants to integrate their proposed grant activities into state or regional economic development strategies. This integration can be achieved by (a) implementing strategies that build upon and align with current state and/or regional strategic plans currently in place under the Workforce Investment Act, the Department of Commerce's economic development programs, the Department of Housing and Urban Development's community development programs, and other applicable state and federal programs; and/or (b) strategically involving state and regional partners in grant activities. Applicants that fully demonstrate that their proposed grant activities are integrated into state or regional economic development strategies by providing clear and specific examples of those strategies will receive 5 bonus points.

II. Award Information

1. Award Amount

ETA intends to fund 10 to 12 projects ranging from $750,000 to $1.5 million; however, this does not preclude funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets for quality projects at whatever funding level is appropriate to the project. Nevertheless, applicants should recognize that the limited funds available through this SGA are intended to supplement project budgets rather than be the sole source of funds for the proposal.

2. Period of Performance

The period of grant performance will be up to 36 months from the date of execution of the grant documents. This performance period shall include all necessary implementation and start-up activities as well as participant follow-

up for performance outcomes and grant close-out activities. A timeline clearly detailing these required grant activities and their expected completion dates must be included in the grant application. If applied for and with significant justification, ETA may elect to exercise its option to award no-cost extensions to these grants for an additional period at its own discretion, based on the success of the program and other relevant factors.

III. Eligibility Information and Other Grant Specifications

1. Eligible Applicants

Applicants may be public, private for-profit, and private non-profit organizations including faith-based and community organizations. The application must clearly identify the applicant and describe its capacity to administer the HGJTI advanced manufacturing grant, in terms of both organizational capacity and data management capabilities. Applications for supplementation of existing projects are eligible for consideration under this SGA; however, applications for renewal of existing projects will not be considered. Please note that the applicant and fiscal agent must be the same organization.

2. Cost Sharing or Matching

Cost sharing, matching, or cost participation is not required for eligibility; however, applicants are encouraged to leverage the resources of the partnership, whenever possible.

3. Other Grant Specifications

A. Demonstrated Partnerships

To be considered for funding under this SGA, the applicant must demonstrate that the proposed project will be implemented by a strategic partnership that includes at least one entity from each of three categories: (1) The workforce investment system, which may include state and local workforce investment boards, state workforce agencies, and One-Stop Career Centers and their partners; (2) the education and training community, which includes the continuum of education from K–12 to community and technical colleges, four year colleges and universities, and other training entities; and (3) employers and industry-related organizations such as associations and labor-management organizations.

B. Training Workers for Employment in High-Growth Industries

All grants funded under this solicitation must include the direct provision of training to individual participants. Applicants are not limited in the strategies and approaches they may employ to implement training activities; however, the training must: (a) Target skills and competencies demanded by the advanced manufacturing industry; (b) support participants' long term career growth along a defined career pathway such as an articulated career ladder and lattice; and (c) result in an industry-recognized certificate, degree, or license that indicates a level of mastery and competence in a given field or function. The credential awarded to participants should be based on the type of training provided through the grant and the requirements of the targeted occupation, and should be selected based on consultations with industry partners. For example:

- Customized and short-term training should result in a performance-based certification or certificate. This certification may be developed jointly by employers and the project partners, based on defined knowledge and skill requirements for specific high-growth occupations. Performance-based certifications may also be based on industry recognized curriculum and standards.
- Training in fields with established professional standards and examinations should result in certification.
- In states where licensure is required for the specific occupation targeted by the training, the credentialing requirement should be set accordingly.
- In some instances, training provided under the HGJTI grant may lead to a degree. In these instances, the credential will be the degree itself or the successful completion of coursework required for the degree.

In addition to the required training strategies, applicants may, but are not required to, propose capacity building strategies to meet the training needs of advanced manufacturing employers. These proposed capacity building efforts must be directly linked to the specific training supported under the grant, and are expected to address significant barriers that impede the ability of the partnership to meet the advanced manufacturing industry's demand for workforce training. These strategies should not simply address isolated deficits, but rather provide a comprehensive solution to identified capacity challenges as they relate to the advanced manufacturing industry.

Please note that, where training and capacity building activities relate specifically to competencies identified in the advanced manufacturing competency model framework found in Attachment A, this relationship should be clearly articulated.

C. Participants Eligible To Receive HGJTI Training

Generally, the scope of potential trainees is very broad. Training may be targeted to a wide variety of populations, including unemployed individuals and incumbent workers. The identification of targeted and qualified trainees should be part of the larger project planning process by the required partnership and should relate to the workforce issue that is being addressed by the training.

D. Veterans Priority

This program is subject to the provisions of the ''Jobs for Veterans Act,'' Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that to obtain priority of service, a veteran must meet the grantee's program eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003), available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1512,* provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs.

IV. Application, Submission, and Funding Restriction Information

1. Address To Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

2. Content and Form of Application Submission

The proposal must consist of two (2) separate and distinct parts: Part I, the Cost Proposal and Part II, the Technical Proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration. Please note that it is the applicant's responsibility to ensure that the funding amount requested is consistent across all parts and sub-parts of the application.

Part I of the proposal is the Cost Proposal and must include the following two items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.whitehouse.gov/omb/grants/*

sf424.pdf). Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall represent the responsible financial and administrative entity. All applicants for federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. For more information about the DUNS number, see OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

• The Standard Form (SF) 424A Budget Information Form (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should break down the budget and corresponding leveraged resources by deliverable, making clear distinctions between training and (if any) capacity building costs, and should discuss precisely how the administrative costs support the project goals. All applicants should indicate training costs-per-participant by dividing the total amount of the budget designated for training by the number of participants trained. This is provided for informational purposes only and will not be used in the evaluation of the grant application. **Please Note:** If the proposal calls for integrating WIA or other federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal. The amount of federal funding requested for the entire period of performance should be shown together on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit the OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement the President's High Growth Job Training Initiative grant project in accordance with the provisions of this solicitation, and includes a project description as described in the Criteria section of this solicitation. The project description is limited to twenty-five (25) double-spaced, single-sided, 8.5 inch x 11 inch pages with 12 point text font and one-inch margins. Any pages over the 25 page limit will not be reviewed. In addition, the applicant may provide resumes, a staffing pattern, statistical information and related material in attachments, which may not exceed twenty (20) pages. Although not required, letters of support or commitment from partners providing financial resources may be submitted as attachments. Such letters will count against the allowable maximum page total. Please note that applicants should not send letters of commitment or support separately to ETA because letters are tracked through a separate system and will not be attached to the application for review. The applicant must clearly reference any partners in the text of the Technical Proposal. Except for the discussion of any leveraged resources to address the evaluation criteria, no cost data or reference to prices should be included in the Technical Proposal. The following information is required:

• A two-page abstract summarizing the proposed project and applicant profile information including:

• Applicant name;

• Industry focus (advanced manufacturing and any other related industries, such as aerospace);

• A brief description of the workforce challenges addressed (100 words);

• A brief description of the proposed solution (150 words);

• Key partners funding amount requested;

• Amount of leveraged resources; and

• Number of people trained and other key grant outcomes

• A table of contents listing the application sections; and

• A timeline outlining project activities, including expected start-up, implementation, participant follow-up for performance outcomes, grant close-out and other activities.

Please note that the abstract, table of contents, and timeline are not included in the twenty-five page limit.

Applications may be submitted electronically on Grants.gov or in hardcopy via mail or hand delivery. These processes are described in further detail in Section IV(3). Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an identical electronic copy of the proposal on CD–ROM.

3. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is July 25, 2006. Applications must be received at the address below no later than 5 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted.

Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Reference SGA/DFA, PY–05–07, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

Applicants may apply online through Grants.gov (*http://www.grants.gov*). It is strongly recommended that applicants using Grants.gov immediately initiate and complete the ''Get Started'' registration steps at *http://www.grants.gov/GetStarted.* These steps may take multiple days to complete, and this time should be factored into plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of an application as untimely. If submitting electronically through grants.gov, it would be appreciated if the application submitted is saved as .doc, .pdf, or .txt files.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was (a) sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be post marked by the 15th of that month), or (b) sent by overnight delivery service or Grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. It is highly

recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation '''bull's eye''' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable federal cost principles or other conditions contained in the grant.

A. Indirect Costs

As specified in OMB Circular A–122, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. In order to utilize grant funds for indirect costs incurred the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after grant award.

B. Administrative Costs

Under the President's High Growth Job Training Initiative, an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct or indirect costs, and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. Although there will be administrative costs associated with the managing of the partnership as it relates to specific grant activity, the primary use of funding should be to support the actual capacity building and training activity(ies). To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its federal cognizant agency as specified in Section 5(A) of this part.

C. ETA Distribution Rights

Applicants should note that grantees must agree to provide USDOL/ETA a paid-up, non-exclusive and irrevocable license to reproduce, publish, or otherwise use for federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

D. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government is generally prohibited from providing direct financial assistance for inherently religious activities. See 29 CFR Part 2, Subpart D. These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients. The term ''direct'' support is used to describe funds or other support that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives ''indirectly'' as the result of the genuine and independent private choice of a beneficiary under the meaning of the Establishment Clause of the U.S. Constitution.

6. Other Submission Requirements

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

1. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate the President's High Growth Job Training Initiative grant proposals. These criteria and point values are:

Criterion	Points
A. Statement of Need	10
B. Innovative Solutions to Address Industry Identified Workforce Challenges	30
C. Outcomes and Impact	25
D. Linkages to Key Partners	15
E. Leveraged Resources	10
F. Program Management and Organization Capacity	10
*Bonus: Connections to Regional Economies	5
Total Possible Points	105

A. Statement of Need (10 Points)

Applicants must demonstrate a clear and specific need for the federal investment in the proposed activities by: (a) Describing the role of the advanced manufacturing industry or industry sub-sectors in the economy of the area in which the grant activity will take place; (b) describing the workforce challenges facing the industry and their impact on specific local economic and workforce conditions; and (c) describing the resource analysis and mapping that has been conducted to date that demonstrates that local resources are not sufficient to address the workforce challenges. If the applicant intends to include capacity building activities as part of the proposal, this section must also include a detailed discussion of the capacity challenges the community or region faces that limit its ability to provide sufficient quantity or quality of training to meet the identified workforce needs. In addition, applicants should provide evidence that the workforce challenges to be addressed by the grant were identified in the context of the strategic partnership.

Applicants may draw from a variety of resources for supporting data, including: traditional labor market information, such as projections; industry data; trade associations or direct information from the local industry; and information on the local economy and other transactional data, such as job vacancies, that are available locally.

Up to 10 points may be awarded under this criterion based on the demonstrated existence of workforce challenges and the extent of need for the federal investment in the solution. Important factors for evaluation include:

• Demonstrated knowledge of the advanced manufacturing industry in the local area, including the impact of the industry on the local or regional economy.

• Demonstrated existence of the identified workforce challenges and, if capacity building activities are proposed, demonstrated existence of a capacity constraint in addressing those challenges, in the area in which the grant activity will take place.

• Discussion of the how the industry workforce challenges affect the specific employer partners contained in the proposal.

• Description of economic analysis and resource mapping used to demonstrate need for the federal investment.

• Identification of the sources of data used in analyses.

• If appropriate, the nature of larger strategic economic development or workforce investment projects with which the proposed project is aligned.

B. Innovative Solutions To Address Industry Identified Workforce Challenges (30 Points)

The applicant must describe the proposed workforce development solution strategy in full, including all solution elements and implementation strategies, how the solutions address the workforce challenges described in the statement of need, and how the proposed solution complements or enhances existing ETA investments in advanced manufacturing, and other activities undertaken by the partnership. Points for this criterion will be awarded for the following factors:

• *Solution Description (15 points).* Applicants may earn up to 15 points based on evidence that the applicant has developed an effective solutions-based approach and a plan of implementation that will address the following objectives:

• The proposed project will address one or more workforce challenges identified by the advanced manufacturing industry through the High Growth Job Training Initiative, as discussed in Sections I(2) and I(4)(A) of this SGA; the proposed industry-driven project activities were developed in the context of a solutions-based approach; and the project will contribute to a demand-driven workforce investment system (4 points).

• The proposed training activities target skills and competencies demanded by the advanced manufacturing industry, support participants' long term career growth along a defined career pathway such as an articulated career ladder and lattice, and clearly fit within the framework for advanced manufacturing competencies described in Attachment A. When discussing skills and competencies under the framework for advanced manufacturing competencies in Attachment A, applicants should specifically describe the tiers or competencies they intend to address. The proposed training activities should also lead to an appropriate credential. If the credential targeted by the training project is a certificate or performance-based certification, applicants should either (a) demonstrate employer engagement in the curriculum development process, or (b) indicate that the certification will translate into concrete job opportunities with an employer. If there are proposed capacity building activities, the applicant must demonstrate that these activities are broad based, and are clearly integrated with training activities. Proposals calling for developing curricula or certification or assessing skills should describe how those activities relate to the competency framework and indicate whether they will be building new tools and materials to address the competencies or will utilize existing ones. (8 points).

• The applicant describes a reasonable sustainability strategy beyond the federal investment (3 points).

• *Implementation Strategy (10 points).* Applicants can earn up to 10 points based on evidence that the applicant has a clear understanding of the tasks required to successfully meet the objectives of the grant. Factors considered in evaluating this evidence include: (1) The existence of a work plan that is responsive to the applicant's statement of need and includes specific goals, objectives, activities, implementation strategies, and a timeline; (2) the feasibility and reasonableness of the timeline for accomplishing all necessary implementation activities, including start-up, capacity building (if applicable) and training activities, participant follow-up for performance outcomes, and grant close-out activities; (3) whether budget line items are consistent with and tied to the work plan objectives; and (4) the extent to which the budget is justified with respect to the adequacy and reasonableness of resources requested.

• *Innovative Solution Design (5 points).* Applicants may earn up to 5 points for integrating into their solutions approaches and techniques that are distinctively innovative, creative, or adaptive, or by demonstrating a new approach to workforce development. To receive full points for this element, applicants must clearly identify innovative aspects of the proposed solution and explain in what way they are innovative and how that innovation will improve the overall quality and effectiveness of the solution. Applicants may also identify innovative solution elements by articulating how proposed workforce solution(s) relate to the growing body of knowledge from public, private, and governmental sources about effective demand-driven workforce development practices.

• *Integrating the Project into State and Regional Economic Development Activities (5 bonus points).* Applicants that fully demonstrate that their proposed grant activities will be integrated into state or regional economic development strategies will receive 5 bonus points. Applications that do not fully demonstrate this integration will not receive bonus points. Full demonstration of this integration can be achieved by (a) describing how proposed activities will build upon and align with current state and/or regional strategic plans currently in place under the Workforce Investment Act, the Department of Commerce's economic development programs, the Department of Housing and Urban Development's community development programs, and other applicable state and federal programs; and/or (b) explaining how key state and regional economic development partners will be involved in grant activities by providing clear and specific examples of those strategies.

C. Outcomes and Impact (25 Points)

Applicants should demonstrate a results-oriented approach to managing and operating the HGJTI project by fully describing the proposed outcome measures relevant to measuring the success or impact of the project. Scoring on this criterion will be based on the following factors:

• *Description of Outcomes (10 points).* Applicants may earn up to 10 points for indicating that appropriate outcomes will be tracked as detailed below. Additionally, the description of outcomes must include: (1) Baseline numbers for tracking progress; (2) benchmark outcome goals; and (3) the methods proposed to collect and validate outcome data in a timely and accurate manner.

• *Training.* Applicants must track training outcome measures that are consistent with ETA's Common Measures, such as employment placement numbers and/or earnings gains and retention. Other outcome measures that should be tracked include

the number of individuals awarded credentials or degrees, and any other outcome measures specific to the proposed training project. Applications must also identify the type of credential that participants will earn as a result of the proposed training, and the employer-, industry-, vendor-, or state-defined standards associated with the credential.

• *Capacity Building.* Applicants that have capacity building components in their projects must clearly describe all products, models, curricula, etc. that will be developed or acquired with federal funds through the grant and indicate the number of participants or entities who will benefit in either the short and/or long term, from the proposed activities. Applicants must describe the data measures that will be used to measure how the proposed capacity building activities impact the ability of entities to train workers for skills in demand by the advanced manufacturing industry.

• *Appropriateness of Outcomes (10 points).* Applicants may earn up to 10 points based on three factors: (1) The extent to which the expected project outcomes are clearly identified and measurable, realistic, and consistent with the objectives of the project; (2) the ability of the applicant to achieve the stated outcomes within the timeframe of the grant; (3) the appropriateness of the outcomes with respect to both the extent of the workforce challenge described in the statement of need and the requested level of funding.

• *Replication of Outcomes (5 points).* Applicants may earn up to 5 points by demonstrating the existence of an effective plan to capture proposed activities into a model that can be shared with the workforce investment system and other partners.

D. Linkages to Key Partners (15 Points)

The application must demonstrate that the proposed project will be implemented by a partnership that includes at least one entity from each of three categories: (1) The workforce investment system, (2) education and training providers such as community colleges, and (3) employers and industry representatives. ETA encourages, and will be looking for, applications that go beyond the minimum level of partnership and demonstrate broader, substantive and sustainable partnerships, such as those with faith-based and community organizations. Points for this criterion will be awarded based on the following three factors:

• *Completeness of the Partnership (9 points).* The applicant must identify the partners and explain the meaningful role each partner will play in the project. Points for this factor will be awarded based on: (a) The comprehensiveness of the partnership and the degree to which each key partner plays a committed role, either financial or non-financial, in the proposed project; (b) the breadth and depth of each key partner's contribution, their knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project; and (c) evidence, which may include letters of commitment and support, that key partners have expressed a clear dedication to the project and understand their areas of responsibility. Please note that, in order to receive full points for this factor, applicants must demonstrate that each required partner will play a well-developed and committed role in the project.

• *Partnership Management (6 points).* Points for this factor will be awarded based on evidence of a plan for interaction between partners at each stage of the project, from planning to execution, demonstrated ability of the lead agency to successfully manage partnerships, and the overall completeness of the partnership, including its ability to manage all aspects and stages of the project and to coordinate individual activities with the partnership as a whole.

E. Leveraged Resources (10 Points)

Applicants should clearly describe any funds and resources leveraged in support of grant activities and demonstrate how these funds will be used to contribute to the goals of the project. This applies to funds leveraged from businesses, faith-based and community organizations, economic development entities, education systems, philanthropic foundations, and/or Federal, State, and local government programs, including WIA, Trade Adjustment Assistance, and Wagner-Peyser.

Scoring on this factor will be based on the extent to which the applicant fully describes the amount, commitment, nature, and quality of leveraged resources. The amount of resources leveraged will not be factored into the score for this section. Rather, applications will be scored based on the degree to which the source and use of funds is clearly explained and the extent to which leveraged resources are integrated into the project in support of grant outcomes. Important elements of the explanation include:

• Which partners have contributed leveraged resources and the extent of each contribution.

• Evidence, such as letters of commitment, that key partners have expressed a clear commitment to provide the contribution.

• The nature of the leveraged resources including an itemized description of each cash or in-kind contribution and a description of how each contribution will support the proposed grant activities.

• The quality of the leveraged resources including the quality of each in-kind contribution and the extent to which each contribution will be used to further the goals of the project.

F. Program Management and Organization Capacity (10 Points)

To satisfy this criterion, applicants must describe their proposed project management structure including, where appropriate, the identification of a proposed project manager, discussion of the proposed staffing pattern, and the qualifications and experience of key staff members. Applicants should also show evidence of the use of data systems to track outcomes in a timely and accurate manner. The applicant should include a description of organizational capacity and the organization's track record in projects similar to that described in the proposal and/or related activities of the primary partners.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

• The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project;

• The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objects and tasks;

• The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles; and

• The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting.

2. Review and Selection Process

Applications for the President's High Growth Job Training Initiative Grants under this solicitation will be accepted after the publication of this announcement until the closing date. A technical review panel will make careful evaluation of applications against the criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to

105 points may be awarded to an application, including the five point bonus for connections to regional economies, based on the required information described in Part V(1). The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as alignment with emphases detailed in the SGA; urban, rural, and geographic balance; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant (including electronic signature via E-Authentication on *http://www.grants.gov).*

VI. Award Administration Information

1. Award Notices

All applicants will be contacted regarding their selection status at the conclusion of the review and selection process and all award notifications will be posted on the ETA Homepage at *http://www.doleta.gov*. Applicants selected for award will be contacted directly before the grant's execution and non-selected applicants will be notified by mail.

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, DOL/ETA may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

2. Administrative and National Policy Requirements

A. Administrative Program Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws (available at *http://thomas.loc.gov*) and regulations (available at *http://www.gpoaccess.gov/cfr*), as well as the applicable Office of Management and Budget (OMB) Circulars (available at *http://www.whitehouse.gov/omb/circulars*). The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

a. All Grant Recipients—20 Code of Federal Regulations (CFR) Part 667.220. (Administrative Costs).

b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

f. All entities must comply with 29 CFR Parts 37, 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

g. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code Section 501(c)(4) that engage in lobbying activities are not eligible to receive federal funds and grants.

Note: Except as specifically provided in this SGA, DOL/ETA's acceptance of a proposal and an award of federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, *i.e.*, avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

B. Special Program Requirements

Evaluation. DOL may require that the program or project participate in an evaluation of overall HGJTI grant performance. To measure the impact of grants funded under the HGJTI, ETA may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers, and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

3. Reporting

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF 269) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's Online Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days after the end of each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet all DOL reporting requirements.

Final Report. A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document the solution approach. After responding to DOL questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

VII. Agency Contacts

For further information regarding this SGA, please contact Melissa Abdullah, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3346 (This is not a toll-free number). Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of Melissa Abdullah and should include SGA/DFA PY 05–07, a contact name, fax and phone number.

This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm* and at *http://www.grants.gov*.

VIII. Other Information

Resources for the Applicant. The Department of Labor maintains a number of Web-based resources that may be of assistance to applicants. The Web page for the Employment and Training Administration's Business Relations Group (*http://www.doleta.gov/BRG*) is a valuable source of background on the President's High Growth Job

Training Initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. Applicants are encouraged to review ''Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal'' (*http://www/dol.gov/cfbci/sgabrochure.htm*). For a basic understanding of the grants process and basic responsibilities of receiving federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*http://www.fbci.gov*).

Signed at Washington, DC, this 22nd day of May 2006.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

Attachment A: Framework of Competencies for the Advanced Manufacturing Industry

Competency Models as a Business Solution

Over the course of the High Growth Job Training Initiative for advanced manufacturing, ETA learned about numerous efforts to document the skills and competencies needed for successful careers in the industry. Over the years, many organizations have created curricula, educational programs, and other training tools to help prepare America's future manufacturing workforce. Today's manufacturers recognize the need for a common framework of foundational skills and competencies in order to know they are hiring workers who are prepared to succeed in 21st Century advanced manufacturing. Moreover, prospective workers want to know what skills they need to take the first step toward a successful career in manufacturing; training providers need to know what standards their training should meet, and that those standards are directly relevant to industry requirements; and the public workforce system needs to know that the training programs they are supporting and referring customers to are producing workers that will find employment.

The Value of Industry Competency Models

In response, industry has developed a dynamic, industry-driven framework of foundational and technical competencies that are necessary for entry-level workers across all manufacturing sectors. Such a model framework allows for consistency across industries, customization within sectors, and easy updating to accommodate changing technology and business practices. More specifically, this framework provides a common language and reference to facilitate communication as industry leaders, educators, economic developers and public workforce investment professionals undertake a variety of activities, including:

- Developing sector specific competencies that flow from the foundational competencies;
- Developing competency-based curricula and training models;
- Developing position descriptions and hiring criteria for industry;
- Developing assessment and testing instruments; and
- Providing guidance for government investments in workforce preparation strategies in the manufacturing industry.

This framework builds on existing national and state skills standards, technical curricula, and certifications in the field of advanced manufacturing. This product is intended to be the framework for a competency model and purposely does not include performance indicators or measurement criteria for each competency content area, which must be developed by industry. Similarly, the framework does not specify competencies for individual industry sectors or occupations, which also must be developed by industry with their educational partners. Rather, the framework does describe specific competencies regarding foundational personal effectiveness, academic, workplace, and industry-wide technical competencies, included as part of this attachment. It is intended that by reducing duplication of efforts, such as continually identifying and re-validating core foundational competencies, this framework will free up resources, time, and energy for innovative curriculum development that can keep up with the pace of changing technology and industry requirements.

For purposes of this SGA, applicants are encouraged to familiarize themselves with this framework. Proposals that call for developing curricula or certifications, providing training assessing skills, or related activities, should describe how those activities relate to this framework. It is not suggested or encouraged that proposals address all of the tiers and competencies identified in the framework, or that applicants should be restricted to address only those competencies identified in the framework. Rather, applicants are encouraged to:

- Describe which tiers or competencies they intend to address or not address;
- Describe how they will utilize existing standards, curricula, certifications, and assessment tools; and
- Describe whether they will build on existing tools or develop new ones.

As noted in the SGA, ETA is particularly interested in projects that provide workers with the technical competencies necessary to succeed in an advanced manufacturing environment, which encompass Tiers 4 through 7 of the framework. While applicants may include efforts that promote personal effectiveness, workplace, academic, and management competencies as an element of their projects, these efforts should not be the primary focus of the project.

Dissemination and Use of Industry Competency Models

Over the coming months, ETA intends to develop similar competency model frameworks for each of the industries that make up the President's High Growth Job Training Initiative. In addition, ETA is developing a Web-based clearinghouse for industry-driven competency models that will:

- Provide industry a means to publicize their emerging skill needs;
- Serve as a resource where businesses (both small and large), educators, and individuals can go to ascertain the emerging skill demands in the U.S. workplace, and related certifications;
- Offer a tool for businesses and human resource professionals to develop job requirements;
- Provide a strong framework for curriculum development in advanced manufacturing; and
- Serve as a resource for career exploration and guidance.

The Internet-based competency clearinghouse will display the competency framework and provide links to access a database of related resources: skill standards, competency-based curricula, certifications, career ladder models and other tools. The clearinghouse will be added to over time as new resources are developed and to reflect changing skill requirements.

Structure of the Competency Framework

For easy reference, the building blocks for competency models, or competency model content framework, are shown in Figure 1 in a graphic consisting of nine tiers.

Foundational Competencies

- Tier 1—Personal Effectiveness Competencies
- Tier 2—Academic Competencies
- Tier 3—Workplace Competencies

Industry Competencies

- Tier 4—Industry-Wide Technical Competencies
- Tier 5—Industry Sector Technical Competencies

Occupational Competencies

- Tier 6—Occupation-Specific Knowledge Areas
- Tier 7—Occupation-Specific Technical Competencies
- Tier 8—Occupation-Specific Requirements
- Tier 9—Management Competencies

Tiers 1 through 4 are divided into blocks. The blocks on these tiers represent competency areas, that is, the skills, knowledge, abilities and other factors that are essential to successful performance in the industry. For example, in the advanced manufacturing competency framework, Tier 4 represents industry-wide technical competencies cutting across all manufacturing sectors. Tiers 5 through 9 may also contain competency blocks, but these should be defined for each industry-sector or occupation. Whereas some manufacturing industry sectors and educational partners have already come together to define their technical and occupational competencies, many others have not.

The arrangement of the tiers in a pyramidal shape represents the increasing level of specificity and specialization of the content on the upper tiers of the graphic. As a user moves through the various tiers of the model, the competencies become specific to certain industries and/or occupations. The graphic in Figure 1 is not intended to represent a sequential model, or to imply that all content area on a lower tier must be achieved prior to tackling a competency on a tier that is at an upper level on the graphic.

Foundational Competencies

At the base of the model, tiers 1 through 3 represent those competencies which provide the foundation for success in school and in the world of work. Employers have identified a link between foundational skills and job performance, as well as the fact that foundational skills are a needed prerequisite for workers to learn new industry-specific skills. These foundational competencies are essential to a large number of occupations and industries.

Tier 1—Personal Effectiveness Competencies are shown as hovering below the pyramid because these competencies are essential for all life roles—those roles as a member of a family, of a community, and of the larger society. They are not exclusive to the competencies needed for a successful career or role in the workplace. They are included here because these competencies also are valued by employers, and are often referred to as ''soft skills.'' Personal effectiveness competencies are generally learned in the home or community and reinforced and honed at school and in the workplace. They represent personal attributes that may present some challenges to teach or assess.

Tier 2—Academic Competencies are critical competencies primarily learned in a school setting. They include cognitive functions and thinking styles. In varying degrees or to varying levels the content areas academic competencies are likely to apply to all industries and occupations. For example, the level of mathematical competency required varies depending upon the work setting such as retail versus aerospace manufacturing.

Tier 3—Workplace Competencies represent motives and traits as well as interpersonal and self-management styles. They generally are applicable to a large number of occupations and industries.

Industry Competencies

The competencies shown on Tiers 4 and 5 are grouped and referred to as Industry Competencies. The cross-cutting industry-wide technical competencies make it possible to show career lattices within an industry wherein a worker can move easily across industry sub-sectors. As a result, this model supports the development of an agile workforce, rather than narrowly following a single occupational career ladder.

Tier 4—Industry-Wide Technical Competencies represent the knowledge and skills that are common across the sectors within a broader industry. These technical competencies build on, but are more specific than, a competency represented on a lower tier. For example, competency in the use of Manufacturing Resource Planning software builds on Basic Computer Skills. It represents a more complex or additional level of knowledge and skill. For this reason, it is essential that education and training program outcomes provide the foundation for the more advanced technical competencies.

Tier 4 is divided into two sections, entry-level and technician-level. The entry-level technical work functions and content areas describe the industry-wide competencies that a training program for entry-level or relatively new workers should address. The technician-level work functions and content areas describe the industry-wide competencies that a training program for more experienced workers should address. ETA does not suggest that a worker must possess all of these competencies to be employed in manufacturing, but that these competencies should form the basis for a comprehensive training program for entry-level or technician-level workers.

Tier 5—Industry-Sector Technical Competencies represent a sub-set of industry technical competencies that are specific to an industry sector, *e.g.*, plastics manufacturing, automotive manufacturing, or food products manufacturing.

Occupational Competencies

The competencies on Tiers 6, 7, and 8 are grouped and referred to as Occupational Competencies. Occupational competency models are frequently developed to define performance in a workplace, to design competency-based curriculum, or to articulate the requirements for an occupational credential such as a license or certification.

Tier 6—Occupation-Specific Knowledge Areas define the knowledge that is frequently specific to an occupation or group of occupations. For example, the knowledge and application of the principles of chemistry or nuclear power is necessary for only a limited number of occupations in certain industry sectors. Knowledge is often a key component of transferability among occupations.

Tier 7—Occupation-Specific Technical Competencies are the technical skills required by an occupation. For example, knowledge of operating a Computer Numerically Controlled (CNC) machine may be necessary for certain metalworking occupations.

Tier 8—Occupation-Specific Requirements are not truly competencies, but the ''other factors'' essential for work in an occupation. Holding a valid commercial driver's license would be an example of such a requirement.

Tier 9—Management Competencies represent the leadership, supervision and management competencies that are needed in addition to the professional competencies for executives, managers, and supervisors in a specific industry or firm.

The placement of a content block on a specific tier of the model is not as important as the inclusion of the content. For example, behaviors that support business ethics could be included under Business Fundamentals, but could also be considered in the

Integrity block. The important consideration when developing a model is that the behaviors, knowledge and skills that ensure success in the workplace are included.

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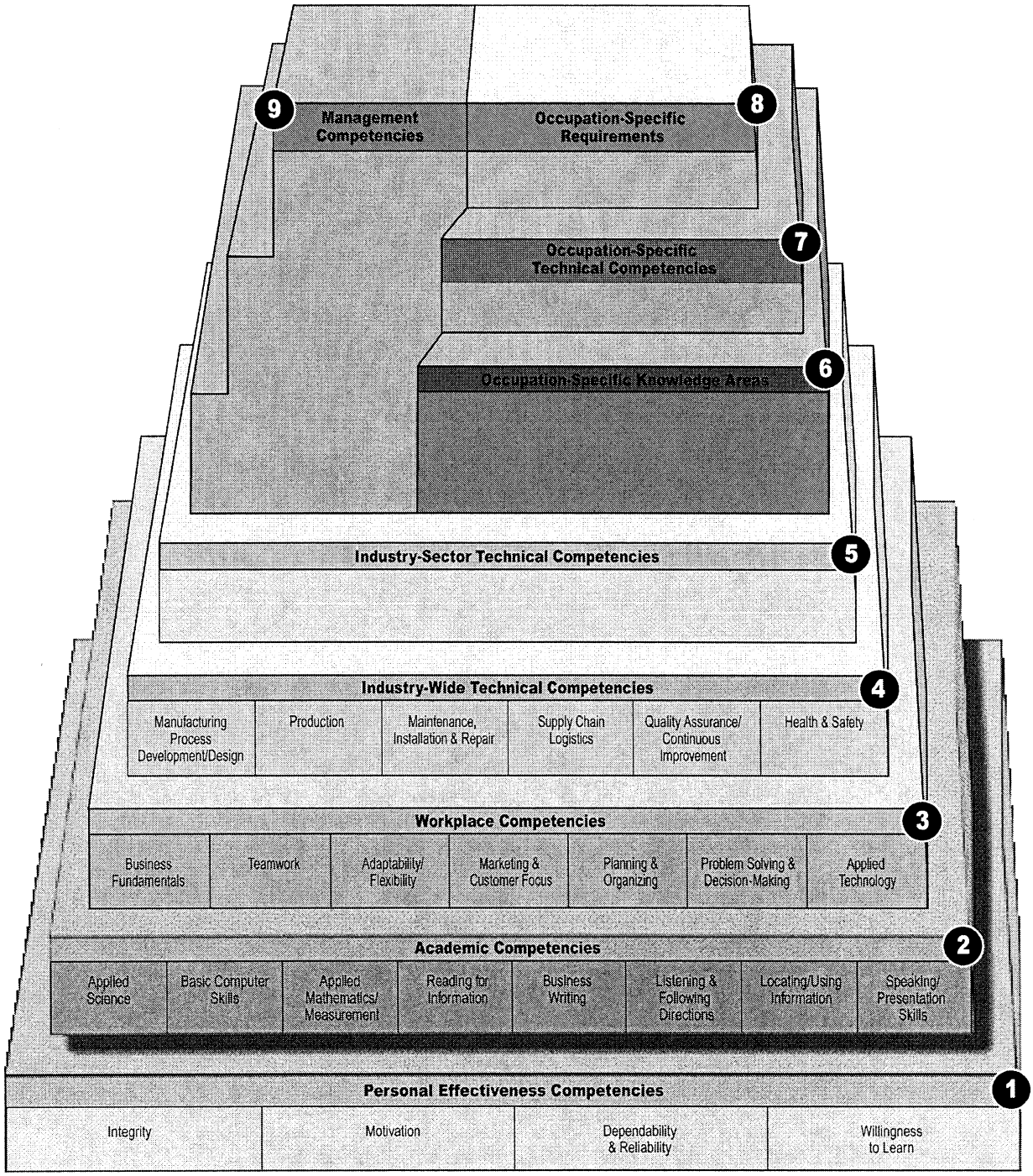
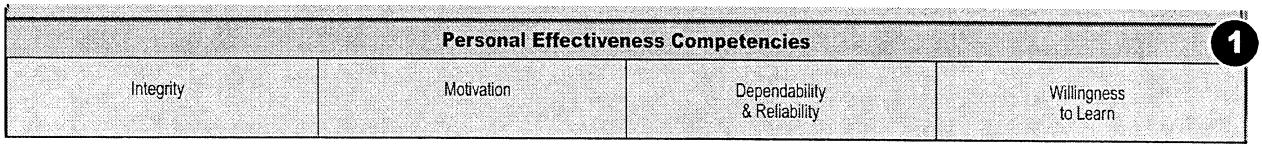
Figure 1: Graphical Representation of the Model for Competencies in the Advanced Manufacturing Industry



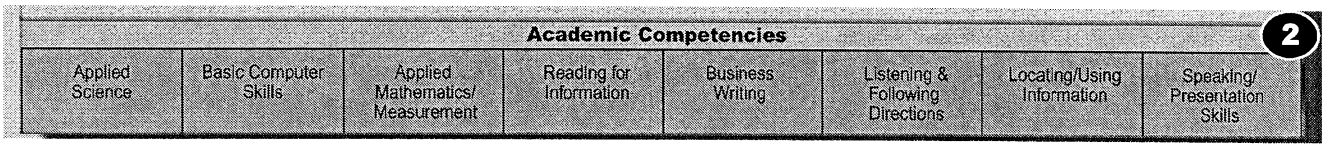
Detailed Information on Tiers 1-4 of the Framework of Competencies for the Advanced Manufacturing Industry

Tier 1: Personal Effectiveness



Personal Effectiveness
1. Integrity: Displaying accepted social and work behaviors.
▪ Use good manners ▪ Maintain confidentiality as appropriate about matters encountered in the workplace ▪ Treat supervisors and co-workers with respect ▪ Perform quality work ▪ Practice honesty with regard to company time and property
2. Motivation: Demonstrating a willingness to work.
▪ Take responsibility for completing one's own work assignment ▪ Show initiative in carrying out work assignments ▪ Take initiative in seeking opportunities to learn new skills and tasks
3. Dependability/Reliability: Displaying responsible behaviors at work.
▪ Avoid absenteeism ▪ Demonstrate promptness ▪ Maintain appropriate grooming and hygiene ▪ Do not attend to personal business on the job ▪ Manage stressful situations effectively
4. Willingness to Learn: Understanding the importance of learning new information for both current and future problem-solving and decision-making.
▪ Accept help from supervisors and co-workers ▪ Learn new/additional skills related to the job ▪ Learn about the products or services of the organization ▪ Contribute to solving problems on the job through suggestions, recommendations and communication

Tier 2: Foundation Academic Competencies



Academic Competencies
1. Applied Science: Using scientific rules and methods to solve problems.

Scientific principles
▪ Understand the scientific principles involved in industry-specific production processes
▪ Apply basic science principles to work-related problems & production processes
  ▪ Physical
  ▪ Chemical
  ▪ Biological
  ▪ Environmental

2. Basic Computer Skills: Using a personal computer and related applications to convey and retrieve information.
Navigation and file management ▪ Use scroll bars, a mouse, and dialog boxes to work within the computer's operating system ▪ Access and switch between applications and files of interest **Internet and e-mail** ▪ Navigate the Internet to find information ▪ Open and configure standard browsers ▪ Use searches, hypertext references, and transfer protocols ▪ Send and retrieve electronic mail (e-mail) **Word processing** ▪ Use a computer application to type text, insert pictures ▪ Format, edit, print text ▪ Save, and retrieve word processing documents **Spreadsheets** ▪ Use a computer application to enter, manipulate, and format text and numerical data ▪ Insert, delete, and manipulate cells, rows, and columns ▪ Create and save worksheets, charts, and graphs

Presentations

- Use a computer application to create, manipulate, edit, and show virtual slide presentations

Databases

- Use a computer application to manage large amounts of information
- Create and edit simple databases
- Input data
- Retrieve detailed records
- Creating reports to communicate the information

Graphics

- Work with pictures in graphics programs or other applications
- Creating simple graphics
- Manipulating the appearance
- Inserting graphics into other files/programs

3. Applied Mathematics/Measurement: Using mathematics to solve problems.

Computation

- Add, subtract, multiply, and divide with whole numbers, fractions, decimals, and percents
- Calculate averages, ratios, proportions and rates; convert decimals to fractions
- Convert fractions to percents

Basic algebraic functions

Applied geometric principles

- Analyze characteristics and properties of two- and three-dimensional geometric shapes
- Use geometric terms, such as spatial coordinates, with concrete objects and drawings
- Use visualization, spatial reasoning, and geometric modeling to solve problems

Measurement and estimation

- Take measurements of time, temperature, distances, length, width, height, perimeter, area, volume, weight, velocity, and speed
- Use and report measurements correctly
- Convert from one measurement to another (e.g., from English to metric)
- Estimate sizes, distances, and quantities; or determine time, costs, resources, or materials needed to perform a work activity

Application

- Perform basic math computations accurately
- Translate practical problems into useful mathematical expressions
- Use appropriate mathematical formulas and techniques

4. Reading for Information: Understanding written sentences and paragraphs in work related documents.

Reading

- Read and understand work-related instructions and policies, memos, bulletins, notices, letters, policy manuals, and governmental regulations
- Read documents ranging from simple & straightforward to more complex & detailed
- Read and interpret technical manuals and equipment specifications

5. Business Writing: Using standard business English, defined as writing that is direct, courteous, grammatically correct, and not overly casual. The main requirement of workplace writing is clarity.

Organization and development

- Create documents such as letters, directions, manuals, reports, graphs, and flow charts
- Communicate thoughts, ideas, information, messages and other written information, which may contain technical material, in a logical, organized, coherent, and persuasive manner
- Ideas are well developed with supporting information and examples

Mechanics

- Use standard syntax and sentence structure
- Use correct spelling, punctuation, and capitalization; uses appropriate grammar (e.g., correct tense, subject-verb agreement, no missing words)
- Tone – Write in a manner appropriate for business; uses language appropriate for the target audience; uses appropriate tone and word choice (e.g., writing is professional and courteous)

6. Listening to and Following Directions: Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.

Listening

- Receive, attend to, interpret, understand, and respond to verbal messages and other cues
- Pick out important information in verbal messages
- Understand complex instructions
- Appreciate feelings and concern of verbal messages

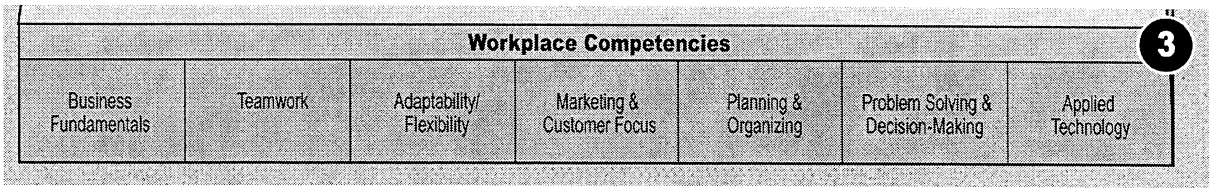
Following directions

- Act upon the instruction to complete an assignment

7. Locating and Using Information: Knowing how to find information and identifying essential information (information gathering).

Organize relevant information ▪ Review information obtained for relevance and completeness ▪ Recognizes important gaps in existing information ▪ Take steps to eliminate those gaps ▪ Organize/reorganize information as appropriate to get a better understanding of the problem
8. <u>Speaking/Presentation</u>: Speaking so others can understand. Communicate in spoken English well enough to make oneself understood by supervisors and co-workers.
Speaking ▪ Speak clearly ▪ Use correct grammar ▪ Effectively use eye-contact and non-verbal expression ▪ Present ideas in a persuasive manner **Presentation** ▪ Express information to individuals or groups taking into account the audience and the nature of the information ▪ Track audience responses and react appropriately

Tier 3: Workplace Competencies



Workplace Competencies
1. <u>Business Fundamentals</u>: Determining how an economy functions as a whole. Money is allocated and spent to get the work done, and accounting for these expenditures.

Economic/Business/Financial principles
▪ Economic Terminology
▪ Supply/Demand
▪ Characteristics of markets
▪ Cost and pricing of products
▪ Profit and loss
▪ Fundamentals of accounting
Economic system as a framework for decision-making
▪ Understand how one's performance can impact the success of the organization
▪ Consider the relative costs and benefits of potential actions to choose the most appropriate one
Business ethics - Act in the best interests of the company, your co-workers, your community, and the environment
▪ Legal/Financial
  ▪ Compliance with the spirit of applicable laws as well as the letter
  ▪ Proper use of company property, minimizing loss and waste; report loss, waste or theft of company property to appropriate personnel
  ▪ Maintain privacy and confidentiality of company information, as well as that of customers and co-workers
▪ Environmental/Health/Safety
  ▪ Maintain a healthful and safe environment and report any violations/discrepancies
  ▪ Ensure proper handling and disposal of toxic or hazardous materials
▪ Social
  ▪ Treat co-workers fairly and with respect
  ▪ Emphasize quality, customer satisfaction and fair pricing
  ▪ Deal with customers in good faith, no bribes, kickbacks, or excessive hospitality

Marketing

- Demonstrate an understanding of market trends, company's position in the market place, defined market segments
- Understand position of product/service in relation to market demand
- Uphold the company and product brand through building and maintaining customer relations
- Integrate internal and external customer demands and needs into manufacturing product and process development

2. Teamwork: Developed capacities used to work with people to achieve goals. Includes social perceptiveness, coordination, persuasion, negotiation, instructing, and service orientation.

Work with others

- Work as part of a team to achieve mutual goals
- Develop and maintain good working relationships with supervisors and co-workers
- Choose behaviors and/or actions that best support the team and lead toward the accomplishment of work tasks
- Recognize a team's goals and identify ways to accomplish those goals in increasingly complex workplace situations

Influence/Negotiate

- Work through conflict constructively
- Persuasively present thoughts and ideas
- Respect the views of others
- Build toward consensus
- Influence, motivate, and persuade others in order to achieve company and client objectives

3. Adaptability/Flexibility: Being open to change (positive or negative) and to considerable variety in the workplace.

Entertain new ideas

- Is open to considering new ways of doing things
- Actively seek out and carefully considers the merits of new approaches to work
- Willingly embrace new approaches when appropriate and discards approaches that are no longer working

Deal with ambiguity

- Take effective action when necessary without having to have all the necessary facts in hand
- Change gears in response to unpredictable or unexpected events
- Effectively change plans, goals, actions or priorities to deal with changing situations

Work with people from diverse backgrounds

- Is flexible and open-minded when dealing with a wide range of people
- Listen to and consider others' viewpoints
- Alter opinion when it is appropriate to do so
- Work well and develop effective relationships with highly diverse personalities

4. Marketing and Customer Focus: Actively looking for ways to identify market demands and

meet the customer or client need.

Understand customer needs

- Identify internal and external customers
- Demonstrate a desire to understand customer needs
- Ask questions as appropriate
- Demonstrate awareness of client goals

Provide personalized service

- Provide prompt and efficient responses to meet the requirements, requests, and concerns of customers
- Provide thorough, accurate information to answer customers' questions and to meet commitment times or performance guarantees
- Actively look for ways to help customers by identifying and proposing appropriate solutions and/or services
- Establish boundaries as appropriate for unreasonable customer demands

Act professionally

- Is pleasant, courteous and professional when dealing with internal or external customers
- Develop constructive and cooperative working relationships with customers
- Display a good-natured, cooperative attitude; is calm and empathetic when dealing with hostile customers
- Uphold the company and product brand in interactions with others

Keep customers informed

- Follow-up with customers during projects and following project completion
- Keep clients up to date about decisions that affect them
- Seek the comments, criticisms and involvement of customers
- Adjust services based on customer feedback
- Address customer comments, questions, concerns and objections with direct accurate and timely responses

5. Planning/Organizing: Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions. For instance, finding ways to structure or classify multiple pieces of information.

Plan

- Approach work in a methodical manner
- Plan and schedule tasks so that work is completed on time
- Keep track of details to ensure work is performed accurately and completely

Prioritize

- Prioritize various competing tasks
- Perform tasks quickly and efficiently according to their urgency
- Find new ways of organizing work area or planning work to accomplish work more efficiently

Allocate resources

- Estimate resources needed for project completion
- Allocate time and resources effectively
- Coordinate efforts with all affected parties
- Keep all parties informed of progress and all relevant changes to project timelines

Anticipate obstacles

- Anticipate obstacles to project completion
- Develop contingency plans to address them
- Take necessary corrective action when projects go off-track

6. Problem Solving/Decision-making: Considering the relative costs and benefits of potential actions to choose the most appropriate one.

Identify the problem

- Recognize the existence of a problem
- Define the problem
- Identify potential causes of the problem by analyzing its component parts
- Use all available reference systems to locate and obtain information relevant to the problem
- Recall previously learned information that is relevant to the problem

Communicate the problem to appropriate personnel

Use team-building skills to analyze the problem

- Identify potential causes of the problem by analyzing its component parts
- Use all available reference systems to locate and obtain information relevant to the problem
- Recall previously learned information that is relevant to the problem

Use team-building skills to generate possible solutions

- Generate a number of different approaches to problems
- Evaluate the relative merits of the various solutions

Choose a solution

- Decisively choose the best solution after contemplating available approaches to the problem
- Make difficult decisions even in highly ambiguous or ill-defined situations
- Quickly choose an effective solution without assistance when appropriate

Implement the solution

- Commit to a solution in a timely manner
- Develop a realistic approach for implementing the chosen solution
- Observe and evaluate the outcomes of implementing the solution to assess the need for alternative approaches and to identify lessons learned
- Solve problems of a technological nature using logic & reasoning

7. Applied Technology: Developed capacities used to design, set-up, operate, and correct malfunctions involving application of machines or technological systems.

Use technology

- Use appropriate computer-based technology (see basic computer skills)
- Use a telephone, pager, radio, or other device to convey and receive information
- Use appropriate methods and instructions to insure equipment is used safely and without damage to the equipment

Equipment selection and troubleshooting

- Determine and select the appropriate tools and equipment needed to do a job
- Determine when and what kind of maintenance is needed
- Determine sources of operating error of equipment and appropriate responses

Tier 4—Industry-Wide Technical Competencies - Entry-Level

Industry-Wide Technical Competencies 4					
Manufacturing Process Development/Design	Production	Maintenance, Installation & Repair	Supply Chain Logistics	Quality Assurance/ Continuous Improvement	Health & Safety

1. MANUFACTURING PROCESS DESIGN/DEVELOPMENT: Research, design, implement, and continuously improve the manufacturing process to ensure product meets customer needs.

Entry-Level Critical Work Functions:

- **Support manufacturing process design and development**
- **Communicate about and respond to requirements of internal and external customers**

Entry-Level Technical Content Areas:

Fundamentals of research & development

- Awareness of basic Product R&D
- Awareness of basic Process R&D

Technical drawings and schematics

- Print reading
- Interpretation of drawings
- Interpretation of schematics
- Geometric dimensions and tolerances

CAD drawing fundamentals

- Creation of computer aided design (CAD) drawings
- Interpretation of CAD drawings
- Updating and editing CAD drawings
- CAD/CAM/CAE applications

Troubleshooting processes

- Knowledge of statistical process control
- Problem solving skills

Process assessment

- Procedure analysis and verification
- Documentation fault finding skills

2. PRODUCTION: Set up, operate, monitor, control and improve manufacturing processes and schedules to meet customer requirements.

Entry-Level Critical Work Functions:

- **Manage raw materials/consumables**
- **Operate and control production/lab equipment**
- **Perform manufacturing process applications and operations**

Entry-Level Technical Content Areas:

Production basics

- Types of production
- Lean manufacturing/continuous improvement

Production materials

- Sources
- Types of materials

Precision measurement

Manual tool & equipment operations

Basic automated systems & control operations

- Automated equipment
- Automated systems
- Computer control
- Robotics
- Process control
- Analytical testing

Basic manufacturing process applications & operations

- Assembly processes
- Fabrication processes
- Electrical/Electronics manufacturing processes
- Continuous flow/line balancing processes
- Finishing processes
- Clean room processes
- Experiment design/implementation processes
- Implementation of approved protocols

3. MAINTENANCE, INSTALLATION AND REPAIR: Maintain and optimize manufacturing equipment and systems.

Entry-Level Critical Work Functions:

- **Identify, diagnose and/or repair equipment problems**
- **Communicate with others to ensure maintenance and repairs meet operational needs**
- **Maintain hands-on knowledge of equipment operations**
- **Maintain equipment, tools and workstations**

Entry-Level Technical Content Areas:

General skills

- Use of hand tools
- Schematic drawings and control documents
- Calibrated measuring instruments
- Knowledge of basic AC/DC electrical systems
- Installation of parts for industrial equipment

Basic Disassembly/assembly skills

Basic maintenance and troubleshooting skills

- Mechanical systems
- Electrical systems
- Electronic systems
- Hydraulic/Pneumatic systems
- High vacuum systems
- Laser systems
- Computer systems

4. HEALTH AND SAFETY: Maintain a safe, healthy work environment.

Entry-Level Critical Work Functions:

- **Follow established personal safety practices**
- **Ensure that equipment is being used safely**
- **Comply with local, federal and company health, safety and environmental regulations**
- **Identify unsafe conditions and take corrective actions**

Entry-Level Technical Content Areas:

Personal safety

- Use of personal protective equipment and clothing
- Safety procedures for clean and safe working environment
- Following established safety practices

Safety procedures

- First aid or first response procedures
- Use of safety equipment
- Safe, prescribed operation of equipment and tools
- Use, maintenance and inspection of machine safeguards
- Inspecting material, equipment and fixtures for defects
- Safe moving of materials
- Safe evacuation of facility
- Response to shop emergencies
- Material safety data sheets (MSDS)
- Confined spaces
- Lock/Tag out practices

Regulatory compliance

- Role of OSHA/EPA in the workplace
- Regulations governing safe use of equipment
- Hazardous material information system labeling and storage (HMIS)
- Hazardous material handling and disposal (HAZMAT)
- Hazardous material communication (HAZCOM)

5. SUPPLY CHAIN LOGISTICS: Plan and monitor the movement and storage of materials and products in coordination with suppliers, internal systems and customers.

Entry-Level Critical Work Functions:

- **Ship and receive products and materials**

Entry-Level Technical Content Areas:

Basics of supply-chain management

- Elements of the supply chain
- Just-in-time/lean manufacturing

Managing inventory

- Inventory forecasting
- Ordering materials and supplies

- Inventory monitoring and audits
- Stock rotation requirements
- Expediting

Work flow

- Material handling
- Plant facility and capacity
- Production scheduling

Production systems

- Lead and cycle time
- Change orders, bills of material, work orders, etc.

Packaging and distributing product

- Packaging product
- Labeling product- inventory tags and bar codes
- Warehouse management systems
- Transportation methods
- Customs and export control (basic paperwork)

6. QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT: Ensure product and process meets quality system requirements as defined by customer specifications.

Entry-Level Critical Work Functions:

- **Ensure materials, processes and final product meet quality specifications**
- **Support and maintain quality systems**

Entry-Level Technical Content Areas:

Quality assurance

- Meeting customer needs
- Lean manufacturing
- Quality management systems and tools
- Industry standards

Improving quality

- Introduction to statistical process control
- Sampling and charting
- Problem solving tools

Inspecting for quality

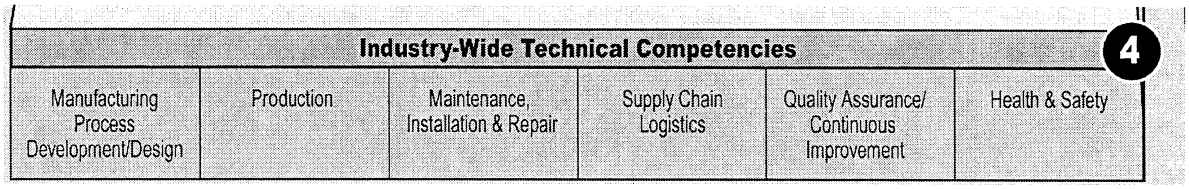
- Inspecting raw/incoming materials

- Inspecting in-process product
- Inspecting final products

Continuous improvement

- Business process reengineering
- Systems analysis
- Data analysis
- Performance improvement strategies

Tier 4—Industry-wide Technical Competencies - Technician Level



1. MANUFACTURING PROCESS DESIGN/DEVELOPMENT: Research, design, implement, and continuously improve the manufacturing process to ensure product meets customer needs.

Technician-Level Critical Work Functions:

- **Interpret and clarify customer expectations and product specifications**
- **Design manufacturing production and production support systems**

Technician-Level Technical Content Areas:

Research & development

- Product R&D
- Process R&D
- Market/Sales/Life cycle analysis
- Intellectual property protection

Product realization

- Design for manufacturing and design for logistics
- Production system design and development
- Equipment/tool design and development
- Support systems design and development
- Development of prototype processes and products
- Production system design, testing and costing

Technology applications

- Integrated graphics technologies
- Machining and forming technologies
- Nano- and micro-nano technology
- Alternative energies technologies

Troubleshooting Processes

- Advanced fault finding skills on actual equipment
- Setup of SPC
- Data analysis and verification
- Data interpretation and corrective action implementation

2. PRODUCTION: Set up, operate, monitor, control and improve manufacturing processes and schedules to meet customer requirements.

Technician-Level Critical Work Functions:

- **Develop manufacturing process plans and documentation**
- **Monitor manufacturing processes and systems**
- **Manage continuous improvement process**

Technician-Level Technical Content Areas:

Production planning and work flow

Production components

- Continuous improvement
- Time, materials and costs
- Production systems

Advanced production/process operations

- Assembly processes
- Fabrication processes
- Electrical/Electronics manufacturing processes
- Process overview knowledge
- Finishing processes
- Continuous flow/line balancing processes
- Cell culture/fermentation/media processes
- Recovery/Filtration processes

Production/process monitoring

- Controlling process flow

- Documentation and reporting
- Performance of analytical tests
- Calibration and troubleshooting
- Environmental parameters
- Write/Execute protocols

Manufacturing management

- Organizational design and management
- Project management
- Personnel management methods
- Human behavior/motivation/leadership
- Material and resource management
- Training skills

3. MAINTENANCE, INSTALLATION AND REPAIR: Maintain and optimize manufacturing equipment and systems.

Technician-Level Critical Work Functions:

- **Support the installation, customization or upgrading of equipment**
- **Coordinate preventive maintenance to ensure production process runs smoothly**

Technician-Level Technical Content Areas:

Advanced installation and repair skills

- Mechanical power transmissions systems
- Piping operations

Advanced maintenance and troubleshooting skills

- Process controls
- Pump systems
- Thermal systems (HVAC)
- Refrigeration systems
- Mechanical/Fluid power systems
- Separation/heat exchange systems
- Water treatment/destruction systems
- High voltage/utility systems
- Programmable logic controlled industrial equipment

Reliability and maintainability

- Basic reliability models
- Reliability of systems
- Design for reliability
- Design for maintainability
- Investigative techniques
- Analysis of failure data

4. HEALTH AND SAFETY: Maintain a safe, healthy work environment.

Technician-Level Critical Work Functions:

- **Conduct health, safety and/or environmental incident and hazard investigations**
- **Conduct preventive health, safety and/or environmental incident and hazard inspections**
- **Implement continuous improvement in health, safety and/or environmental practices**

Technician-Level Technical Content Areas:

Incident and hazard investigations

- Investigation of health, safety, or environmental incidences/hazards
- Documentation of findings
- Developing corrective actions
- Follow-up investigation
- Violations reports to proper authorities
- Workers compensation

Additional knowledge

- Insurance (property)
- Life safety code/National Fire Protection Association 101
- Engineering principles for safety

Environmental protection/waste management

- Chemical hazard assessment

Preventive health, safety or environmental inspections

- Audit of records and documentation
- Conducting inspections
- Clean room protocol
- Documentation of inspection findings
- Emergency response preparedness
- Fire protection and control

Continuous improvement in health and safety

- Root cause analysis
- Analysis of health/safety/environmental data
- Identification of projects and priorities

5. SUPPLY CHAIN LOGISTICS: Plan and monitor the movement and storage of materials and products in coordination with suppliers, internal systems and customers.

Technician-Level Critical Work Functions:

- **Manage purchasing and just-in-time materials flow, shipping and receiving, packaging and transportation**
- **Control inventory of materials and products**
- **Develop and maintain production/delivery schedules and supplier networks**

Technician-Level Technical Content Areas:

Supply-chain management

- Manufacturing resources planning
- Collaborative, planning, forecasting and replenishment
- Vendor managed inventory systems
- Centralized versus decentralized control
- E-business and direct shipment

Automated material handling

- Automated material handling and distribution systems
- Integrated supply chain information technology

Resources planning

- Demand management
- Sales and operations planning
- Master scheduling
- Measuring business performance

Detailed scheduling and planning

- Techniques of inventory management
- Detailed material planning

Executing operations

- Procurement and external source of supply
- Prioritizing and sequencing work

▪ Executing plans and implementing controls ▪ Evaluating performance ▪ Ergonomics ▪ Sharing and collaboration across the supply chain **Awareness of global impacts** ▪ Intellectual property ▪ Taxes and duties ▪ Shipping, receiving, and freight ▪ Customs and export control (legal aspects)
6. QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT: Ensure product and process meets quality system requirements as defined by customer specifications.
Technician-Level Critical Work Functions: ▪ **Monitor production for product and process quality** ▪ **Employ audits and inspections to maintain the quality and continuous improvement process** ▪ **Correct the product and process to meet quality standards** ▪ **Suggest and/or implement continuous improvement actions**

Technician-Level Technical Content Areas:

Probability and statistics

Data analysis and presentation

- Presentation skills
- Query-based intermediate computer skills
- Facilitation skills
- Business case

Statistical process control methods

- Factor analysis
- Capability analysis
- Inspection/Test/Validation
- Reliability analysis
- Acceptance sampling

Quality assurance audits

- ISO 9000
- Audit procedures

Corrective and preventive actions

- Eliminating non-conformities
- Verification and documentation
- Documentation creation

Benchmarking and best practice

[FR Doc. 06–5139 Filed 6–5–06; 8:45 am]
BILLING CODE 4610–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Labor Organization and Auxiliary Reports (LM–1, LM–2, LM–3, LM–4, LM–10, LM–15, LM–15A, LM–16, LM–20, LM–21, LM–30, and S–1). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 7, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

Congress enacted the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement a basic tenet of the LMRDA: The guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members. Section 205 of the LMRDA provides that the reports are public information.

The Office of Labor-Management Standards (OLMS) administers the reporting provisions of the LMRDA to the statute (29 U.S.C. 431 *et seq.*) and the implementing and interpreting regulations (29 CFR Chapter IV). This information collection is currently approved for use through November 30, 2006.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

The Department of Labor (DOL) seeks extension of the current approval to collect this information. An extension is necessary because the LMRDA explicitly requires the reporting and establishes the frequency of the required filings. The information collected by OLMS is used by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and others and is used by Congress in oversight and legislative functions. In addition to making Forms LM–2, LM–3, LM–4, LM–10, LM–20, LM–21, and LM–30 (from fiscal year 2000 to the present) available to the public online free of charge through its Internet Public Disclosure Room, (*http://unionreports.dol.gov/olmsWeb/docs/lmrda.htm*), OLMS receives and fulfills approximately 210 disclosure report requests per month.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Agency Number: LM–1, LM–2, LM–3, LM–4, LM–10, LM–15, LM–15A, LM–16, LM–20, LM–21, LM–30 and S–1.

Affected Public: Individual or households; business or other for-profit; not-for-profit institutions.

Total Respondents: 27,849.

Total Responses: 27,849.

Time per Response (Reporting): 1,175,450.

Time per Response (Recordkeeping): 2,197,804.

Frequency: Semi-annually and Annually.

Estimated Total Burden Hours: 3,373,254.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

REPORTING AND RECORDKEEPING BURDEN HOURS

Forms	Responses	Hours per respondent for reporting	Reporting burden hours	Hours per respondent for recordkeeping	Recordkeeping burden hours	Total hours
LM–1	255	0.83	212	0.08	20	232
LM–2	3,827	146.00	558,742	390.00	1,492,530	2,051,272
LM–3	10,812	52.00	562,224	64.00	691,968	1,254,192
LM–4	6,355	8.00	50,840	2.00	12,710	63,550
LM–10	1,766	0.50	883	0.08	141	1,024
LM–15	354	1.50	531	0.33	117	648

REPORTING AND RECORDKEEPING BURDEN HOURS—Continued

Forms	Responses	Hours per respondent for reporting	Reporting burden hours	Hours per respondent for recordkeeping	Recordkeeping burden hours	Total hours
LM–15A	68	0.33	22	0.03	2	24
LM–16	95	0.33	31	0.02	2	33
LM–20	90	0.33	30	0.03	3	33
LM–21	11	0.50	6	0.08	1	7
LM–30	3,494	0.50	1,747	0.08	280	2,027
S–1	179	0.50	90	0.08	14	104
SARF*	543	0.17	92	0.03	16	108
Total	27,849		1,175,450		2,197,804	3,373,254

Note: Some numbers may not add due to rounding.
* Simplified Annual Report Format.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 1, 2006.

Ruben L. Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–8739 Filed 6–5–06; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

FY 2006 Stand Down Grant Requests

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Initial announcement of available FY 2006 funds under the Homeless Veterans' Reintegration Program to Support Local Stand Down Events.

Funding Opportunity No: 17–805.

SUMMARY: The Veterans' Employment and Training Service (VETS) continues to support local Stand Down events that assist homeless veterans and is now accepting applications for Stand Down grant awards. A Stand Down is an event held in a local community where homeless veterans are provided a wide variety of social services. Under this FY 2006 announcement, VETS anticipates that up to $325,000 will be available for grant awards up to a maximum of $8,000 per event. However, if the event is held for one (1) day, the maximum amount is $5,000. VETS expects to award approximately forty (40) grants. Applications for Stand Down funds will be accepted from State Workforce Agencies and State and local Workforce Investment Boards, Veterans Service Organizations (VSO), local public agencies, and non-profit organizations, including community and faith-based organizations. VETS is not authorized to award these grant funds to organizations that are registered with Internal Revenue Service (IRS) as a 501(c)(4) organization.

DATES: All Stand Down grant requests must be received by the appropriate State Director for Veterans' Employment and Training (DVET) who serves as the Grant Officer Technical Representative (GOTR) no later than 60 days prior to the event and by no later than June 30, 2006, for events that occur on or prior to November 30, 2006. Events occurring after November 30, 2006, application will be accepted, and awarded as next year's federal appropriations or continuing resolution funding becomes available.

ADDRESSES: Applications for Stand Down grant funding are to be submitted to the appropriate State DVET/GOTR. Address and contact information for each State DVET/GOTR can be found at: *http://www2.dol.gov/vets/aboutvets/contacts/main.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Stand Down is a military term referring to an opportunity to achieve a brief respite from combat. Troops would assemble in a base camp to receive new clothing, hot food, and a relative degree of safety before returning to the front. Today more than 160 organizations across the country partner with local businesses, government agencies, and community- and faith-based service providers to hold Stand Down events for homeless veterans and their families in the local community.

Each year, the Assistant Secretary for Veterans' Employment and Training awards Homeless Veterans' Reintegration Program (HVRP) grants to programs that enhance employment and training opportunities and/or promote self-sufficiency for homeless veterans. Residual HVRP funds can be awarded as grants to organizations sponsoring Stand Down events for homeless veterans.

The critical services provided at a Stand Down are often the catalyst that enables homeless veterans to reenter mainstream society. Some of the services available at these events include temporary shelter, showers, haircuts, meals, clothing, hygiene kits, medical examinations, immunizations, legal advice, State identification cards, veterans benefit information, training program information, employment services, and referral to other supportive services.

Stand Down grant funds must be used to enhance employment and training opportunities or to promote self-sufficiency for homeless veterans. The funds may be used to support activities such as:

- The purchase of food, bottled water, clothing, sleeping bags and hygiene care kits;
- Rental of facilities and/or tents;
- Payment for special one-time electricity costs, equipment rentals, advertising, event posters, portable toilets, janitorial/kitchen supplies, and communications/internet access;
- The hiring of security personnel;
- Transportation of homeless veterans to and from Stand Down events; and
- Other items and services as appropriate.

Stand Down grant funds may not be used to purchase special monogrammed tee shirts, pen sets, specialty hats (unless for cold weather use), military and veteran type patches, and memento gifts for staff members/visitors/volunteers.

II. Award Information

The maximum amount that can be awarded to support a local Stand Down event is $8,000 per year, per event. If the

event is held for one (1) day, the maximum amount that can be awarded is $5,000.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants will generally fall into one of the following categories: State and local Workforce Boards, Veteran Service Organizations, local public agencies, and non-profit organizations including community and faith-based organizations. Organizations registered with the Internal Revenue Service as a 501(c)(4) organization are not eligible.

2. Cost Sharing or Matching

Cost Sharing and matching funds are not required. However, we do encourage grantees to maximize the resources available to the Stand Down event and its participants.

3. Other Eligibility Requirements

Applicant Registration Requirements

A. All applicants for Federal funding are required to include a Dun and Bradstreet Number (DUNS) with their application. Applicants can obtain a DUNS number through the following Web site *http://www.dunandbradstreet.com/* or by phone at 1–866–705–5711.

B. After receiving a DUNS number, all grant applicants must also register as a vendor with the Central Contractor Registration through the following Web site: *http://www.ccr.gov* or by phone at 1–888–227–2423. CCR registration should become active within 24 hours of completion. If grant applicants have questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423.

After registration, grant applicants will receive a confirmation number. Grantee listed Point of Contact will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

IV. Application Content

All applications for Stand Down funding must include:

1. Applicant letter requesting Stand Down funds (original signed in blue ink);
2. Application for Federal Assistance, Standard Form 424 (original signed in blue ink);
3. SF–424A, Budget Information—Non-Construction Programs; SF–424 and SF–424A forms can be downloaded from the following Web site: *http://www.whitehouse.gov/omb/grants/grants_forms.html;*
4. Budget Narrative describing each planned expenditure listed on the SF 424A;
5. Demonstrate and document Stand Down Activities and develop a timeline for completion of activities. For Stand Down events that occur on or after July 1st, grant applicants must demonstrate and document planning activities prior to the end of the Fiscal Year (September 30th);
6. Original signed Assurances and Certifications Signature Page;
7. A copy of the Central Contractor Registration (CCR) confirmation number. Please do not send the Trader Partnership Identification Number (TPIN) (see Section A.2. above);
8. Letters of support, particularly from the local One-Stop Career Centers and/or Disabled Veterans' Outreach Program Specialists (DVOPs) and Local Veterans' Employment Representative (LVER) staff, the Department of Veterans Affairs, Veterans' Service Organizations, State and local government agencies, local businesses, local non-profit organizations including community-based and faith-based organizations, etc; when applicable; and
9. A copy of the Internal Revenue Service documentation indicating approval of non-profit status (for example: 501(c)(3), 501(c)(19), etc.) as required to verify eligibility when claiming non-profit status.

V. Award Administration Information

Stand Down funding is a non-competitive grant awarded on a first come first serve basis until available residual funding is exhausted. Funding is subject to approval by the Grant Officer. If approved, the grantee will receive a grant award document and financial form to complete in order for USDOL Office of Financial Management to set up an account in the Health and Human Services, Payment Management System (HHS/PMS) to electronically draw down funds.

If awarded funds, the grantee must submit the completed HHS/PMS financial forms directly to the U.S. Department of Labor (USDOL), Division of Financial Management Operations in order to electronically draw down funds. The financial forms should be sent via FedEx, UPS, or other non-U.S. Postal Service provider to avoid processing delays. If grantee has previously set-up an electronic HHS/PMS account, additional awarded funds will be added into that existing bank account unless otherwise notified in writing. Questions or problems relating to the HHS/PMS paperwork or processes should be referred to the USDOL Office of Financial Management at (202) 693–4479.

Upon receipt of grant award financial documents, HHS/PMS will forward a packet of instructions to the grantee on how to set up a payment account. After setting up the account, the grantee will be able to draw down funds to reimburse approved expenses already incurred and to cover approved expenses that will be paid within three (3) days of the draw down. Funds requested for draw down through the HHS/PMS are directly deposited into the account within 24 hours of the request.

Since grantees may draw funds down in more than one quarter, up to and after the date of the Stand Down event, grantees are required to complete a PSC Federal Cash Transaction Report (PS 272) no later than 45 days after the end of each quarter in which grantees receive all or part of their grant award (February 14th, May 15th, August 14th, and November 14th). Instructions for completing this requirement are provided in the HHS/PMS information packet. Grantees are to print hard copies of all PSC 272s submitted to provide with an Activity and Expenditure Report that will be submitted after the Stand Down event.

VI. Required Post-Event Reporting

No later than 45 calendar days after the Stand Down event, grantees must submit the Stand Down Activity and Expenditure Report to the appropriate DVET/GOTR and to the USDOL Procurement Services. If grantees experience any delay in submitting this report, they should immediately contact their DVET/GOTR and provide a justification to request an extension.

The following documents will be needed to complete the Activity and Expenditure Report:

- An original signed invoice or list of all items purchased with grant funding;
- Original sales receipts for all expenditures;
- Comparison of planned activities and expenditures versus actual activities and expenditures;
- SF 269A, Financial Status Report (short form) (available for download at *http://www.whitehouse.gov/omb/grants/sf269a.pdf;*
- The Stand Down After Action Report (provided by the DVET/GOTR); and
- Copies of all PSC 272s submitted to HHS/PMS.

To prevent processing delays and/or the need to recoup over payments, grantees are strongly encouraged to submit the Stand Down Activity and Expenditure Report to the appropriate

DVET/GOTR prior to sending the originals to Procurement Services. The DVET/GOTR will review the report to ensure it is complete and accurate and that all expenditures were appropriate and allowable.

After the DVET/GOTR review for completeness and accuracy, grantees are to distribute copies of the Activity and Expenditure Report as follows:

• The original SF 269A, signed invoice or list of expenditures and the Stand Down After Action Report is mailed to:

U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

• Original sales receipts for all Stand Down expenditures, a copy of the SF 269A, signed invoice or list of expenditures, and Stand Down After Action Report is to be submitted to the appropriate DVET/GOTR.

If the DVET/GOTR does not recommend approval of a particular expenditure, he/she will notify the grantee in writing with an explanation for the disapproval and instruct grantee to electronically return the funds to the HHS/PMS account if already drawn down. All FY 2006 Stand Down awarded funds must be electronically drawn down by no later than November 30, 2006.

Any grantee who fails to comply with guidance set forth in the Stand Down Special Grant Provisions and reporting requirements will be excluded from consideration of any future funding requests.

VII. Agency Contacts

Questions regarding this announcement should be directed to the Director for Veterans' Employment and Training /GOTR in your State. Contact information for each DVET/GOTR is located in the VETS Staff Directory at the following Web page *http://www2.dol.gov/vets/aboutvets/contacts/main.htm* or access the directory from the agency Web site at *http://www.dol.gov/vets.*

VIII. Other Information

Current competitive HVRP grantees are not eligible for a separate non-competitive Stand Down grant award as described in this announcement. Current competitive HVRP grantees are authorized to utilize existing funds for Stand Down purposes.

Signed at Washington, DC, this 30th day of May, 2006.

Eric Vogt,

Grant Officer.

Appendices: (Located on U.S. Department of Labor, Veterans' Employment and Training Service Web page *http://www.dol.gov/vets,* follow link for 2006 Stand Down Grants and Required Forms listed under announcements.)

Appendix A: Application for Federal Assistance SF–424

Appendix B: Budget Information Sheet SF 424A

Appendix C: Certifications and Assurances Signature Page

Appendix D: Stand Down After Action Report

[FR Doc. E6–8740 Filed 6–5–06; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly meeting.

DATE AND TIME: July 25, 2006, 9 a.m.–5 p.m. EST.

LOCATION: Embassy Suites Hotel, 1300 Jefferson Davis Highway, Arlington, VA.

STATUS: This meeting will be open to the public and free of charge.

AGENDA: Reports from the Chairperson and the Executive Director, Team Reports, Unfinished Business, New Business, Announcements, Adjournment.

TYPE: Town Hall Meeting.

DATE AND TIME: July 26, 2006, 9 a.m.–1 p.m.

LOCATION: National Press Club, Ballroom, 13th Floor, 529 14th Street, NW., Washington, DC.

STATUS: This meeting will be open to the public and free of charge.

AGENDA: A national dialogue on the state of disability, keynote addresses, three consecutive panels discussing the goals of the Americans with Disabilities Act, and audience participation.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: NCD is an independent Federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD at least two weeks before these meetings.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD at least two weeks before these events.

Dated: June 1, 2006.

Ethel D. Briggs,

Executive Director.

[FR Doc. 06–5194 Filed 6–2–06; 2:41 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for GPRA Performance Assessment (13853)—Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for GPRA Performance Assessment (AC/GPA).

Date and Time: June 22, 2006, 8 a.m.–5 p.m., June 23, 2006, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 375. If you are attending the meeting and need access to the NSF building, please contact Joyce Grainger (*jgrainge@nsf.gov*) for a visitor's badge.

Contact: Joyce Grainger, BFA/BD, National Science Foundation, Room 407, Arlington, Virginia. Telephone: 703–292–4481.

Type of Meeting: Open.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) Director regarding the Foundation's performance as it relates to the Government Performance and Results Act of 1993 (GPRA).

Agenda: Topics include retrospective accomplishments of NSF awards as they relate to performance indicators associated with the National Science Foundation's Ideas, Tools, People and Organizational Excellence (I, T, P, OE) strategic outcome goals; the quality and relevance of NSF award portfolios; and issues involving future AC/GPA performance assessment activity.

Thursday, June 22, 2006

Welcome and Introductions; Charge to the Committee; Overview Presentations on NSF Performance Assessment, Merit Review, Committees of Visitors, transformative Research, and the proposed Strategic Plan. The Committee, in subgroups, will review and discuss retrospective accomplishments under the Ideas, Tools, People, and Organizational Excellence strategic goals.

Friday, June 23, 2006

The Committee reconvenes as a Committee of the Whole to hear progress reports from the strategic goals' subgroups, discuss findings, recommendations, and the preparation of the final report. The Committee will discuss the proposed 2006–2011 Strategic Plan (Draft) with regard to potential impact on the AC/GPA performance assessment activity.

Dated: May 31, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–5115 Filed 6–5–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Meeting; Sunshine Act

Agenda

TIME: 9:30 a.m., June 13, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: This one item is open to the public.

MATTER TO BE CONSIDERED: 7793 *Railroad Accident Report*—Collision Between Two BNSF Railway Company Freight Trains Near Gunter, Texas, May 19, 2004.

NEWS MEDIA CONTACT: Ted Lopatkiewicz. Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, June 9, 2006.

The public may view the meeting via a live or archived webcast by accessing a line under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio (202) 314–6410.

Dated: June 2, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–5189 Filed 6–2–06; 1:35 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation Corp.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation Corp. (the licensees) to withdraw its January 5, 2005, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County.

The proposed amendment would have revised Technical Specification (TS) 3/4.3.2.1, ''Safety Features Actuation System [SFAS] Instrumentation,'' to permit a single inoperable SFAS functional unit to be placed in a bypassed condition indefinitely.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 15, 2005 (70 FR 7765). However, in response to answering the NRC staff's request for additional information (RAI) dated November 23, 2005, the licensees conducted a preliminary risk evaluation and determined that a full risk evaluation was too resource intensive and may not yield acceptable results. As a result, the licensees did not submit a formal response to the RAI. Subsequently, by letter dated April 21, 2006, the licensees withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 5, 2005, and the licensees' letter dated April 21, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 19th day of May 2006.

For the Nuclear Regulatory Commission.

Stephen J. Campbell,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8705 Filed 6–5–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of June 5, 12, 19, 26, July 3, 10, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of June 5, 2006

Wednesday, June 7, 2006

9 a.m. Discussion of Security Issues (closed—ex. 1 & 3).

Week of June 12, 2006—Tentative

There are no meetings scheduled for the Week of June 12, 2006.

Week of June 19, 2006—Tentative

There are no meetings scheduled for the Week of June 19, 2006.

Week of June 26, 2006—Tentative

There are no meetings scheduled for the Week of June 26, 2006.

Week of July 3, 2006—Tentative

There are no meetings scheduled for the Week of July 3, 2006.

Week of July 10, 2006—Tentative

There are no meetings scheduled for the Week of July 10, 2006.

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Additional Information

The Affirmation of ''Andrew Siemaszko, Docket No. 1A–05–021, unpublished Licensing Board Order (Dec. 22, 2005)'' which was tentatively scheduled on Wednesday, May 31, 2006, at 12:55 p.m. has been rescheduled tentatively on Friday, June 2, 2006, at 3:30 p.m.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, of would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 1, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–5163 Filed 6–2–06; 10:21 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 12, 2006 to May 24, 2006. The last biweekly notice was published on May 23, 2006 (71 FR 29671).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 26, 2006.

Description of amendment request: The proposed amendment would modify technical specification (TS) requirements for inoperable snubbers by adding Limiting Condition for Operation 3.0.8. The changes are consistent with Nuclear Regulatory Commission approved Industry/Technical Specification Task Force (TSTF) standard TS change TSTF–372, Revision 4.

The NRC staff issued a notice of availability of a model safety evaluation and model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252). The licensee affirmed the applicability of the model NSHC determination in its application dated April 26, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. Entrance into Actions or delaying entrance into Actions is not an initiator of any accident previously evaluated.

Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on the delay time allowed before declaring a TS supported system inoperable and taking its Conditions and Required Actions are no different than the consequences of an accident under the same plant conditions while relying on the existing TS supported system Conditions and Required Actions.

Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change restores an allowance in the pre-ISTS conversion TS that was unintentionally eliminated by the conversion. The pre-ISTS TS were considered to provide an adequate margin of safety for plant operation, as does the post-ISTS conversion TS. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Michael L. Marshall, Jr.

Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station (VYNPS), Vernon, Vermont

Date of amendment request: April 22, 2006.

Description of amendment request: The proposed amendment would relocate the Technical Specification (TS) requirements for shock suppressors (snubbers) to the Technical Requirements Manual (TRM) and add a new Limiting Condition for Operation (LCO) 3.0.8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to relocate TS 3/4.6.1 to the TRM is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Snubber operability and surveillance requirements will be contained in the TRM to ensure design assumptions for accident mitigation are maintained.

The proposed change to add LCO 3.0.8 allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform the required safety function. Entrance into actions or delaying entrance into actions is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The station design and safety analysis assumptions included provisions for redundancy to provide for periods when redundant systems are out-of-service per the TS. The proposed snubber LCO ensures that out-of-service time is minimized and risk is managed per 10 CFR 50.65(a)(4).

Therefore, the consequences of an accident previously evaluated are not significantly increased by this change.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to relocate TS 3/4.6.1 to the TRM is administrative and does not involve any physical alteration of plant equipment. The proposed change does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

[* * *]

The proposed change to add LCO 3.0.8 allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform the required safety function. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to relocate TS 3/4.6.1 to the TRM is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by requirements that are retained, but relocated from the TS to the TRM.

[* * *]

The proposed change to add LCO 3.0.8 to TS allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform the required safety function. The proposed change retains an allowance in the current VYNPS TS while upgrading it to be more conservative for snubbers supporting multiple trains or sub-systems of an associated system. The updated TS will continue to provide an adequate margin of safety for plant operation upon incorporation of LCO 3.0.8. The station design and safety analysis assumptions provide margin in the form of redundancy to account for periods of time when system capability is reduced. This proposed change does not reduce that margin.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Travis C. McCullough, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

Branch Chief: Richard Laufer.

Exelon Generation Company, LLC (EGC), Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of amendment request: April 21, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time extension of the LaSalle County Station (LSCS), Unit 2 primary containment Type A integrated leak rate test (ILRT) date from the current requirement of no later than December 7, 2008, to prior to startup following the twelfth LSCS, Unit 2 refueling outage (L2R12).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will revise LSCS, Unit 2, TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time extension of the primary containment Type A Integrated Leak Rate Test (ILRT) date to ''prior to startup following L2R12.'' The current Type A ILRT interval of 15 years, based on past performance, would be extended on a one-time basis by approximately 2% of the current interval.

The function of the primary containment is to isolate and contain fission products released from the reactor Primary Coolant System (PCS) following a design basis Loss of Coolant Accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with Type A ILRTs is not a precursor of any accident previously evaluated. Type A ILRTs provide assurance that the LSCS Unit 2 primary containment will not exceed allowable leakage rate values specified in the TS and will continue to perform their design function following an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes for a one-time extension of the Type A ILRT for LSCS Unit 2 will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

LSCS Unit 2 is a General Electric BWR/5 plant with a Mark II primary containment. The Mark II primary containment consists of two compartments, the drywell and the suppression chamber. The drywell has the shape of a truncated cone, and is located above the cylindrically shaped suppression chamber. The primary containment is penetrated by access, piping and electrical penetrations.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the primary containment is verified by a Type A ILRT, as required by 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' These tests are performed to verify the essentially leak tight characteristics of the primary containment at the design basis accident pressure. The proposed changes for a one-time extension of the Type A ILRTs do not affect the method for Type A, B or C testing or the test acceptance criteria.

EGC has conducted a risk assessment to determine the impact of a change to the LSCS Unit 2 Type A ILRT schedule from a baseline ILRT frequency of three times in ten years to once in 16.25 years (i.e., 15 years plus 15 months) for the risk measures of Large Early Release Frequency (i.e., LERF), Total Population Dose, and Conditional Containment Failure Probability (i.e., CCFP). This assessment indicated that the proposed LSCS ILRT interval extension has a minimal impact on public risk.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Daniel S. Collins

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 1, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 1.1, ''Definitions,'' TS 3.4.13, ''RCS [reactor coolant system] Operational Leakage,'' TS 5.5.8, ''Steam Generator Program,'' and add new specifications (TS 3.4.17) for ''Steam Generator (SG) Tube Integrity'' and (TS 5.6.7) for ''Steam Generator Tube Inspection Report.'' The proposed changes are necessary in order to implement the guidance for the industry initiative on Nuclear Energy Institute (NEI) 97–06, ''Steam Generator Program Guidelines.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting Technical Specification Task Force Change Traveller 449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated May 1, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires an SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby,

cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

An SGTR [steam generator tube rupture] event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as MSLB [main steam line break], rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than [500 gallons per day or 720 gallons per day] in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Branch Chief: Richard J. Laufer.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: April 28, 2006.

Description of amendment requests: The proposed change will increase the minimum allowed boron concentration of the spent fuel pool and allow credit for soluble boron, guide tube inserts (GT-Inserts) made from borated stainless steel, and fuel storage patterns in place of Boraflex.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pool when assuming a complete loss of the Boraflex panels in the spent fuel pool racks and considering the presence of soluble boron in the spent fuel pool water for criticality control.

Neither the presence of soluble boron in the spent fuel pool water, nor the placement of borated stainless steel guide tube inserts (GT-Inserts) in the fuel assemblies for criticality control, will increase the probability of a fuel assembly drop accident. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks or GT-Inserts placed in the fuel assemblies, has no affect on the probability of such a drop accident.

Southern California Edison (SCE) has performed a criticality analysis which shows that the consequences of a fuel assembly drop accident in the spent fuel pool are not affected when considering a complete loss of the Boraflex in the spent fuel racks and the presence of soluble boron. The rack K_{eff} remains less than or equal to 0.95.

The fuel, the fuel rack, and the fuel pool qualifications have been evaluated and determined to be unaffected by the installation of the GT-Inserts. The mechanical design configuration of the GT-Inserts is similar to the shape, size, and weight of a control element assembly (CEA) finger. Each of the GT-Inserts are approximately 0.78 inch outside diameter (OD) solid stainless steel, with a boron content of approximately 2 weight percent (w/o). A small counterbore is machined at the top for handling and a rounded bottom is machined. The OD of these GT-Inserts is less than that of a CEA finger. The material (borated stainless steel) is American Society for Testing and Materials (ASTM) approved and has been licensed by the United States Nuclear Regulatory Commission (NRC) for use in spent fuel storage technologies and spent fuel pools. The structural effect of the weight of the GT-Inserts on the fuel, the fuel rack, and the fuel pool structural interfaces and drop qualifications are unaffected. This is because the addition of five GT-Inserts (which increases the dry weight of a fuel assembly by 110 lbs.) brings the total weight to 1551 lbs. which is enveloped by the 2904 lbs. assumed in the calculation for fuel rack design.

Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel racks when assuming a complete loss of the Boraflex panels and considering the presence of soluble boron in the pool water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with Technical Specification (TS) 3.7.18[,] ''Spent Fuel Assembly Storage[,]'' and Licensee Controlled Specification (LCS) 4.0.100, ''Fuel Storage Patterns,'' which will specify spent fuel rack storage configuration limitations.

There is no increase in the consequences of the accidental misloading of a spent fuel assembly into the spent fuel racks. The criticality analysis, performed by SCE, demonstrates that the pool K_{eff} will be maintained less than or equal to 0.95 following an accidental misloading by the boron concentration of the pool. The proposed TS 3.7.17[,] ''Fuel Storage Pool Boron Concentration[,]'' will ensure that an adequate spent fuel pool boron concentration is maintained.

Change in Spent Fuel Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when assuming a complete loss of the Boraflex panels and considering the presence of soluble boron in the spent fuel pool water. A high proposed concentration (>2000 parts per million (ppm)) of soluble boron is consistent with current operating practices maintained in the spent fuel pool water. The proposed minimum boron concentration of 2000 ppm in TS 3.7.17 will ensure that an adequate concentration is maintained in the spent fuel pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in the water density, and when coupled with the assumption of a complete loss of Boraflex, may result in a positive reactivity addition. However, the additional negative reactivity provided by the boron concentration limit in the proposed TS 3.7.17 will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling. Because adequate soluble boron will be maintained in the spent fuel pool water to maintain K_{eff} less than or equal to 0.95, the consequences of a loss of normal cooling to the spent fuel pool will not be increased.

The thermal considerations of the fuel are unaffected by the presence of the GT-Inserts because the guide tube is designed for the presence of a CEA; therefore, it is not a primary coolant flow area. The fuel rack normal thermal cooling and malfunctioned blocked cooling scenarios are unaffected by the presence of the GT-Inserts in the fuel assemblies.

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The consideration of criticality accidents in the spent fuel pool are not new or different. They have been analyzed in the Updated Final Safety Analysis Report (UFSAR) and in previous submittals to the NRC. Specific accidents considered and evaluated include fuel assembly drop, fuel assembly misloading in the racks, and spent fuel pool water temperature changes.

The possibility for creating a new or different kind of accident is not credible. Neither Boraflex [n]or soluble boron are accident initiators. The proposed change takes credit for soluble boron in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility. However, a criticality accident resulting from a dilution accident was not considered credible. For this proposed amendment, SCE performed a spent fuel pool dilution analysis, which demonstrated that a dilution of the boron concentration in the spent fuel pool water which could increase the rack K_{eff} to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain boron concentration in the spent fuel pool water for reactivity control will have no effect on normal pool operations and maintenance. There are no changes in equipment design or plant configuration.

The possibility of accidentally withdrawing a GT-Insert is minimized because special tooling is required to remove it, and it is completely contained within the guide tubes of the designated assemblies. Potential misloading of the GT-Inserts is minimized due to the design of the

installation equipment, procedural controls, and double verification that will be in place to ensure the GT-Inserts are installed properly.

The possibility of accidentally withdrawing a CEA is minimized because specialized tooling is required for withdrawing a CEA from a fuel assembly. It is physically possible for the spent fuel handling tool to bind on a CEA after ungrappling from a fuel assembly and raising the tool. However, existing SONGS [San Onofre Nuclear Generating Station] procedures require that the operator validate ''tool weight only'' on the spent fuel handling machine's load cell read out after ungrappling from a fuel assembly and raising the hoist slightly, and to report this information to the engineer directing the fuel movement.

Therefore, the proposed change will not result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The TS changes proposed by this license amendment request and the resulting spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 plant specific analysis that was performed in accordance with a methodology previously approved by the NRC.

The proposed change takes partial credit for soluble boron in the spent fuel pool. SCE's analyses show that spent fuel storage requirements meet the following NRC acceptance criteria for preventing criticality outside the reactor.

(1) The neutron multiplication factor, K_{eff}, including all uncertainties, shall be less than 1.0 when flooded with unborated water, and

(2) The neutron multiplication factor, K_{eff}, including all uncertainties, shall be less than or equal to 0.95 when flooded with borated water.

The criticality analysis utilized credit for soluble boron to ensure K_{eff} will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 K_{eff} calculation to ensure that the spent fuel rack will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining K_{eff} less than or equal to 0.95 including uncertainties, tolerances[,] and accident conditions in the presence of spent fuel pool soluble boron. SCE evaluated the loss of a substantial amount of soluble boron from the spent fuel pool water which could lead to K_{eff} exceeding 0.95 and showed that it was not credible.

Also, the spent fuel rack K_{eff} will remain less than 1.0 with the spent fuel pool flooded with unborated water.

Decay heat, radiological effects, and seismic loads are unchanged by the absence of Boraflex.

The mechanical properties and the weight of the fuel assemblies remain essentially unchanged with the inclusion of the weight of five GT-Inserts per assembly. The original mechanical and thermal analysis of the fuel assembly/fuel rack and fuel pool building interfaces currently approved remain valid and conservative.

Therefore, the proposed change does not involve a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: David Terao.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 30, 2006.

Description of amendment request: The proposed amendments revise Technical Specification 3.3.3.6, ''Accident Monitoring Instrumentation,'' with respect to the required action for inoperable Wide Range Reactor Coolant Temperature, Wide Range Steam Generator Water Level, and Auxiliary Feedwater (AFW) Flow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed increase in the allowed outage times for the Reactor Coolant Outlet Temperature—Wide Range, Reactor Coolant Inlet Temperature—Wide Range, Steam Generator [Water] Level—Wide Range, and the AFW Flow does not involve a significant increase in the probability of an accident previously evaluated because these are accident monitoring functions that have no effect on the potential for accident initiation. The proposed deletion of the existing requirements in ACTION 38 is an administrative change. Since these requirements are not currently applied to any plant equipment, this change cannot affect the probability of any accident previously evaluated.

The proposed increase in the allowed outage times for the Reactor Coolant Outlet Temperature—Wide Range, Reactor Coolant Inlet Temperature—Wide Range, Steam Generator [Water] Level—Wide Range, and AFW Flow does not involve a significant increase in the consequences of an accident previously evaluated because the availability of redundant and diverse indications provides adequate assurance that the operator will be able to determine the post-accident status of the secondary heat sink.

The proposed deletion of the existing requirements in ACTION 38 is an administrative change. Since these requirements are not currently applied to any plant equipment, this change cannot affect the consequence of any accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed increase in the allowed outage times for the Reactor Coolant Outlet Temperature—Wide Range, Reactor Coolant Inlet Temperature—Wide Range, Steam Generator [Water] Level—Wide Range, and the AFW Flow does not create the possibility of a new or different kind accident from any accident previously evaluated because the proposed change affects only the allowed outage time for accident monitoring instrumentation and involves no changes to plant design, plant configuration or operating procedures.

The proposed deletion of the existing requirements in ACTION 38 is an administrative change. Since these requirements are not currently applied to any plant equipment, this change cannot create the possibility of any kind of accident.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed increase in the allowed outage times for the Reactor Coolant Outlet Temperature—Wide Range, Reactor Coolant Inlet Temperature—

Wide Range, Steam Generator [Water] Level—Wide Range, and AFW Flow does not involve a significant reduction in the margin of safety because the availability of redundant and diverse indications provides adequate assurance that the operator will be able to determine the post-accident status of the secondary heat sink.

The proposed deletion of the existing requirements in ACTION 38 is an administrative change. Since these requirements are not currently applied to any plant equipment, this change cannot affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: David Terao.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 21, 2006.

Brief description of amendments: The amendments revise Technical Specification (TS) 5.6.5 entitled, ''Core Operating Limits Report (COLR),'' to revise the listed Loss-of-Coolant Accident (LOCA) and non-LOCA analysis methodologies used at Comanche Peak Steam Electric Station, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves an administrative change only. Designation of the accident analysis methodologies, described in ERX–04–004 and ERX–04–005, as approved analytical methods is required to maintain the accuracy of the Technical Specification 5.6.5 (Core Operating Limits Report) and to maintain consistency with the resolution of issues as prescribed in 10 CFR 50.46. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves an administrative change only. Technical Specification 5.6.5 is being changed to reference the revised accident analysis methodologies currently under NRC review. No actual plant equipment will be affected by the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change (subject to NRC approval) only to incorporate the NRC-approved methodologies into the allowable analysis methodologies specified in Technical Specification 5.6.5. No actual plant equipment will be affected by the proposed change. The compliance of the revised methodology with the requirements of 10 CFR 50.46 and Appendix K will be addressed through the NRC staff's review of the topical reports. Therefore, it is concluded that the use of the proposed methodology will not degrade the confidence in the ability of the fission product barriers to limit the level of radiation dose to the public. Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: David Terao.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 21, 2006.

Brief description of amendments: The amendments would revise Technical Specifications (TS) 3.3.1, 3.3.2, 3.4.5, 3.4.6, and 3.4.7, ''Reactor Trip System (RTS) Instrumentation,'' ''Engineered Safety Feature System Actuation (ESFAS) Instrumentation,'' ''RCS [Reactor Coolant System] Mode 3,'' ''RCS Loops-Mode 4,'' and ''RCS Loops-Mode 5, Loops Filled,'' respectively. The revisions reflect the different steam generator water level trip setpoints and steam generator inventory requirements associated with the planned replacement of the steam generators in Comanche Peak Steam Electric Station, Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes affect the protective and mitigative capabilities of the plant; none of the changes impact the initiation or probability of occurrence of any accident.

The consequences of accidents evaluated in the FSAR [Final Safety Analysis Report] that could be affected by this proposed change are those in which the steam generator water level trip functions are credited for initiating a protective or mitigative function. These transients and accidents have been analyzed and all relevant event acceptance criteria were shown to be satisfied. The radiological dose consequences are unaffected. Therefore, there is no increase in the consequences of an accident previously evaluated.

The actual proposed setpoint values were determined using an uncertainty methodology previously approved by the NRC for this application. These values provide adequate assurance that required protective and mitigative functions will be initiated as assumed in the transient and accident analyses. Therefore, there is no increase in the consequences of an accident previously evaluated.

The proposed revisions to the Δ76 steam generator inventory, required to ensure that the steam generators can provide an effective heat sink, are consistent with the current design requirements. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. There are no changes which would cause the malfunction of safety-related equipment, assumed to be operable in the accident analyses, as a result of the proposed Technical Specification changes. No new equipment performance burdens are imposed. The possibility of a new or different malfunction of safety-related equipment is not created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the Steam Generator Water Level-Low-Low and Steam Generator Water Level-High-High trip function setpoints protect the assumed safety analysis limits established in the transient and accident analyses. When used in the transient and accident analyses, all relevant event acceptance criteria are satisfied. Therefore, these proposed changes do not result in the reduction in a margin of safety.

The proposed changes to the Δ76 steam generator inventory requirements, which ensure the steam generators can function as an effective heat sink during required shutdown operating modes, are consistent with the existing design and licensing bases. Therefore, these proposed changes do not result in the reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: David Terao.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 17, 2006.

Brief description of amendment request: The proposed amendment would add a license condition to Section 2.C of the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Operating Licenses. This license condition will authorize the licensee to credit administering potassium iodide (KI) to reduce the 30-day post-accident thyroid radiological dose to the operators in the main control room for an interim period of approximately 4 years. In addition, the design-basis accident analysis section of the Updated Final Safety Analysis Reports will be updated to reflect crediting of KI.

Date of publication of individual notice in ***Federal Register:*** March 27, 2006 (71 FR 15223).

Expiration date of individual notice: 30-day date April 26, 2006; 60-day date May 26, 2006.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 19, 2005.

Brief description of amendment: The amendment revised the Technical Specification (TS) to make permanent the temporary changes to TS Table 3.3.8.1–1 previously approved by Amendment No. 147. TS Table 3.3.8.1–1 is revised to delete the temporary note, correct the number of Required Channels per Division for the Loss of Power (LOP) time delay functions, and delete the requirement to perform Surveillance Requirement 3.3.8.1.2, the monthly Channel Functional Test, on certain LOP time delay functions.

Date of issuance: May 17, 2006.

Effective date: As of the date of issuance and shall be implemented prior to expiration of the temporary change on June 1, 2006, provided by Amendment No. 147.

Amendment No.: 151.

Facility Operating License No. NPF–47: The amendment revised the Technical Specfications.

*Date of initial notice in **Federal Register:*** March 14, 2006 (71 FR 13173).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit 3, York and Lancaster Counties, Pennsylvania

Date of application for amendment: July 6, 2005, as supplemented March 15 and April 7, 2006.

Brief description of amendments: The proposed changes extend the use of the Peach Bottom Atomic Power Station, Unit 3, pressure-temperature (P–T) limits specified in the Technical Specifications (TSs) from 22 to 32 effective full-power years.

Date of issuance: May 12, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 263.

Renewed Facility Operating License No. DPR–56: The amendment revised the TSs.

*Date of initial notice in **Federal Register:*** August 2, 2005 (70 FR 44402). The supplements dated March 15, 2006, and April 7, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 2006.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: October 21, 2005, as supplemented February 28, March 28 and April 24, 2006.

Brief description of amendment: The amendment revised the Operating License and Technical Specifications to allow operation of St. Lucie Unit 2 with a reduced reactor coolant system flow rate of 300,000 gpm and a reduction in the maximum thermal power to 89 percent of the rated thermal power. The flow rate of 300,000 gpm conservatively bounds an analyzed steam generator tube plugging level of 42 percent per steam generator.

Date of Issuance: May 16, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 145.

Renewed Facility Operating License No. NPF–16: Amendment revised the TS.

*Date of initial notice in **Federal Register:*** December 20, 2005 (70 FR 75492). The February 28, March 28 and April 24, 2006, supplements did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2006.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 22, 2005, as supplemented by letters dated March 24, 2006, and April 28, 2006.

Description of amendment request: The proposed amendment revised the Seabrook Station, Unit No. 1 Technical Specifications (TSS) to increase the licensed thermal power level by 1.7% to 3648 megawatts thermal.

Date of issuance: May 22, 2006.

Effective date: As of its date of issuance, and shall be implemented within 12 months.

Amendment No.: 110.

Facility Operating License No. NPF–86: The amendment revised the Tss and the License.

*Date of initial notice in **Federal Register:*** November 8, 2005 (70 FR 67748). The licensee's letters dated March 24, 2006, and April 28, 2006, provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2006.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: July 29, 2005.

Brief description of amendments: The amendments revised Technical Specification 3.7.5, ''Auxiliary Feedwater (AFW) System,'' to change the frequency of Surveillance Requirement 3.7.5.6 from 92 days to 24 months.

Date of issuance: May 17, 2006.

Effective date: As of the date of issuance, and shall be implemented within 120 days of issuance.

Amendment Nos.: 186 and 188.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 11, 2005 (70 FR 59086).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2006.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 29, 2005.

Brief description of amendment: This amendment for V. C. Summer revises TSs by eliminating the requirements to submit monthly operating reports and certain annual reports.

Date of issuance: May 19, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 175.

Renewed Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register:*** March 14, 2006 (71 FR 13178).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: December 13, 2005.

Brief description of amendment: The amendment changes the steam generator (SG) level requirement for Limiting Condition for Operation 3.4.7.b and Surveillance Requirements 3.4.5.2, 3.4.6.3 and 3.4.7.2 from greater than or equal (≥) to 6 percent (%) to ≥ 32% following replacement of the SGs during the Unit 1, Cycle 7 refueling outage.

Date of issuance: May 5, 2006.

Effective date: As of the date of issuance and shall be implemented prior to entering Mode 5 upon restart

from the Unit 1 Cycle 7 (U1C7) Refueling Outage.

Amendment No.: 61.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 14, 2006 (71 FR 7814).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 2006.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: March 8, 2005.

Brief description of amendments: These amendments revised the auxiliary feedwater (AFW) requirements of Technical Specifications (TSs) 3.6, ''Turbine Cycle,'' and 4.8, ''Auxiliary Feedwater System,'' to eliminate the inconsistency between the AFW pump requirements and the required actions, establish consistency with the Improved TSs, and add an AFW flowpath allowed outage time along with required actions.

Date of issuance: February 23, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 246 and 245.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 26, 2005 (70 FR 21465).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2006.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there

are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. 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 requestor's/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 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.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner 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.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Southern California Edison Company, et al., Docket No. 50–362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of amendment request: May 4, 2006.

Description of amendment request: Allowed repairing a line in the shutdown cooling (SDC) system with the unit in Mode 4. This repair plan caused Unit 3 to be out of compliance with the licensing basis of the SDC system for the limited duration of the repair, but not to exceed 7 days.

Date of issuance: May 5, 2006.

Effective date: Immediate.

Amendment No.: 194.

Facility Operating License No. (NPF–15): Amendment revised the Updated Final Safety Analysis Report, Section 5.4.7.1.2.C. with a note that states that the change is only applicable from the date of issuance of the amendment until the repair is completed on the SDC line or 7 days, whichever occurs first.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated May 5, 2006.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

NRC Branch Chief: David Terao.

Dated at Rockville, Maryland, this 25th day of May 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8450 Filed 6–5–06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a new guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Regulatory Guide 1.205, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' provides guidance for use in complying with the requirements that the NRC has promulgated for risk-informed, performance-based fire protection programs that meet the requirements of Title 10, § 50.48(c), of the *Code of Federal Regulations* (10 CFR 50.48(c)) and the referenced 2001 Edition of the National Fire Protection Association (NFPA) standard, NFPA 805, ''Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants.''

In accordance with 10 CFR 50.48(a), each operating nuclear power plant must have a fire protection plan that satisfies General Design Criterion (GDC) 3, ''Fire Protection,'' of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' In addition, plants that were licensed to operate before January 1, 1979, must meet the requirements of 10 CFR part 50, Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' except to the extent provided for in 10 CFR 50.48(b). Plants licensed to operate after January 1, 1979, are required to comply with 10 CFR 50.48(a), as well as any plant-specific fire protection license condition and technical specifications.

Section 50.48(c), which the NRC adopted in 2004 (69 FR 33536, June 16, 2004), incorporates NFPA 805 by reference, with certain exceptions, and allows licensees to voluntarily adopt and maintain a fire protection program that meets the requirements of NFPA 805 as an alternative to meeting the requirements of 10 CFR 50.48(b) or the plant-specific fire protection license conditions. Licensees who choose to comply with 10 CFR 50.48(c) must submit a license amendment application to the NRC, in accordance with 10 CFR 50.90. Section 50.48(c)(3) describes the required content of the application.

The Nuclear Energy Institute (NEI) has developed NEI 04–02, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c),'' Revision 1, dated September 2005, to assist licensees in adopting 10 CFR 50.48(c) and making the transition from their current fire protection program (FPP) to one based on NFPA 805. This regulatory guide endorses NEI 04–02, Revision 1, because it provides methods acceptable to the NRC for implementing NFPA 805 and complying with 10 CFR 50.48(c), subject to the additional regulatory positions contained in Section C of this regulatory guide and the approval authority that 10 CFR 50.48(c) grants to the authority having jurisdiction (AHJ). The regulatory positions in Section C include clarification of the guidance provided in NEI 04–02, as well as any NRC exceptions to the guidance. The regulatory positions in Section C take precedence over the NEI 04–02 guidance.

All references to NEI 04–02 in this regulatory guide refer to Revision 1 of NEI 04–02. All references to NFPA 805 in this regulatory guide refer to the 2001 Edition of NFPA.

The NRC previously solicited public comment on this new guide by publishing a **Federal Register** notice (69 FR 60192) concerning Draft Regulatory Guide DG–1139 on October 7, 2004. Following the closure of the public comment period on December 15, 2004, the staff considered all stakeholder comments in the course of preparing Regulatory Guide 1.205. The NRC staff's responses to public comments received on the draft regulatory guide are available electronically in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061100235. In particular, the revisions in this new guide include additional guidance regarding the plant change process, including risk acceptance thresholds for changes that may be made without prior NRC review and approval. In addition, this new guide includes guidance for the fire probabilistic safety analyses that licensees use to risk-inform the fire protection program.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, at (301) 415–5144.

Requests for technical information about Regulatory Guide 1.205 may be directed to Paul W. Lain at (301) 415–2346 or via e-mail to *PWL@nrc.gov*.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections*. Regulatory Guide 1.205 is also available electronically in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061100174.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to

(301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of May, 2006.

For the U.S. Nuclear Regulatory Commission,

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E6–8706 Filed 6–5–06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft of a revised guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft Revision 2 of Regulatory Guide 1.193, ''ASME Code Cases Not Approved for Use,'' is temporarily identified by its task number, DG–1135, which should be mentioned in all related correspondence. Like its predecessors, this proposed revision lists the Code Cases that the NRC has determined are not acceptable for generic use as specified in Section III, ''Rules for Construction of Nuclear Power Plant Components,'' and Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' of the Boiler and Pressure Vessel (BPV) Code promulgated by the American Society of Mechanical Engineers (ASME). (In so doing, this guide complements Revision 34 of Regulatory Guide 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' and Revision 15 of Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' which list the Code Cases that the NRC has determined to be acceptable alternatives to applicable provisions of Section III and Section XI, respectively.)

Licensees may request NRC approval to implement one or more of the Code Cases listed in Revision 2 of Regulatory Guide 1.193, as provided in 10 CFR 50.55a(a)(3), which permits the use of alternatives to the Code requirements referenced in 10 CFR 50.55a, provided that the proposed alternatives result in an acceptable level of quality and safety. To do so, a licensee must submit a plant-specific request that addresses the NRC's concern about the given Code Case.

The NRC staff is soliciting comments on Draft Regulatory Guide DG–1135, and comments may be accompanied by relevant information or supporting data. Please mention DG–1135 in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–1135 may be directed to Wallace E. Norris, at (301) 415–6796 or *WEN@nrc.gov*.

Comments would be most helpful if received by July 14, 2006. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061210425.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of May, 2006.

For the U.S. Nuclear Regulatory Commission,

James T. Wiggins,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. E6–8709 Filed 6–5–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: David Guilford, Center for Leadership and Executive Resources Policy, Strategic Human Resources Policy Division, 202–606–1391.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between April 1, 2006, and April 30, 2006. Future notices will be

published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for April 2006.

Schedule B

No Schedule B appointments were approved for April 2006.

Schedule C

The following Schedule C appointments were approved during April 2006:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS00151 Deputy Press Secretary to the Press Secretary. Effective April 18, 2006.

Office of National Drug Control Policy

QQGS60089 Associate Director Office of Legislative Affairs to the Chief of Staff. Effective April 13, 2006.

Section 213.333 Office of Science and Technology Policy

TSGS60039 Assistant to the Director for Legislative Affairs to the Chief of Staff. Effective April 03, 2006.

Section 213.334 Department of State

DSGS61070 Special Advisor to the Assistant Secretary. Effective April 04, 2006.

DSGS61061 Protocol Officer (Gifts) to the Chief of Protocol. Effective April 07, 2006.

DSGS61062 Foreign Affairs Officer (Visits) to the Chief of Protocol. Effective April 07, 2006.

DSGS61071 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective April 07, 2006.

DSGS61073 Senior Advisor to the Assistant Secretary for Population, Refugees and Migration. Effective April 07, 2006.

DSGS61074 Senior Advisor to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs. Effective April 07, 2006.

DSGS61076 Special Assistant to the Chief of Staff. Effective April 10, 2006.

DSGS61077 Special Assistant to the Coordinator for Counter-Terrorism. Effective April 14, 2006.

DSGS61078 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs. Effective April 18, 2006.

DSGS61081 Foreign Affairs Officer to the Director, Assistant Secretary, Bureau of Democracy, Human Rights and Labor. Effective April 25, 2006.

DSGS61084 Staff Assistant to the Director, Policy Planning Staff. Effective April 27, 2006.

Section 213.335 Department of the Treasury

DYGS00250 Director, Public Affairs to the Deputy Assistant Secretary for Public Affairs. Effective April 03, 2006.

DYGS00469 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary (Public Affairs). Effective April 03, 2006.

DYGS60404 Senior Advisor to the Assistant Secretary (Financial Institutions). Effective April 27, 2006.

Section 213.336 Office of the Secretary of Defense

DDGS16930 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective April 10, 2006.

DGS16932 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective April 13, 2006.

DDGS16936 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller) and Deputy Under Secretary of Defense (Management Reform). Effective April 14, 2006.

DDGS16937 Foreign Affairs Specialist to the Director, Administration and Management. Effective April 14, 2006.

DDGS16942 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective April 19, 2006.

DDGS16929 Assistant for Research, Analysis and Special Projects to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective April 25, 2006.

Section 213.3310 Department of Justice

DJGS00187 Counsel to the Assistant Attorney General, Civil Division. Effective April 07, 2006.

DJGS00392 Policy Coordinator and Special Assistant to the Director, Executive Office for the United States Attorneys. Effective April 12, 2006.

DJGS00390 Counsel to the Assistant Attorney General (Legal Counsel). Effective April 17, 2006.

Section 213.3311 Department of Homeland Security

DMGS00498 Advisor to the Director for Intergovernmental. Effective April 03, 2006.

DMGS00499 Confidential Assistant to the Chief of Staff. Effective April 03, 2006.

DMGS00495 Assistant Director to the Assistant Secretary for Legislative Affairs. Effective April 05, 2006.

DMGS00501 Special Assistant to the Chief of Staff. Effective April 06, 2006.

DMGS00502 Confidential Assistant to the Deputy White House Liaison and Advisor to the Chief of Staff. Effective April 06, 2006.

DMGS00505 Confidential Assistant to the Secretary of the Department of Homeland Security. Effective April 7, 2006.

DMGS00488 Press Officer to the Assistant Commissioner for Public Affairs. Effective April 13, 2006.

DMGS00506 Policy Analyst to the Assistant Secretary for Private Sector. Effective April 14, 2006.

DMGS00507 Special Assistant to the Assistant Secretary for Policy. Effective April 14, 2006.

DMGS00508 Public Affairs Specialist to the Director of Communications, Office of Domestic Preparedness. Effective April 14, 2006.

DMGS00510 Policy Analyst to the Assistant Secretary for International Affairs. Effective April 14, 2006.

DMGS00511 Senior Advisor for Management to the Under Secretary for Management. Effective April 14, 2006.

DMGS00509 Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective April 19, 2006.

DMGS00503 Director of Strategic Communications to the Assistant Secretary for Public Affairs. Effective April 24, 2006.

DMGS00517 Executive Assistant to the Chief of Staff. Effective April 26, 2006.

Section 213.3314 Department of Commerce

DCGS00656 Confidential Assistant to the Director of Advance. Effective April 13, 2006.

DCGS00558 Confidential Assistant to the Director of Advance. Effective April 14, 2006.

DCGS00623 Public Affairs Specialist to the Assistant Secretary for Manufacturing and Services. Effective April 28, 2006.

Section 213.3315 Department of Labor

DLGS60089 Special Assistant to the Director of Operations. Effective April 6, 2006.

DLGS60045 Staff Assistant to the Special Assistant, Office of Public Affairs. Effective April 12, 2006.

DLGS60126 Special Assistant to the Solicitor of Labor. Effective April 14, 2006.

DLGS60225 Staff Assistant to the Assistant Secretary for Public Affairs. Effective April 26, 2006.

Section 213.3316 Department of Health and Human Services

DHGS60030 Special Assistant to the General Counsel. Effective April 7, 2006.
DHGS60006 Confidential Assistant to the Assistant Secretary for Public Affairs. Effective April 12, 2006.
DHGS60032 Special Assistant to the Deputy Commissioner for Policy. Effective April 12, 2006.
DHGS60374 Confidential Assistant to the Executive Secretary. Effective April 12, 2006.
DHGS60033 Special Assistant to the Assistant Secretary for Administration and Management. Effective April 14, 2006.
DHGS60035 Confidential Assistant to the Administrator Centers for Medicare and Medicaid Services. Effective April 21, 2006.
DHGS60689 Director of Media Affairs to the Director, Office of External Affairs. Effective April 21, 2006.
DHGS60007 Special Assistant to the Associate Commissioner for External Relations. Effective April 26, 2006.

Section 213.3317 Department of Education

DBGS00514 Special Assistant to the Director, Faith-Based and Community Initiatives Center. Effective April 3, 2006.
DBGS00510 Special Assistant to the Director, Intergovernmental Affairs. Effective April 7, 2006.
DBGS00285 Special Assistant (Education Attache to the United States Mission to the United Nations Educational, Scientific and Cultural Organization) to the Secretary. Effective April 18, 2006.
DBGS00519 Confidential Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications. Effective April 21, 2006.
DBGS00513 Special Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective April 24, 2006.

Section 213.3318 Environmental Protection Agency

EPGS06010 Senior Advance Specialist to the Deputy Chief of Staff (Operations). Effective April 20, 2006.

Section 213.3325 United States Tax Court

JCGS60069 Trial Clerk to the Chief Judge. Effective April 7, 2006.
JCGS60074 Trial Clerk to the Chief Judge. Effective April 7, 2006.

Section 213.3327 Department of Veterans Affairs

DVGS60011 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective April 7, 2006.
DVGS60036 Protocol Liaison Officer to the Secretary. Effective April 19, 2006.

Section 213.3331 Department of Energy

DEGS005182 Legislative Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 21, 2006.
DEGS00515 Special Assistant to the Assistant Secretary for Environment, Safety and Health. Effective April 24, 2006.
DEGS00519 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 24, 2006.
DEGS00521 Special Assistant to the White House Liaison. Effective April 24, 2006.

Section 213.3332 Small Business Administration

SBGS00598 Special Assistant to the Associate Administrator for Strategic Alliances. Effective April 12, 2006.
SBGS60112 Special Assistant to the Deputy Administrator. Effective April 12, 2006.
SBGS00597 Director of Scheduling to the Chief of Staff and Chief Operating Officer. Effective April 14, 2006.
SBGS00599 Assistant Administrator for Policy and Planning to the Associate Administrator for Policy. Effective April 28, 2006.

Section 213.3337 General Services Administration

GSGS00174 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective April 6, 2006.
GSGS00176 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective April 19, 2006.

Section 213.3339 United States International Trade Commission

TCGS60019 Staff Assistant (Legal) to a Commissioner. Effective April 12, 2006.
TCGS00013 Staff Assistant (Economics) to the Vice Chairman. Effective April 13, 2006.

Section 213.3348 National Aeronautics and Space Administration

NNGS00170 Program Specialist to the Deputy Administrator, Office of Program and Institutional Integration. Effective April 25, 2006.

Section 213.3379 Commodity Futures Trading Commission

CTGS00091 Chief Economist to the Chairperson. Effective April 21, 2006.

Section 213.3384 Department of Housing and Urban Development

DUGS60410 Special Assistant to the General Counsel. Effective April 5, 2006.
DUGS60543 Staff Assistant to the Director, Center for Faith Based and Community Initiatives. Effective April 14, 2006.
DUGS60176 Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective April 26, 2006.

Section 213.3391 Office of Personnel Management

PMGS00059 Congressional Relations Officer to the Director, Office of Congressional Relations.

Section 213.3394 Department of Transportation

DTGS60357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective April 10, 2006.

Section 213.3396 National Transportation Safety Board

TBGS60107 Confidential Assistant to a Member. Effective April 25, 2006.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–8720 Filed 6–5–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53903; File No. SR–ISE–2005–49]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Complex Order Execution

May 31, 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 October 4, 2005, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The ISE filed Amendment Nos. 1 and 2 to the proposal on February 1, 2006, and April 20, 2006, respectively.[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 ISE Rule 722, ''Complex Orders,'' with respect to complex order execution. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 722. Complex Orders.

(a) no change.

(b) Applicability of Exchange Rules. Except as otherwise provided in this Rule, complex orders shall be subject to all other Exchange Rules that pertain to orders generally.

(1) *Minimum Increments.* Bids and offers on complex orders may be expressed in any decimal price, and the [option] leg(s) of a [stock-option] *complex* order may be executed in one cent increments, regardless of the minimum increments otherwise applicable to the individual [options] legs of the order. [Complex orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under subparagraph (b)(2) of this Rule as such orders expressed in increments that are multiples of the minimum increment.]

(2) *Complex Order Priority.* Notwithstanding the provisions of Rule 713, a complex order, as defined in paragraph (a) of this Rule, may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such total credit or debit; provided, however, that if any of the bids or offers established in the marketplace consist of a Public Customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace *by at least one minimum trading increment as defined in Rule 710.* Under the circumstances described above, the option leg of a stock-option order, as defined in subparagraph (a)(5)(i)(A) of this Rule, or SSF-option order as defined in subparagraph (a)(5)(ii)(A) of this Rule, has priority over bids and offers established in the marketplace by Non-Customer orders and market maker quotes that are no better than the price of the options leg, but not over such bids and offers established by Public Customer Orders. The option legs of a stock-option order as defined in subparagraph (a)(5)(ii)(B), or SSF-option order as defined in subparagraph (a)(5)(ii)(B), consisting of a combination order with stock or single stock futures, as the case may be, may be executed in accordance with the first sentence of this subparagraph (b)(2).

(3) through (5) no change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to allow the legs of an options-only complex order to be executed in penny increments. Currently under ISE Rule 722, the options leg of a stock-option order may be executed in penny increments, but the legs of an options-only complex order must be executed at the standard trading increments. The Exchange proposes to allow the legs of all complex orders to trade in penny increments. The Exchange believes that the proposed rule change will provide investors with flexibility in pricing the complex orders and create more opportunities for complex orders to receive an execution.

Under ISE Rule 722, a complex order may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such total credit or debit, provided that if any of the bids or offers established in the marketplace consist of a Public Customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace. While the Exchange proposes to allow the legs of complex orders to be executed in penny increments, it does not propose to change the existing requirement that to have priority over Public Customer limit orders, at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace by at least one minimum trading increment.[4] Thus, Public Customer limit orders will maintain their existing priority under ISE Rule 722.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, to remove[5] impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest in that it will provide investors with more flexibility in pricing complex orders and increase the opportunity for complex orders to be executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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 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

[3] Amendment No. 2 replaced the initial filing and Amendment No. 1 in their entirety.

[4] A minimum trading increment is defined in ISE Rule 710, ''Minimum Trading Increments,'' as $0.05 if the options contract is trading at less than $3.00 and $0.10 if the options contract is trading at or above $3.00.

[5] 15 U.S.C. 78f(b).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–49 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–2005–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of 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–2005–49 and should be submitted on or before June 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8717 Filed 6–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53879; File No. SR–NYSEArca–2006–03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish a Public Disclosure Program

May 26, 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 6, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 9, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change. On May 17, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to implement a new rule, NYSE Arca Rule 10.17, that would institute and govern a program (''Public Disclosure Program'') in which certain disciplinary actions involving Option Trading Permit Holders (''OTP Holders''), Option Trading Permit Firms (''OTP Firms''), and associated persons thereof would be publicized. The text of the proposed rule change is below. Proposed new language is in *italics.*

Rules of the NYSE Arca, Inc.

* * * * *

Rule 10 Disciplinary Proceedings and Appeals

* * * * *

Release of Disciplinary Information Through the Public Disclosure Program

Rule 10.17(a) The Exchange shall, in response to a request, release a copy of any identified disciplinary decision issued by the Exchange or any Committee thereof; provided, however, that each copy of:

(1) *A decision that is released prior to the expiration of the time period provided under NYSE Arca Rule 10.8 for appeal or while such an appeal is pending shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Exchange;*

(2) *A final decision of the Exchange that is released prior to the time period provided under the Securities Exchange Act of 1934 for appeal to the Securities and Exchange Commission or while such an appeal is pending shall be accompanied by a statement that the findings and sanctions of the Exchange are subject to review and modification by the Securities and Exchange Commission; and*

(3) *A final decision of the Exchange that is released after the decision is appealed to the Securities and Exchange Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Securities and Exchange Commission.*

(b)(1) The Exchange shall release to the public information with respect to any disciplinary decision issued pursuant to NYSE Arca Rule 10 imposing: (i) A suspension, cancellation or expulsion upon an OTP Holder or OTP Firm; or (ii) suspension or revocation of the registration of an associated person of an OTP Holder or OTP Firm; or (iii) suspension or barring of an OTP Holder or OTP Firm or associated person from association with all OTP Holders or OTP Firms; or (iv) imposition of monetary sanctions of $10,000 or more upon an OTP Holder or OTP Firm or associated person; or (v) containing an allegation of a violation of a Designated Rule; and may also release to the public such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of the Exchange to be in the public interest. The Exchange may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

would violate fundamental notions of fairness or work as an injustice. The Exchange may release to the public information on any disciplinary or other decision issued pursuant to NYSE Arca Rule 10 not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

A ''Designated Rule'' means (i) SEC Rule 10b–5, (ii) NYSE Arca Rule 11.5, or (iii) NYSE Arca Rule 11.2.

(A) *The Exchange shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to NYSE Arca Rule 10.8 that does not meet one or more of the criteria in section (b)(1) for the release of information to the public, provided that the underlying decision issued pursuant to NYSE Arca Rule 10.7 meets one or more of the criteria in section (b)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.*

(B) *In the event there is more than one respondent in a disciplinary decision issued pursuant to NYSE Arca Rule 10 and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in section (b)(1) for the release of information to the public, the Exchange shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, the Exchange shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to NYSE Arca Rule 10.8 if the sanctions imposed on such respondent in the underlying decision issued pursuant to NYSE Arca Rule 10.7 meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.*

(2) *Information released to the public pursuant to subparagraph (b)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs (a)(1)–(3).*

(c) Information regarding any sanctions imposed pursuant to NYSE Arca Rule 10.6 shall be released to the public pursuant to paragraph (b) immediately upon such approval.

(d) If a decision of the Exchange imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of an OTP Holder or OTP Firm from being associated with all OTP Holders or OTP Firms is appealed to the Securities and Exchange Commission, notice thereof shall be given to all OTP Holders and OTP Firms and to the press as soon as possible after receipt by the Exchange of notice from the Securities and Exchange Commission of such appeal and the Exchange's notice shall state whether the effectiveness of the Exchange's decision has been stayed pending the outcome of proceedings before the Securities and Exchange Commission.

(e) In the event an appeal to the Federal courts is filed from a decision by the Securities and Exchange Commission in a case previously appealed to it from a decision of the Exchange, involving the imposition of monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of an OTP Holder or OTP Firm from being associated with all OTP Holders or OTP Firms, notice thereof shall be given to the OTP Holders or OTP Firms as soon as possible after receipt by the Exchange of a formal notice of appeal. Such notice shall include a statement whether the order of the Securities and Exchange Commission has been stayed.

(f) Any order issued by the Securities and Exchange Commission of (i) revocation or suspension of an OTP Holder's or OTP Firm's broker/dealer registration with the Securities and Exchange Commission; or (ii) the suspension or expulsion of an OTP Holder or OTP Firm from the Exchange; or (iii) the suspension or barring of an OTP Holder or OTP Firm or an associated person from association with all broker/dealers or OTP Holders or OTP Firms; or (iv) the imposition of monetary sanctions of $10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Exchange of the order of the Securities and Exchange Commission.

(g) Cancellations of Option Trading Permits or registration pursuant to the Exchange's Rules and interpretative material shall be released to the public as soon after the effective date of the cancellation as possible.

(h) Releases to the public referred to in paragraph (b) above shall identify the Exchange Rule(s) or the SEC Rule(s) violated, and shall describe the conduct constituting such violation. Releases may also identify the OTP Holder or OTP Firm with which an individual was associated at the time the violations occurred if such identification is determined by the Exchange to be in the public interest.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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 III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the proposed Public Disclosure Program, the Exchange would release to the public certain information concerning the disciplinary history of OTP Holders, OTP Firms, and associated persons. The Exchange is instituting such procedures in order to provide investors with information regarding final disciplinary decisions related to such OTP Holders, OTP Firms, and associated persons. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business. Currently, the Exchange does not have rules related to the release of disciplinary decisions to members of the public. Proposed NYSE Arca Rule 10.17 would allow the Exchange to release such information upon request and when certain other circumstances exist, as explained in greater detail below.

Disciplinary Decisions. If a member of the public requests a copy of an identified disciplinary decision issued by the Exchange or any committee thereof, a copy of the decision will be provided to the requesting member of the public. The Exchange's practice will be to provide such information on a per-OTP Holder, OTP Firm, or associated person basis. The Exchange will not charge the public for this service.

The Exchange will also release information to the public with respect to disciplinary decisions that: (i) Impose a suspension, cancellation, or expulsion of an OTP Holder or OTP Firm; (ii) impose the suspension or revocation of the registration of an associated person of an OTP Holder or OTP Firm; (iii) impose the suspension or barring of an OTP Holder, OTP Firm, or associated person from association with all OTP

Holders or OTP Firms; (iv) impose monetary sanctions of $10,000 or more upon an OTP Holder, OTP Firm, or associated person; or (v) contain an allegation of a violation of a Designated Rule.[3] The Exchange will release unredacted information concerning decisions issued by the Board Appeals Committee that do not meet one or more of the criteria in proposed NYSE Arca Rule 10.17(b)(1), provided that the underlying decision meets one or more of the criteria in proposed NYSE Arca Rule 10.17(b)(1), and the information regarding the underlying decision was released to the public in unredacted form.

In the event that there is more than one respondent in a disciplinary decision and sanctions are imposed on one or more of the respondents, but not all of the respondents meet one or more of the criteria in proposed NYSE Arca Rule 10.17(b)(1) for the release of information, the Exchange will release to the public unredacted information with respect to the respondents who meet such criteria. In addition, the Exchange may release redacted information to the public with respect to the respondents who do not meet the criteria in proposed NYSE Arca Rule 10.17(b)(1).

The Exchange may release information to the public concerning disciplinary decisions that involve significant policy or enforcement determinations where the release of such information is deemed by the President of the Exchange to be in the public interest. In addition, the Exchange may exercise its discretion and waive the requirement to release information with respect to a disciplinary decision under extraordinary circumstances where the release of the information would violate fundamental notions of fairness or work as an injustice. Finally, the Exchange may release public information concerning any disciplinary or other decision issued pursuant to NYSE Arca Rule 10 that is not specifically enumerated in proposed NYSE Arca Rule 10.17(b)(1), regardless of the sanctions imposed, so long as the names of the parties and other identifying information are redacted.

Notices. Decisions that are released to a member of the public must include certain notices. Decisions that are released prior to the period in which a respondent may request an appeal pursuant to NYSE Arca Rule 10.8 (Review) or while an appeal is pending must include a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Exchange. In addition, a final decision by the Exchange that is released prior to the period in which a respondent may appeal to the Commission or while such appeal is pending will include a statement that the findings and sanctions of the Exchange are subject to review and modification by the Commission. Lastly, a final decision of the Exchange that is released after the decision is appealed to the Commission will include a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

Appeals. In the instance that the Exchange's decisions are appealed to the Commission or the federal courts, the Exchange will notify all OTP Holders, OTP Firms, and the press. This includes all Exchange decisions imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension, and/or barring of an OTP Holder or OTP Firm from being associated with all OTP Holders or OTP Firms.

Commission Orders. The Exchange will release through a notice to the public information with respect to any order issued by the Commission: (i) Revoking or suspending an OTP Firm's or OTP Holder's broker-dealer registration; (ii) suspending or expelling an OTP Firm or OTP Holder from the Exchange; (iii) suspending or barring an OTP Holder, OTP Firm, or an associated person from associating with all broker-dealers, OTP Holders, or OTP Firms; or (iv) imposing monetary sanctions of $10,000 or more.

Offers of Settlement. The Exchange will release information regarding sanctions imposed pursuant to NYSE Arca Rule 10.6 (Offers of Settlement) upon the approval of offers of settlement.

Cancellation of Option Trading Permits. In cases where the Exchange cancels an Options Trading Permit or registration, the Exchange will notify the public as soon after the effective date of the cancellation as possible.

While proposed NYSE Arca Rule 10.17 is based substantially on NASD Rule 8310 (Sanctions for Violation of the Rules) and IM–8310–2 (Release of Disciplinary and Other Information Through the Public Disclosure Program), it does not incorporate all aspects of such NASD Rule. For example, proposed NYSE Arca Rule 10.17 excludes public disclosure of disciplinary complaints and arbitrations. The Exchange's intention is for public disclosure not to apply to disciplinary complaints that involve undecided issues or arbitrations between parties. The Exchange plans to notify OTP Holders, OTP Firms, and associated persons of the effectiveness of this proposed rule change through the Exchange's Internet Web site and a regulatory bulletin.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–03 on the subject line.

[3] A ''Designated Rule'' means (i) Commission Rule 10b–5 under the Act, (ii) NYSE Arca Rule 11.5 (Manipulation), or (iii) NYSE Arca Rule 11.2 (Prohibited Acts). *See* proposed NYSE Arca Rule 10.17(b)(1).

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78s(b)(5).

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–NYSEArca–2006–03. 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–NYSEArca–2006–03 and should be submitted on or before June 27, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission believes that the proposal to institute the Public Disclosure Program, which is substantially based on NASD Rule 8310 and IM–8310–2,[8] serves the interest of investor protection because it allows NYSE Arca members and the general public to promptly learn of final disciplinary decisions involving its broker-dealer members or associated persons of such members. By notifying the public of a final decision issued by the Exchange or any committee of the Exchange that results in the suspension, cancellation, expulsion, and/or barring of an OTP Holder or OTP Firm or the imposition of monetary sanctions of $10,000 or more, for example, the Commission believes that the Public Disclosure Program should provide important information to the public, create additional incentives for members of the Exchange to comply with its rules, and help investors make informed choices and decisions about the individuals and firms with whom they may wish to conduct business. As such, the Commission finds that the proposed program promotes just and equitable principles of trade, encourages the prevention of fraudulent and manipulative acts and practices, and seeks to perfect the mechanism of a free and open market.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted earlier, prompt disclosure of final disciplinary decisions serves the interest of protecting investors and the general public.[9] Therefore, accelerating approval of the proposed rule change should benefit investors because they will have access to the NYSE Arca disciplinary information sooner. The Public Disclosure Program should foster compliance with NYSE Arca rules, heighten awareness of the public investor with respect to the conduct of business on the Exchange, and, in general, improve the overall integrity of the market center.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2006–03), as amended, is hereby approved on an accelerated basis.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8700 Filed 6–5–06; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 35138 (December 22, 1994), 59 FR 67362 (December 29, 1994) (approving the NASD program to publish final disciplinary decisions involving its members).

[9] *See id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53878; File No. SR–NYSEArca–2006–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish a Public Disclosure Program

May 26, 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 6, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 9, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change. On May 17, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its subsidiary, NYSE Arca Equities, proposes to implement a new rule, NYSE Arca Equities Rule 10.15, that would institute and govern a program (''Public Disclosure Program'') in which certain disciplinary actions involving Equity Trading Permit Holders (''ETP Holders'') and associated persons thereof would be publicized. The text of the proposed rule change is below. Proposed new language is in *italics.*

NYSE Arca Equities Rules

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

RULE 10 DISCIPLINARY PROCEEDINGS, OTHER HEARINGS, AND APPEALS

* * * * *

Release of Disciplinary Information Through the Public Disclosure Program

Rule 10.15(a) The Corporation shall, in response to a request, release a copy of any identified disciplinary decision issued by the Corporation or any Committee thereof; provided, however, that each copy of:

(1) *a decision that is released prior to the expiration of the time period provided under NYSE Arca Equities Rule 10.8 for appeal or while such an appeal is pending shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Corporation;*

(2) *a final decision of the Corporation that is released prior to the time period provided under the Securities Exchange Act of 1934 for appeal to the Securities and Exchange Commission or while such an appeal is pending shall be accompanied by a statement that the findings and sanctions of the Corporation are subject to review and modification by the Securities and Exchange Commission; and*

(3) *a final decision of the Corporation that is released after the decision is appealed to the Securities and Exchange Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Securities and Exchange Commission.*

(b)(1) The Corporation shall release to the public information with respect to any disciplinary decision issued pursuant to NYSE Arca Equities Rule 10 imposing: (i) a suspension, cancellation or expulsion upon an ETP Holder; or (ii) suspension or revocation of the registration of an associated person of an ETP Holder; or (iii) suspension or barring of an ETP Holder or associated person from association with all ETP Holders; or (iv) imposition of monetary sanctions of $10,000 or more upon an ETP Holder or associated person; or (v) containing an allegation of a violation of a Designated Rule; and may also release to the public such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of the Corporation to be in the public interest. The Corporation may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work as an injustice. The Corporation may release to the public information on any disciplinary or other decision issued pursuant to NYSE Arca Equities Rule 10 not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

A ''Designated Rule'' means (i) SEC Rule 10b–5, (ii) NYSE Arca Equities Rule 6.5, or (iii) NYSE Arca Equities Rule 6.2.

(A) *The Corporation shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to NYSE Arca Equities Rule 10.8 that does not meet one or more of the criteria in section (b)(1) for the release of information to the public, provided that the underlying decision issued pursuant to NYSE Arca Equities Rule 10.7 meets one or more of the criteria in section (b)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.*

(B) *In the event there is more than one respondent in a disciplinary decision issued pursuant to NYSE Arca Equities Rule 10 and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in section (b)(1) for the release of information to the public, the Corporation shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, the Corporation shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to NYSE Arca Equities Rule 10.8 if the sanctions imposed on such respondent in the underlying decision issued pursuant to NYSE Arca Equities Rule 10.7 meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.*

(2) *Information released to the public pursuant to subparagraph (b)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs (a)(1)–(3).*

(c) Information regarding any sanctions imposed pursuant to NYSE Arca Equities Rule 10.6 shall be released to the public pursuant to paragraph (b) immediately upon such approval.

(d) If a decision of the Corporation imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of an ETP Holder from being associated with all ETP Holders is appealed to the Securities and Exchange Commission, notice thereof shall be given to all ETP Holders and to the press as soon as possible after receipt by the Corporation of notice from the Securities and Exchange Commission of such appeal and the Corporation's notice shall state whether the effectiveness of the Corporation's decision has been stayed pending the outcome of proceedings before the Securities and Exchange Commission.

(e) In the event an appeal to the federal courts is filed from a decision by the Securities and Exchange Commission in a case previously appealed to it from a decision of the Corporation, involving the imposition of monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of an ETP Holder from being associated with all ETP Holders, notice thereof shall be given to the ETP Holders as soon as possible after receipt by the Corporation of a formal notice of appeal. Such notice shall include a statement whether the order of the Securities and Exchange Commission has been stayed.

(f) Any order issued by the Securities and Exchange Commission of (i) revocation or suspension of an ETP Holder's broker/dealer registration with the Securities and Exchange Commission; or (ii) the suspension or expulsion of an ETP Holder from the Corporation; or (iii) the suspension or barring of an ETP Holder or an associated person from association with all broker/dealers or ETP Holders; or (iv) the imposition of monetary sanctions of $10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Corporation of the order of the Securities and Exchange Commission.

(g) Cancellations of Equity Trading Permits or registration pursuant to the Corporation's Rules and interpretative material shall be released to the public as soon after the effective date of the cancellation as possible.

(h) Releases to the public referred to in paragraph (b) above shall identify the Corporation's Rule(s) or the SEC Rule(s) violated, and shall describe the conduct constituting such violation. Releases may also identify the ETP Holder with which an individual was associated at

the time the violations occurred if such identification is determined by the Corporation to be in the public interest.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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 III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the proposed Public Disclosure Program, NYSE Arca Equities would release to the public certain information concerning the disciplinary history of ETP Holders and associated persons. NYSE Arca Equities is instituting such procedures in order to provide investors with information regarding final disciplinary decisions related to ETP Holders and associated persons. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business. Currently, NYSE Arca Equities does not have rules related to the release of disciplinary decisions to members of the public. Proposed NYSE Arca Equities Rule 10.15 would allow NYSE Arca Equities to release such information upon request and when certain other circumstances exist, as explained in greater detail below.

Disciplinary Decisions. If a member of the public requests a copy of an identified disciplinary decision issued by NYSE Arca Equities or any committee thereof, a copy of the decision will be provided to the requesting member of the public. NYSE Arca Equities' practice will be to provide such information on a per-ETP Holder or associated person basis. NYSE Arca Equities will not charge the public for this service.

NYSE Arca Equities will also release information to the public with respect to disciplinary decisions that: (i) Impose a suspension, cancellation, or expulsion of an ETP Holder; (ii) impose the suspension or revocation of the registration of an associated person of an ETP Holder; (iii) impose the suspension or barring of an ETP Holder or associated person from association with all ETP Holders; (iv) impose monetary sanctions of $10,000 or more upon an ETP Holder or associated person; or (v) contain an allegation of a violation of a Designated Rule.[3] NYSE Arca Equities will release unredacted information concerning decisions issued by the Board Appeals Committee that do not meet one or more of the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1), provided that the underlying decision meets one or more of the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1), and the information regarding the underlying decision was released to the public in unredacted form.

In the event that there is more than one respondent in a disciplinary decision and sanctions are imposed on one or more of the respondents, but not all of the respondents meet one or more of the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1) for the release of information, NYSE Arca Equities will release to the public unredacted information with respect to the respondents who meet such criteria. In addition, NYSE Arca Equities may release redacted information to the public with respect to the respondents who do not meet the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1).

NYSE Arca Equities may release information to the public concerning disciplinary decisions that involve significant policy or enforcement determinations where the release of such information is deemed by the President of NYSE Arca Equities to be in the public interest. In addition, NYSE Arca Equities may exercise its discretion and waive the requirement to release information with respect to a disciplinary decision under extraordinary circumstances where the release of the information would violate fundamental notions of fairness or work as an injustice. Finally, NYSE Arca Equities may release public information concerning any disciplinary or other decision issued pursuant to NYSE Arca Equities Rule 10 that is not specifically enumerated in proposed NYSE Arca Equities Rule 10.15(b)(1), regardless of the sanctions imposed, so long as the names of the parties and other identifying information are redacted.

Notices. Decisions that are released to a member of the public must include certain notices. Decisions that are released prior to the period in which a respondent may request an appeal pursuant to NYSE Arca Equities Rule 10.8 (Review) or while an appeal is pending must include a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by NYSE Arca Equities. In addition, a final decision by NYSE Arca Equities that is released prior to the period in which a respondent may appeal to the Commission or while such appeal is pending will include a statement that the findings and sanctions of NYSE Arca Equities are subject to review and modification by the Commission. Lastly, a final decision of NYSE Arca Equities that is released after the decision is appealed to the Commission will include a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

Appeals. In the instance that NYSE Arca Equities' decisions are appealed to the Commission or the federal courts, NYSE Arca Equities will notify all ETP Holders and the press. This includes all NYSE Arca Equities decisions imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension, and/or barring of an ETP Holder from being associated with all ETP Holders.

Commission Orders. NYSE Arca Equities will release through a notice to the public information with respect to any order issued by the Commission: (i) Revoking or suspending an ETP Holder's broker-dealer registration; (ii) suspending or expelling an ETP Holder from NYSE Arca Equities; (iii) suspending or barring an ETP Holder or an associated person from associating with all broker-dealers or ETP Holders; or (iv) imposing monetary sanctions of $10,000 or more.

Offers of Settlement. NYSE Arca Equities will release information regarding sanctions imposed pursuant to NYSE Arca Equities Rule 10.6 (Offers of Settlement) upon the approval of offers of settlement.

Cancellation of Equity Trading Permits. In cases where NYSE Arca Equities cancels an Equity Trading Permit or registration, NYSE Arca Equities will notify the public as soon after the effective date of the cancellation as possible.

While proposed NYSE Arca Equities Rule 10.15 is based substantially on NASD Rule 8310 (Sanctions for Violation of the Rules) and IM–8310–2 (Release of Disciplinary and Other Information Through the Public Disclosure Program), it does not incorporate all aspects of such NASD Rule. For example, proposed NYSE Arca

[3] A "Designated Rule" means (i) Commission Rule 10b–5 under the Act, (ii) NYSE Arca Equities Rule 6.5 (Manipulation), or (iii) NYSE Arca Equities Rule 6.2 (Prohibited Acts). *See* proposed NYSE Arca Equities Rule 10.15(b)(1).

Equities Rule 10.15 excludes public disclosure of disciplinary complaints and arbitrations. NYSE Arca Equities's intention is for public disclosure not to apply to disciplinary complaints that involve undecided issues or arbitrations between parties. NYSE Arca Equities plans to notify ETP Holders and associated persons of the effectiveness of this proposed rule change through NYSE Arca Equities' Internet Web site and a regulatory bulletin.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–02 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–NYSEArca–2006–02. 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–NYSEArca–2006–02 and should be submitted on or before June 27, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission believes that the proposal to institute the Public Disclosure Program, which is substantially based on NASD Rule 8310 and IM–8310–2,[8] serves the interest of investor protection because it allows NYSE Arca Equities members and the general public to promptly learn of final disciplinary decisions involving its broker-dealer members or associated persons of such members. By notifying the public of a final decision issued by the Exchange or any committee of the Exchange that results in the suspension, cancellation, expulsion, and/or barring of an ETP Holder or the imposition of monetary sanctions of $10,000 or more, for example, the Commission believes that the Public Disclosure Program should provide important information to the public, create additional incentives for members of the Exchange to comply with its rules, and help investors make informed choices and decisions about the individuals and firms with whom they may wish to conduct business. As such, the Commission finds that the proposed program promotes just and equitable principles of trade, encourages the prevention of fraudulent and manipulative acts and practices, and seeks to perfect the mechanism of a free and open market.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted earlier, prompt disclosure of final disciplinary decisions serves the interest of protecting investors and the general public.[9] Therefore, accelerating approval of the proposed rule change should benefit investors because they will have access to the NYSE Arca Equities disciplinary information sooner. The Public Disclosure Program should foster compliance with NYSE Arca Equities rules, heighten awareness of the public investor with respect to the conduct of business on the Exchange, and, in general, improve the overall integrity of the market center.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78s(b)(5).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 35138 (December 22, 1994), 59 FR 67362 (December 29, 1994) (approving the NASD program to publish final disciplinary decisions involving its members).

[9] *See id.*

2006–02), as amended, is hereby approved on an accelerated basis.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8716 Filed 6–5–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10480 and #10479]

Maine Disaster #ME–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1644–DR), dated May 25, 2006.

Incident: Severe Storms and Flooding.

Incident Period: May 13, 2006 and continuing.

Effective Date: May 25, 2006.

Physical Loan Application Deadline Date: July 24, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: February 26, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on May 25, 2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
York.

Contiguous Counties (Economic Injury Loans Only):
Maine, Cumberland, Oxford
New Hampshire, Carroll, Rockingham, and Strafford.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	7.763
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 104806 and for economic injury is 104790.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–8693 Filed 6–5–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10482 and #10481]

Massachusetts Disaster #MA–00006

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Masschusetts (FEMA–1642–DR), dated 05/25/2006.

Incident: Severe Storms and Flooding.

Incident Period: 05/12/2006 and continuing.

Effective Date: 05/25/2006.

Physical Loan Application Deadline Date: 07/24/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 02/26/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/25/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Essex, Middlesex, Suffolk.

Contiguous Counties (Economic Injury Loans Only):
Massachusetts: Norfolk, Worcester.
New Hampshire: Hillsborough, Rockingham.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	7.763
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 104826 and for economic injury is 104810.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–8686 Filed 6–5–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10478 and #10477]

New Hampshire Disaster # NH–00002

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1643–DR), dated 05/25/2006.

Incident: Severe Storms and Flooding.

Incident Period: 05/12/2006 and continuing.

Effective Date: 05/25/2006.

Physical Loan Application Deadline Date: 07/24/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 02/26/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/25/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Belknap, Carroll, Hillsborough, Merrimack, Rockingham, Strafford.

Contiguous Counties (Economic Injury Loans Only):

New Hampshire: Cheshire, Coos, Grafton, Sullivan.

Massachusetts: Essex, Middlesex, Worcester.

Maine: Oxford, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	7.763
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 104786 and for economic injury is 104770.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–8685 Filed 6–5–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) Wisconsin District Advisory Council will be hosting an open meeting on Wednesday, June 21, 2006. The meeting will take place at the U.S. Small Business Administration, Wisconsin District–Milwaukee Office, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin 53203.

The purpose of the meeting will be to discuss and provide an update on disaster loan processing; a report on our recently held lenders conference and small business awards breakfast; new and on-going initiatives. Information will be presented by the staff of the SBA, or others present.

Anyone wishing to attend must contact Cindy Merrigan in writing or by fax. Cindy Merrigan, U.S. Small Business Administration, 740 Regent Street, Suite 100, Madison, Wisconsin 53715, telephone (608) 441–5560, fax (202) 481–0815, e-mail: *cindy.merrigan@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–8689 Filed 6–5–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Council Public Meeting

The U.S. Small Business Administration (SBA) National Advisory Council (NAC) will hold a public meeting on Friday, June 30, 2006 at 3 p.m. The meeting will take place using an audio/web conference system. To participate, please call our toll free conferencing service at 1–866–740–1260 and enter access code 3711001 at the prompt.

The purpose of the meeting is to provide and discuss recent updates pertaining to the delivery of the Agency's programs and services. Information will be presented by the staff of the SBA, members of the council or interested others.

Anyone wishing to attend or to make a presentation must contact Balbina Caldwell in writing, phone or e-mail in order to be put on the agenda. Balbina Caldwell, Director, National Advisory Council, SBA Headquarters, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205–6914, e-mail: *balbina.caldwell@sba.gov.* For more information about the National Advisory Council, see our Web site at *http://www.sba.gov/nac/index.html.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–8688 Filed 6–5–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration (SBA) National Small Business Development Center (SBDC) Advisory Board will be hosting a public annual meeting. The meeting will be held on Monday, June 26, 2006 from 4 p.m. to 5:30 p.m. Pacific time. The meeting will take place at the SBA San Diego District Office, 550 West C Street, Suite 550, San Diego, California 92101.

The purpose of the meeting is to discuss advisory board matters that may be presented by members, and the staff of the U.S. Small Business Administration (SBA), with a view towards constructively advancing and improving national and local SBDC program operations.

Anyone wishing to attend the National Small Business Development Center Advisory Board Meeting must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–8687 Filed 6–5–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5434]

Determination and Certification Related to Colombian Armed Forces Under Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D, Pub. L. 108–447)

Pursuant to the authority vested in me as Secretary of State, including under section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D, Pub. L. 108–447 ''the Act''), I hereby determine and certify that the Colombian Armed Forces are, in accordance with the conditions contained in section 556(a)(3) of the Act, continuing to meet the conditions contained in (A) through (E) below and are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerilla organizations.

The above-mentioned conditions are that: (A) The Commander General of the

Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations; (B) the Colombian Government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations; (C) the Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information); (D) the Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade level, with paramilitary organizations, especially in regions where these organizations have a significant presence; (E) the Colombian Government is dismantling paramilitary leadership and financial networks by arresting commanders and financial backers, especially in regions where these networks have a significant presence.

The Department of State has periodically consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the abovementioned conditions, as provided in section 556(c) of the Act.

This Determination shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: May 26, 2006.

Condoleezza Rice,

Secretary of State.

[FR Doc. E6–8728 Filed 6–5–06; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 5424]

Advisory Committee on Historical Diplomatic Documentation Notice of Meeting

Summary: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, Annex 1, 2401 E Street, NW., Washington, DC, June 19–20, 2006, in Conference Room 316. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Chris Tudda, Office of the Historian (202–663–3054) no later than June 12, 2006 to provide date of birth, valid government-issued photo ID (such as driver's license, passport, U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult Chris Tudda for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, March 6, 2006, in Room 1105 to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, June 19, 2006, and 9 a.m. until 1 p.m. on Tuesday, June 20, 2006, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: May 24, 2006.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. E6–8729 Filed 6–5–06; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 5406]

Overseas Security Advisory Council (OSAC) Meeting Notice

Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 28, 2006 at the Federal Bureau of Investigation, Washington, DC. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c][4], it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial and financial information that is considered privileged and confidential. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For More Information Contact: Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: May 24, 2006.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E6–8730 Filed 6–5–06; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Placentia, California

[Waiver Petition Docket Number FRA–2006–24654]

The City of Placentia, California (City) has petitioned for temporary waiver of the deadline of June 24, 2006, provided for in 49 CFR 222.42 for continuation of an intermediate partial quiet zone. The

City states that it is working with the BNSF Railway Company to establish a 24-hour quiet zone, that certain improvements have already been made to the benefit of safety, and that all necessary improvements will be completed by September 22, 2006. The City seeks to retain the current nighttime quiet zone in order to avoid disruption and confusion during the period permanent arrangements are being completed and states that safety will not be compromised.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA within 15 days of the date of publication of this notice, in writing, and specify the basis for their request.

All communications concerning these proceedings should identify the docket number set forth above and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. FRA reserves the right to grant temporary relief to avoid lapse of the existing partial quiet zone while the comment period is open, after consideration of any comments filed prior to the initial date of decision. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are available for inspection and copying on the Internet at the docket facility's Web site: *http://dms.dot.gov*.

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

Issued in Washington, DC on May 26, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–8733 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Gettysburg & Northern Railroad Company

[Waiver Petition Docket Number FRA–2005–23489]

The Gettysburg & Northern Railroad Company (GNRR) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.11, that requires certified glazing for one locomotive. The GNRR is located in Peoria, IL, and operates over 25.5 miles of track at a speed not exceeding 15 miles per hour. The terrain is mostly rural with light residential and commercial surroundings. This locomotive is used primarily in passenger service during the summer excursion season. During the off season, this locomotive is stored inside a diesel shop.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2005–23489) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

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

Issued in Washington, DC on May 26, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–8738 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Hoosier Valley Railroad Museum

[Docket Number FRA–2006–24647]

The Hoosier Valley Railroad Museum (HVRM) seeks a permanent waiver of compliance from *Control of Alcohol and Drug Use*, 49 CFR Part 219 Subparts D through J, which require a railroad to conduct reasonable suspicion alcohol and/or drug testing, pre-employment drug testing, random alcohol and drug testing, and to have voluntary referral and co-worker report policies, and which also specify drug and alcohol testing procedures and record-keeping requirements. HVRM has less than 16 hours of service employees, and while

it is not currently part of the general railroad system of transportation, it will begin operation of tourist trains on five to ten miles of the 33 miles of track owned by the Incorporated Town of North Judson, Indiana between North Judson and LaCrosse, IN. The Chesapeake & Indiana Railroad (CKIN) conducts freight operations on 23 miles of this 33-mile rail line; however, the only common track use would be a wye track in LaCrosse. HVRM's tourist train operations would normally be conducted on weekends and would not operate at the same time as the CKIN freight trains.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2006–24647) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

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

Issued in Washington, DC on May 26, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standard and Program Development.

[FR Doc. E6–8737 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Regional Commuter Railroad Corporation

[Waiver Petition Docket Number FRA–2006–24562]

The Northeast Illinois Regional Commuter Railroad Corporation (Metra), further identified herein as the railroad, seeks approval for a waiver of compliance with the requirements of the *Passenger Equipment Safety Standards* contained in 49 CFR 238.309(b)(3), *Periodic brake equipment maintenance*, which requires that brake equipment receive periodic maintenance at 736 days. Metra requests an extension of the time period to 1840 days for 26 new bi-level electric passenger MU's.

The twenty-six new electric MU locomotives for which the relief is being requested are being built by Sumitomo Corporation of America/Nippon Sharyo and the air brake system is provided by Knorr Brake Corporation in Westminster, Maryland. The railroad explains that the brake application is transmitted electronically to each MU's Friction Brake Control Unit (FBCU). The FBCU then provides the requested brake application without drawing down brake pipe pressure. An Emergency Magnetic Valve (EMV) is provided on each MU for an electronic emergency brake application.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–24562) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are available for inspection and copying on the Internet at the docket facility's Web site: *http://dms.dot.gov*.

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

Issued in Washington, DC on May 26, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–8735 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket Number FRA–2006–24706]

Applicant: MTA Long Island Rail Road, Mr. Brian J. Finn, Chief Engineer, Jamaica Station, Jamaica, New York 11435–4380.

The Long Island Rail Road Company (LIRR) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, § 236.51, Track circuit requirements, to the extent that the LIRR be permitted to utilize single rail track circuits which do not provide for broken rail protection, in the vicinity of a new LIRR terminal called Vanderbilt Yard (VD Yard). The LIRR is working to rebuild the existing VD Yard and replace it with a modern interlocked yard. The location of the project is in Brooklyn, New York, on the LIRR's Atlantic Branch line, between existing Brook 1 and 2 Interlockings.

Applicant's Justification for Relief

(1) The track speed for these circuits will be restricted to 5 mph.

(2) The signal aspect proposed for the affected tracks will be ''Restricting.''

(3) The existing Brook 1 Interlocking at Flatbush Avenue contains existing single rail track circuits, permitted by the granting of a previous waiver application.

(4) Passenger service will not be provided on the yard tracks except for an emergency detour route that will allow a passenger train to bypass the main tracks if both main tracks are blocked.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

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

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 26, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–8736 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–03–15852]

RIN 2137–AD96

Request for Public Comments and Office of Management and Budget (OMB) Approval of a New Information Collection as Required by the Final Rule Titled ''Pipeline Safety: Public Awareness Programs for Hazardous Liquid and Gas Pipeline Operators.''

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

SUMMARY: This notice requests public participation in the OMB approval process for a new PHMSA information collection related to a final rule requiring pipeline operators to establish public awareness programs. In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) described below has been forwarded to OMB for an approval of a new collection. The ICR describes the nature of the information collection and the expected burden. PHMSA received no comments in response to a request for comment on the information collection during the rulemaking. The final rule was published on May 19, 2005. The purpose of this notice is to allow the public an additional 30 days from the date of this notice to submit comments in the information collection.

DATES: Comments must be submitted on or before July 6, 2006.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

FOR FURTHER INFORMATION CONTACT: Blaine Keener by phone at (202) 366–0970, or by e-mail at *blaine.keener@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA invites comments on whether the collection of information related to the final rule requiring pipeline operators to establish public awareness programs is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. PHMSA solicited comments on this information collection request as part of the rulemaking but received no comments. PHMSA published a Final Rule on May 19, 2005 (70 FR 28833).

As used in this notice, ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: New Collection.

Title of Information Collection: Public Awareness Program.

Respondents: 22,500 Hazardous liquid and natural gas pipeline operators.

Estimated Total Burden on Respondents: 517,480 hours.

Issued in Washington, DC on May 31, 2006.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E6–8696 Filed 6–5–06; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the 2006 Solicited Initiative Effective October 1, 2006

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces changes to its Upcoming Spring 2006 Solicited Grant Competition. The Solicited Initiative will focus on six countries as they relate to USIP's mandate and starting October 1, 2006, applications will be accepted throughout the year. The Solicited initiative is restricted to projects that fit specific themes or topics identified in advance by the Institute of Peace.

The 2006 Solicited Initiative will focus on the six countries outlined below. The specific themes and topics for each country may be found at our Web site at: *http://www.usip.org/grants/solicited.html.*

- Colombia
- Iran
- Iraq
- Nigeria
- Pakistan
- Sudan

Deadline: Starting October 1, 2006, USIP will accept solicited initiative applications throughout the year. Please visit our Web site at: *http://www.usip.org/grants/solicited.html* for specific information on the competition as well as instructions about how to apply.

ADDRESSES: If you are unable to access our Web site, you may submit an inquiry to: United States Institute of Peace, Grant Program, Solicited Initiative, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone). (202) 833–1018 (fax). (202) 457–1719 (TTY). E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program. Phone (202) 429–3842. E-mail: *grants@usip.org.*

Dated: June 1, 2006.

Michael Graham,

Vice President for Administration.

[FR Doc. 06–5129 Filed 6–5–06; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2006 Unsolicited Initiative Effective October 1, 2006

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces a change to the Unsolicited Grant Program. The Unsolicited Initiative will be open on the basis of a single application deadline per year, starting October 1, 2006. The Unsolicited Initiative offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Unsolicited Initiative competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline: October 1, 2006. Application material available on request and at *http://www.usip.org/grants.*

DATES: Receipt of Application: October 1, 2006. Notification Date: March 31, 2007.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone). (202) 833–1018 (fax). (202) 457–1719 (TTY). E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Unsolicited Grants. Phone (202) 429–3842. E-mail: *grants@usip.org.*

Dated: June 1, 2006.

Michael Graham,

Vice President for Administration.

[FR Doc. 06–5130 Filed 6–5–06; 8:45 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 71, No. 108

Tuesday, June 6, 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 DEFENSE

Department of the Army

Record of Decision for the Chemical and Biological Defense Program (CBDP) Final Programmatic Environmental Impact Statement (FPEIS)

Correction

In notice document 06–4859 beginning on page 30123 in the issue of Thursday, May 25, 2006, make the following corrections:

1. On page 30123, in the second column, the subject heading is corrected to read as set forth above.

2. On page 30124, in the first column, in the file line, ''**BILLING CODE 371–08–M**'' should read ''**BILLING CODE 3710–08–M**''.

[FR Doc. C6–4859 Filed 6–5–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 6, 2006

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 35 and 37

Preventing Undue Discrimination and Preference in Transmission Service; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 37

[Docket Nos. RM05–25–000 and RM05–17–000]

Preventing Undue Discrimination and Preference in Transmission Service

May 19, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing amendments to its regulations adopted in Order Nos. 888 and 889, and to the *pro forma* open access transmission tariff, to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential.

DATES: Comments are due August 7, 2006. Reply comments are due September 5, 2006.

ADDRESSES: You may submit comments, identified by Docket Nos. RM05–25–000 and RM05–17–000, by one of the following methods:

- Agency Web site: *http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.
- 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: Daniel Hedberg (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6243.

Kathleen Barrón (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6461.

David Withnell (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8421.

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I. Introduction

1. Ten years have passed since the Commission issued its landmark Order No. 888.[1] Named after our new headquarters in Washington, DC, Order No. 888 sought to eradicate undue discrimination in the provision of transmission service in interstate commerce. It did so by requiring that each public utility that owns, operates, or controls facilities used for transmission in interstate commerce offer unbundled transmission service pursuant to a standard Open Access Transmission Tariff (*pro forma* OATT) and separate its transmission and merchant generation functions pursuant to a companion order issued that same day, Order No. 889.[2] These remedies reduced barriers to entry, led to greater competition in bulk power markets and provided the foundation for subsequent regulatory reforms at both the federal and state level.

2. Although Order No. 888 has been successful in many important respects, the need for reform of the Order No. 888 *pro forma* OATT has been apparent for some time. In 1999, the Commission held, in adopting Order No. 2000,[3] that

[1] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS* v. *FERC*), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[2] *Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[3] *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (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).

the *pro forma* OATT could not fully remedy undue discrimination because transmission providers retained both the incentive and the ability to discriminate against third parties, particularly in areas where the pro forma OATT left the transmission provider with significant discretion.[4] The Commission in Order No. 2000 thus encouraged utilities to voluntarily join independent regional transmission organizations (RTOs) that would operate their transmission facilities on a non-discriminatory basis and administer the OATT. The Commission based Order No. 2003 on a similar finding, explaining that the interconnection process includes opportunities for undue discrimination that may lead to delays that benefit generation-owning transmission utilities and undermine competition.[5] While many regions of the country now have independent grid operators, not all do, and changes to the pro forma OATT are necessary to reduce the opportunity for transmission providers to engage in undue discrimination. In the past ten years new investment has faltered and many regions now experience chronic transmission congestion and inadequate infrastructure. Congress, through the Energy Policy Act of 2005 (EPAct 2005),[6] recognized this problem and provided the Commission not only new tools to encourage infrastructure but also made clear that the Commission should use its existing authority to ensure an adequate infrastructure to support a vibrant economy.

3. The reforms we propose today are intended to address deficiencies in the *pro forma* OATT that have become apparent since 1996 and to facilitate improved planning and operation of transmission facilities. We summarize these reforms in Part IV.A below, but note the major focus of this reform effort here. As a general matter, the purpose of this rulemaking is to strengthen the *pro forma* OATT to ensure that it achieves its original purpose—remedying undue discrimination—not to create new market structures. We propose to achieve this goal by increasing the clarity and transparency of the rules applicable to the planning and use of the transmission system and by addressing ambiguities and the lack of sufficient detail in several important areas of the pro forma OATT. The lack of specificity in the pro forma OATT creates opportunities for undue discrimination as well as making the undue discrimination that does occur more difficult to detect. First, we propose to improve transparency and consistency in several critical areas, such as the calculation of available transfer capability (ATC).[7] We propose to direct public utilities, under the auspices of the North American Electric Reliability Council (NERC) and the North American Energy Standards Board (NAESB), to provide for greater consistency in ATC calculation. By reducing unnecessarily broad discretion in this and other areas, we will reduce the ability of transmission providers to unduly discriminate and provide them greater certainty to facilitate compliance with our regulations. Second, we propose to reform the transmission planning requirements of the *pro forma* OATT to eliminate potential undue discrimination and support the construction of adequate transmission facilities to meet the needs of all load-serving entities. The *pro forma* OATT contains only minimal requirements regarding transmission planning, which have proven to be inadequate as the Nation faces inadequate transmission investment in many areas. We propose to require public utilities to engage in an open and transparent planning process at both the local and regional levels. Third, we propose to remedy certain portions of the *pro forma* OATT that may have permitted utilities to discriminate against new merchant generation, including intermittent generation. For example, we propose to modify the energy imbalance provisions of the *pro forma* OATT and adopt certain other tariff modifications. Fourth, we provide for greater transparency in the provision of transmission service to allow transmission customers better access to information to make their resource procurement and investment decisions, as well as to increase our ability to detect any remaining incidents of undue discrimination. Finally, we provide for reform and greater clarity in areas that have generated recurring disputes over the past 10 years, such as rollover rights, ''redirects,'' and generation redispatch.

4. Although the reforms being proposed in these areas are significant, we wish to underscore that we propose to maintain many of the core elements of Order No. 888. For example, we are retaining the comparability requirement under which each public utility must treat third parties in a manner comparable to its service to bundled customers. We are retaining the basic nature of the services being offered—network service and point-to-point service. We are retaining the protection of native load customers embodied in Order No. 888, consistent with EPAct 2005's new requirement that load-serving entities be provided transmission rights to meet their service obligations.[8] We are retaining our decision to exercise jurisdiction over unbundled transmission service, but not transmission service provided as part of a bundled retail service. We are retaining the use of functional unbundling to address undue discrimination, rather than requiring corporate unbundling. We are retaining the use of an OATT to facilitate the development of competitive wholesale markets by reducing barriers to entry through the control of transmission assets, not imposing any particular market structure on the industry.

5. In proposing to reform Order No. 888, we have relied heavily on the comments received in response to our notices of inquiry in the above-captioned dockets.[9] We appreciate the time and thoughtfulness of all sectors of the industry in preparing comments on these notices of inquiry. We have found them very informative and useful and this Notice of Proposed Rulemaking (NOPR) incorporates many of the commenters' suggestions. We invite further comments on this NOPR. We also are scheduling technical conferences to more fully address the topics of ATC calculation and transmission planning.

II. Background

A. Historical Antecedent

6. In the first few decades after enactment of the Federal Power Act (FPA) in 1935, the industry was characterized mostly by self-sufficient, vertically integrated electric utilities, in which generation, transmission, and distribution facilities were owned by a single entity and sold as part of a bundled service to wholesale and retail customers. Most electric utilities built their own power plants and transmission systems, entered into interconnection and coordination arrangements with neighboring utilities,

[4] Order No. 2000 at 31,015.

[5] *See* Order No. 2003 at P 11–12.

[6] Pub. L. 109–58, 119 Stat. 594 (to be codified in scattered itles of the U.S.C.).

[7] We note that the Commission used the term ''Available Transmission Capability'' in Order No. 888 to describe the amount of additional capability available in the transmission network to accommodate additional requests for transmission services. To be consistent with the term generally accepted throughout the industry, the Commission is proposing to revise the *pro forma* OATT to adopt the term ''Available Transfer Capability.''

[8] EPAct 2005 sec. 1233 (to be codified at section 217(b)(4) of the FPA, 16 U.S.C. 824q).

[9] *Preventing Undue Discrimination and Preference in Transmission Services*, Notice of Inquiry, 112 FERC ¶ 61,299 (2005) (NOI); *Information Requirements for Available Transfer Capability*, Notice of Inquiry, 111 FERC ¶ 61,274 (2005) (ATC NOI).

and entered into long-term contracts to make wholesale requirements sales (bundled sales of generation and transmission) to municipal, cooperative, and other investor-owned utilities connected to each utility's transmission system. Each system covered a limited service area, which was defined by the retail franchise decisions of state regulatory agencies. This structure of separate systems arose naturally due primarily to the cost and technological limitations on the distance over which electricity could be transmitted.

7. A number of statutory, economic, and technological developments in the 1970s led to an increase in coordinated operations and competition. Among those was the passage of the Public Utility Regulatory Policies Act of 1978 (PURPA),[10] which was designed to lessen dependence on foreign fossil fuels by encouraging the development of alternative generation sources and imposing a mandatory purchase obligation on utilities for generation from such sources. PURPA also enabled the Commission to order wheeling of electricity under limited circumstances.[11] The rapid expansion and performance of the independent power industry following the enactment of PURPA demonstrated that traditional, vertically integrated public utilities need not be the only sources of reliable power. During this period, the profile of generation investment began to change, and a market for non-traditional power supply beyond the purchases required by PURPA began to emerge. The economic and technological changes in the transmission and generation sectors helped encourage many new entrants in the generating markets that could sell electric energy profitably with smaller scale technology at a lower price than many utilities selling from their existing generation facilities at rates reflecting cost. However, it became increasingly clear that the potential consumer benefits that could be derived from these technological advances could be realized only if more efficient generating plants could obtain access to the regional transmission grids. Because many traditional vertically integrated utilities still did not provide open access to third parties and favored their own generation if and when they provided transmission access to third parties, access to cheaper, more efficient generation sources remained limited.

8. The Commission encouraged the development of independent power producers (IPPs), as well as emerging power marketers, by authorizing market-based rates for their power sales on a case-by-case basis and by encouraging more widely available transmission access on a case-by-case basis. Market-based rates helped to develop competitive bulk power markets by allowing generating utilities to move more quickly and flexibly to take advantage of short-term or even long-term market opportunities than those utilities operating under traditional cost-of-service tariffs. In approving these market-based rates, the Commission required that the seller and its affiliates lack market power or mitigate any market power that they may have possessed.[12] The major concern of the Commission was whether the seller or its affiliates could limit competition and thereby drive up prices. A key inquiry became whether the seller or its affiliates owned or controlled transmission facilities in the relevant service area and therefore, by denying access or imposing discriminatory terms or conditions on transmission service, could foreclose other generators from competing. Beginning in the late 1980s, in order to mitigate their market power to meet the Commission's conditions, public utilities seeking Commission authorization for blanket approval of market-based rates for generation services under section 205 of the FPA filed ''open access'' transmission tariffs of general applicability.[13] The Commission also approved proposed mergers under section 203 of the FPA on the condition that the merging companies remedy anticompetitive effects potentially caused by the merger by filing ''open access'' tariffs. The early tariffs submitted in market-based rate proceedings under section 205 and merger proceedings under section 203 did not, however, provide access to the transmission system that was comparable to the service the transmission providers used for their own purposes. Rather, they typically made available only point-to-point transmission service, *i.e.*, service from a single point of receipt to a single point of delivery. As these early tariffs were offered only by transmission providers that volunteered to provide service to third parties, they resulted in a patchwork of open access that was not sufficient to facilitate wholesale generation markets.

9. In response to the competitive developments following PURPA, and the fact that limited transmission access and significant regulatory barriers continued to constrain the development of generation by independent power producers, Congress enacted Title VII of the Energy Policy Act of 1992 (EPAct 1992).[14] EPAct 1992 reduced regulatory barriers to entry by creating a class of ''Exempt Wholesale Generators'' that were exempt from the requirements of the Public Utility Holding Company Act of 1935.[15] EPAct 1992 also expanded the Commission's authority to approve applications for transmission services under sections 211 and 212 of the FPA. Though the Commission aggressively implemented expanded section 211, it ultimately concluded that the procedural limitations in section 211 thwarted the Commission's ability to effectively eliminate undue discrimination in the provision of transmission service.

B. Order No. 888 and Subsequent Reforms

10. In April 1996, as part of its statutory obligation under sections 205 and 206 of the FPA to remedy undue discrimination, the Commission adopted Order No. 888 prohibiting public utilities from using their monopoly power over transmission to unduly discriminate against others. In that order, the Commission required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file open access non-discriminatory transmission tariffs that contained minimum terms and conditions of non-discriminatory service. It also obligated such public utilities to ''functionally unbundle'' their generation and transmission services. This meant public utilities had to take transmission service (including ancillary services) for

[10] Pub. L. 95–617, 92 Stat. 3117 (1978) (codified in U.S.C. titles 15, 16, 26, 30, 42, and 43 (2000)).

[11] Section 211 of the FPA, 16 U.S.C. 824j (2000). In earlier years, a few customers were able to obtain access as a result of litigation, beginning with the U.S. Supreme Court's decision in *Otter Tail Power Company* v. *United States*, 410 U.S. 366 (1973). Additionally, some customers gained access by virtue of Nuclear Regulatory Commission license conditions and voluntary preference power transmission arrangements associated with federal power marketing agencies. *See, e.g.*, *Consumers Power Co.*, 6 NRC 887, 1036–44 (1977); *Toledo Edison Co.*, 10 NRC 265, 327–34 (1979); *Florida Municipal Power Agency* v. *Florida Power and Light Company*, 839 F. Supp. 1563 (M.D. Fla. 1993).

[12] *See, e.g.*, *Dartmouth Power Associates Limited Partnership*, 53 FERC ¶ 61,117 (1990); Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); *Doswell Limited Partnership*, 50 FERC ¶ 61,251 (1990); *Citizens Power & Light Co.*, 48 FERC ¶ 61,210 (1989); *Ocean State Power*, 44 FERC ¶ 61,261 (1988); and *Orange and Rockland Utilities*, Inc., 42 FERC ¶ 61,012 (1988).

[13] *See* Order No. 888 at 31,644 n.52.

[14] Pub. L. 102–486, 106 Stat. 2776 (1992) (codified at, among other places, 15 U.S.C. 79z–5a and 16 U.S.C. 796 (22–25), 824j–l (2000)).

[15] 15 U.S.C. 79a (2000), *repealed by* EPAct 2005 sec. 1263; *see 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).

their own new wholesale sales and purchases of electric energy under the open access tariffs, and to separately state their rates for wholesale generation, transmission and ancillary services.[16] Each public utility was required to file the *pro forma* OATT included in Order No. 888 without any deviation (except a limited number of terms and conditions that reflect regional practices).[17] After the effectiveness of their OATTs, public utilities were allowed to file, pursuant to section 205 of the FPA, deviations that were consistent with or superior to the *pro forma* OATT's terms and conditions. Because certain owners and controllers or operators of interstate transmission facilities were not subject to the Commission's jurisdiction under sections 205 and 206 and thus were not subject to Order No. 888, the Commission adopted a reciprocity provision in the *pro forma* OATT which conditions the use by non-public utilities of public utilities' open access services on an agreement to offer open access services in return.

11. In addition to imposing the functional unbundling requirement, the Commission also encouraged broader reforms through the formation of independent system operators (ISOs). The Commission stated that ISOs ''have the potential to provide significant benefits (*e.g.*, to help provide regional efficiencies, to facilitate economically efficient pricing, and, especially in the context of power pools, to remedy undue discrimination and mitigate market power) and will further our goal of achieving a workably competitive market.'' [18] While the Commission declined to mandate ISOs, it set forth eleven principles for assessing ISO proposals submitted to the Commission.[19]

12. Order No. 888 also clarified the Commission's interpretation of the federal/state jurisdictional boundaries over transmission and local distribution. While it reaffirmed that the Commission has exclusive jurisdiction over the rates, terms, and conditions of unbundled retail transmission in interstate commerce by public utilities, it nevertheless recognized the legitimate concerns of state regulatory authorities regarding the transmission component of bundled retail sales. The Commission therefore declined to extend its unbundling requirement to the transmission component of bundled retail sales. On appeal, the U.S. Supreme Court affirmed this element of Order No. 888, finding that the Commission made a statutorily permissible choice.[20]

13. The same day it issued Order No. 888, the Commission issued a companion order, Order No. 889, addressing both the separation of vertically integrated utilities' transmission and merchant functions, the information transmission providers were required to make public and the electronic means they were required to use to do so. Order No. 889 imposed Standards of Conduct governing the separation of, and communications between, the utility's transmission and wholesale power functions, to prevent the utility from giving its merchant arm preferential access to transmission information. All public utilities that owned, controlled or operated facilities used in the transmission of electric energy in interstate commerce were required to create or participate in an Open Access Same-Time Information System (OASIS) that was to provide existing and potential transmission customers the same access to transmission information.

14. Among the information required to be posted by Order No. 889 was the transmission provider's calculation of ATC. Though the Commission acknowledged that before-the-fact measurement of the availability of transmission service is ''difficult,'' it concluded that it was important to give potential transmission customers ''an easy-to-understand indicator of service availability.'' [21] Because formal methods did not then exist to calculate ATC and total transfer capability (TTC), the Commission encouraged industry efforts to develop consistent methods for calculating ATC and TTC.[22] Order No. 889 ultimately required transmission providers to base their calculations on ''current industry practices, standards and criteria'' and to describe their methodology in their tariffs.[23] The Commission noted that the requirement that transmission providers purchase only ATC that is posted as available ''should create an adequate incentive for them to calculate ATC and TTC as accurately and as uniformly as possible.'' [24]

15. The electric industry continued to undergo economic and regulatory changes in the years following the issuance of Order No. 888. Retail access was adopted by approximately 25 states in the late 1990s.[25] This state restructuring activity spurred significant changes at the wholesale level as well by encouraging or requiring the divestiture of generation plants by traditional electric utilities and the development of ISOs that could manage short-term energy markets necessary to support retail access. At the same time, there was a significant increase in the number of mergers between traditional electric utilities and between electric utilities and gas pipeline companies, and large increases in the number of power marketers and independent generation facility developers entering the marketplace. Trade in bulk power markets increased significantly and the Nation's transmission grid was used more heavily and in new ways as customers took advantage of the *pro forma* OATT and purchased power from competitive sellers.

16. In the wake of these changes, in December 1999, the Commission adopted Order No. 2000.[26] That rulemaking recognized that Order No. 888 set the foundation upon which competitive electric markets could develop, but did not eliminate the potential to engage in undue discrimination and preference in the provision of transmission service.[27] The rulemaking also recognized that Order No. 888 did not address the regional nature of the grid, including the treatment of parallel flows, pancaked rates, and congestion management. Thus, the Commission encouraged the creation of RTOs to address important operational and reliability issues and eliminate any residual discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility. The Commission found that RTOs would increase the efficiency of wholesale markets by eliminating pancaked rates, internalizing parallel flow, managing congestion efficiently and operating markets for energy, capacity and ancillary services. The Commission

[16] This is known as ''functional unbundling'' because the transmission element of a wholesale sale is separated or unbundled from the generation element of that sale, although the public utility may retain ownership over both functions. *See infra* Part IV.B.4.

[17] *See* Order No. 888 at 31,769–70 (noting that the *pro forma* OATT expressly identified certain non-rate terms and conditions, such as the time deadlines for determining available capability in section 18.4 or scheduling changes in sections 13.8 and 14.6, that may be modified to account for regional practices if such practices are reasonable, generally accepted in the region, and consistently adhered to by the transmission provider).

[18] Order No. 888 at 31,655.

[19] *Id.* at 31,730–32.

[20] *New York* v. *FERC*, 535 U.S. 1 (2002).

[21] Order No. 889 at 31,605.

[22] *Id.* at 31,607.

[23] *Id.*

[24] *Id.*

[25] See Energy Information Administration, Retail Unbundling—U.S. Summary (2005), *http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html.*

[26] *See supra* note 3.

[27] Order No. 2000 at 31,015.

established an open, collaborative process that relied on voluntary regional participation to design RTOs tailored to the specific needs of each region. The Commission noted, however, that ''[i]f the industry fails to form RTOs under this approach, the Commission will reconsider what further regulatory steps are in the public interest.'' [28]

17. Following Order No. 2000, RTOs were approved in several regions of the country including the Northeast (PJM Interconnection, Inc.; ISO New England), the Midwest (MISO) and the South (SPP). In most cases, RTOs have assumed responsibility for calculating ATC across the footprint of the RTO, as well as the planning and expansion of the transmission grid, at least for facilities necessary for maintaining system reliability. However, large areas of the Nation have not developed RTOs using the voluntary structure adopted by the Commission in Order No. 2000. Moreover, transmission customers have complained that even in RTO markets there are instances when comparable transmission service is not provided, particularly in the area of transmission planning.

C. EPAct 2005 and Recent Developments

18. EPAct 2005,[29] enacted on August 8, 2005, added a number of new authorities and priorities for the Commission and emphasized certain of its existing obligations. Specifically, EPAct 2005 recognized the importance of adequate transmission infrastructure development and its role in facilitating the development of competitive wholesale markets. For example, Congress required the Commission to adopt a rule establishing incentive ratemaking for transmission infrastructure to help promote reliability and reduce congestion.[30] Congress further directed the Commission to ''exercise its authority'' under EPAct 2005 ''in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities.'' [31] Congress also gave the Commission certain ''backstop'' transmission siting authority, and authorized the creation of interstate compacts establishing transmission siting agencies.[32] EPAct 2005 also authorized the Commission to require unregulated transmitting utilities (except for certain small entities) to provide access to their transmission facilities on a comparable basis.[33] Congress further ordered the Department of Energy (DOE) to study the benefits of economic dispatch and required the Commission to convene regional joint boards to develop a report to Congress containing recommendations for the use of security constrained economic dispatch within each region.[34] Congress also directed the Commission to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers, and it authorized the Commission to prescribe rules to provide for the dissemination of information about the availability and price of wholesale electric energy and transmission service.[35] Finally, Congress emphasized compliance with the Commission's regulations, increasing the civil and criminal penalties for violations of Commission-administered statutes and regulations.[36]

19. Recognizing the need for reform of Order No. 888 in light of these developments and those described in the next section, the Commission issued an NOI in September 2005 seeking comments on the reforms needed to the Order No. 888 *pro forma* OATT to prevent undue discrimination and preference in the provision of transmission services. In the NOI, the Commission expressed its preliminary view that reforms to the *pro forma* OATT and public utilities' OATTs are necessary to avoid undue discrimination or preference in the provision of transmission service. The NOI sought comments on how best to accomplish the Commission's goals, specifically with respect to enhancements that are needed to: (1) Remedy any unduly discriminatory or preferential application of the pro forma OATT or (2) improve the clarity of the Order No. 888 *pro forma* OATT and the individual public utility tariffs in order to more readily identify violations and facilitate compliance.

20. The Commission received over 4,000 pages of initial and reply comments on the NOI. Based on these comments, the comments submitted in response to the ATC NOI, our experience in implementing Order No. 888, and the changes in the industry since we adopted it, we conclude that reform of the *pro forma* OATT is necessary, for the reasons we discuss next.

III. The Need for Reform of Order No. 888

A. Opportunities for Undue Discrimination Continue To Exist

21. In Order No. 2000, the Commission found that ''opportunities for undue discrimination continue to exist that may not be remedied adequately by [the] functional unbundling [remedy of Order No. 888].'' [37] The Commission made a similar finding in Order No. 2003, holding that opportunities for undue discrimination continue to exist in areas where the *pro forma* OATT leaves transmission providers with substantial discretion.[38] The Commission has a responsibility under section 206 of the FPA to remedy undue discrimination.[39] Our action today proposes to fulfill that responsibility by proposing reforms to the *pro forma* OATT that will address remaining opportunities for undue discrimination.

22. As the Commission noted in Order No. 888, it is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves.[40] Such an incentive can lead to unduly discriminatory behavior

[28] *Id.* at 30, 993.

[29] *See supra* note 6.

[30] EPAct 2005 sec. 1241 (to be codified at section 219 of the FPA, 16 U.S.C. 824s).

[31] EPAct 2005 sec. 1233(a) (to be codified at section 217(b)(4) of the FPA, 16 U.S.C. 824q).

[32] EPAct 2005 sec. 1221(a) (to be codified at section 216 of the FPA, 16 U.S.C. 824p).

[33] EPAct 2005 sec. 1231 (to be codified at section 211A of the FPA, 16 U.S.C. 824j–1).

[34] EPAct 2005 sec. 1234 (to be codified at 42 U.S.C. 16432); EPAct 2005 sec. 1298 (to be codified at section 223 of the FPA, 16 U.S.C. 824w). EPAct 2005 defined economic dispatch as ''the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.'' EPAct 2005 sec. 1234 (b).

[35] EPAct 2005 sec. 1281 (to be codified at section 220 of the FPA, 16 U.S.C. 824t).

[36] EPAct 2005 sec. 1284(d) (to be codified at section 316 of the FPA, 16 U.S.C. 825o); EPAct 2005 sec. 1284(e) (to be codified at section 316A of the FPA, 16 U.S.C. 825o–1).

[37] Order No. 2000 at 31,105.

[38] Order No. 2003 at P 11–12.

[39] In *Associated Gas Distributors* v. *FERC,* 824 F.2d 981 (D.C. Cir. 1987), (*AGD*), the court concluded that, like the Natural Gas Act, the FPA ''fairly bristles'' with concern over undue discrimination. Based on *AGD*, the Commission determined in Order No. 888 that:

> The Commission has a mandate under sections 205 and 206 of the FPA to ensure that, with respect to any transmission in interstate commerce or any sale of electric energy for resale in interstate commerce by a public utility, no person is subject to any undue prejudice or disadvantage. We must determine whether any rule, regulation, practice or contract affecting rates for such transmission or sale for resale is unduly discriminatory or preferential, and must prevent those contracts and practices that do not meet this standard. * * * *AGD* demonstrates that our remedial power is very broad and includes the ability to order industry-wide non-discriminatory open access as a remedy for undue discrimination.

Order No. 888 at 31,669.

[40] *Id.* at 31,682.

against third parties, particularly if public utilities have unnecessarily broad discretion in the application of their tariffs. This discretion also can create problems for transmission providers seeking to comply with our regulations in good faith because so many issues are left for their interpretation, thereby increasing the possibility of disputes with transmission customers and enforcement actions by the Commission.[41] Transmission customers also have found ways to use the tariffs to their own advantage, particularly in the scheduling and queuing processes.[42] Finally, tariff provisions have been modified in numerous ways on a company-by-company basis, leading to uncertainties within the industry as to the proper interpretation of those provisions and to unnecessarily inconsistent treatment of transmission customers across public utilities.

23. Commenters suggest that enhanced clarity and consistency in the *pro forma* OATT would go a long way toward eliminating the opportunities for undue discrimination and the perception that it is occurring.[43] Calpine notes that undue discrimination is most likely to occur when the transmission provider retains discretion to implement an OATT provision in a manner that favors its affiliated generation. APPA asserts that the success of the OATT regime depends on public utilities' ability to faithfully implement the OATT's provisions. Large transmission providers share this view to some degree. Entergy notes that a lack of clarity is at the heart of many disputes involving the OATT, and urges the Commission to improve the OATT in a manner that will minimize the potential for future violations. Duke posits that tariff terms and conditions that are susceptible to multiple interpretations present opportunities for discrimination and/or the perception thereof. Progress Energy agrees that several OATT provisions can be interpreted differently, leaving room for disagreement as to their meaning.

24. Perhaps the most obvious deficiency in this regard is ATC calculation. In Order Nos. 888 and 889, the Commission declined to require a specific methodology for ATC calculation. As a result, there are few clear rules respecting ATC calculation, and transmission providers, therefore, retain unnecessarily broad discretion in this area. On systems where transmission capacity is congested, this lack of consistency, coupled with a lack of transparency, has led to recurring disputes over whether the transmission provider is exercising its discretion to discriminate against its competitors.

25. There is a similar lack of clarity in the transmission provider's planning obligations. Order No. 888 included a general obligation on the part of the transmission providers to plan on a comparable basis (*i.e.*, comparable to the manner in which it would plan for its own needs) to serve network loads and to construct new facilities as necessary to respond to requests for firm service from point-to-point customers. However, there were no clear guidelines with respect to whether transmission customers should be included in the planning process, what standards and criteria should be used in system planning, and whether the planning process should identify potential economic upgrades that could benefit a wide range of customers, as opposed to responding only to customer-specific requests. Here too, this lack of clarity has led to significant disputes over whether transmission providers are planning on a nondiscriminatory basis or are favoring service to their own loads.

B. A Lack of Transparency Undermines Confidence in Open Access and Impedes Enforcement of Open Access Requirements

26. A major focus of comments on the NOI is that increased transparency would aid transmission customers in their participation in the wholesale market.[44] Constellation explains that the transmission provider's unique position as the owner and operator of the transmission system and often the majority of the generation assets in its control area gives it better information than its transmission customers. Moreover, the transmission provider, Constellation argues, has financial incentives to use the system differently, and more efficiently, to serve its own loads than to serve its other customers under the *pro forma* OATT. TDU Systems urges the Commission to ensure that transmission providers make their actions under the OATT completely transparent on a timely basis to all transmission customers. NARUC posits that enhanced reporting requirements, if sufficiently targeted, would facilitate greater transparency in transmission activities. Alberta Intervenors states that the current *pro forma* OATT provides transmission customers with only a narrow glimpse of how the system is being operated. For example, Bonneville notes that many terms and conditions of native load service are not transparent to OATT transmission customers.[45] EEI also states that greater transparency, such as with respect to ATC calculation, can increase confidence in open access and potentially reduce claims of undue discrimination.

27. Calpine argues that undue discrimination is difficult to detect given the lack of access to data, analytical assumptions, and processes used by transmission providers to determine transmission access and service. It recommends that the Commission increase reporting requirements for denials of transmission service, for congestion management mitigation events, including curtailments and redispatch, and for transmission expansion planning decisions. Powerex notes that the Commission already has posting standards, and urges the Commission to enforce them and to increase requirements to provide more meaningful posting of reliable ATC data, curtailment methodology and results, details relating to denials of service, and congestion information. Constellation agrees, urging the Commission to require OASIS posting of service metrics, such as all transmission requests approved, rejected, confirmed and curtailed.

28. A common theme in the comments is that the lack of transparency can lead to claims of undue discrimination and can make such claims more difficult to resolve.[46] As such, National Grid asserts that greater transparency will allow the Commission and transmission system users to understand when a transmission access decision is

[41] *See, e.g.*, Order No. 2003 at P 11–12.

[42] *See, e.g.*, Potomac Economics, Ltd., *2004 State of the Market Report: Midwest ISO* at 30–31, 34–35 (Jun. 2005) (explaining that the queuing process, by giving customers the opportunity to submit multiple requests for service, provides a low or no-cost option that restricts other customers' access to congested interfaces, and the scheduling process, by allowing customers to leave transmission requests unconfirmed, provides a free option that may invite hoarding or result in underutilized capacity), *http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-7bf20a48324a/2004%20MISO%20SOM%20Report.pdf?action=download&_property=Attachment.*

[43] *E.g.,* Calpine, Duke, and MidAmerican. (A list of commenter acronyms may be found in Appendix A). As the Commission noted in Order No. 2000, ''[p]erceptions of discrimination are significant impediments to competitive markets. Efficient and competitive markets will develop only if market participants have confidence that the system is administered fairly.'' Order No. 2000 at 31,017.

[44] *E.g.,* LG&E, MidAmerican, Midwest SATs, TDU Systems, and Williams.

[45] Bonneville urges the Commission to require load-serving transmission providers to post the same information for bundled retail load that they must post for service to network customers.

[46] *E.g.,* Ameren, National Grid, and NRECA.

motivated by a legitimate reason rather than an intent to discriminate. If transmission customers have more accurate information about the transmission service request process, National Grid contends, they also will have more accurate expectations and a better understanding of how to expedite the implementation of service. Though NRECA agrees that increased transparency will allow the Commission to deter undue discrimination and facilitate accountability, it urges the Commission to require not just raw data but meaningful, clear and understandable data, in a format that facilitates understanding.

29. Commenters urge the Commission to improve the transparency of transmission service in a number of areas, particularly the evaluation of ATC and the planning of the transmission system.[47] Another area often cited as lacking sufficient transparency is the processing of transmission service requests and studies. For example, several commenters note that system impact studies are often not completed within the tariff-prescribed time limits, and that information about that process is not available to transmission customers.[48] TDU Systems suggests that one way to address the difficulty of determining acceptable delays is to require transmission providers to post statistics on their OASIS sites providing information as to the length of time it might take to process requests for transmission service. Cinergy proposes that adopting such reporting metrics could result in an improved quality of service.

30. We agree that a lack of transparency both increases the potential for undue discrimination and makes it more difficult to detect. We believe this lack of sufficient transparency is caused in part by inadequate compliance with our existing OASIS regulations, and in part by inadequate transparency requirements. Our reforms address both elements of the problem in an effort to increase confidence in open access tariffs and to facilitate compliance with our regulations and our enforcement of them.

C. Congestion and Inadequate Infrastructure Development Impede Customers' Use of the Grid

31. The ability and incentive to discriminate increases as the transmission system becomes more congested. Vertically integrated utilities do not have an incentive to expand the grid to accommodate new entry or to facilitate the dispatch of more efficient competitors. Even with the advent of RTOs, transmission infrastructure development has not kept pace with the increase in demand for electricity. Transmission capacity is being constructed at a much slower rate than the rate of increase in customer demand. Indeed, transmission capacity per MW of peak demand declined at an average rate of 2.1 percent per year during the period 1992 to 2002.[49] Investment for the most recent year available, 2003, was below 1975 levels,[50] and projections suggest that this trend will continue through 2012.[51] As a result, there has been a significant decrease in transmission capacity relative to load in every NERC region.[52] EEI estimates that capital spending must increase by 25 percent, from $4 billion annually to $5 billion annually, to ensure system reliability and to accommodate wholesale electric markets.[53] The legacy systems constructed by vertically integrated utilities prior to the adoption of Order No. 888 support ''only limited amounts of inter-regional power flows and transactions. Thus, existing systems cannot fully support all of society's goals for a modern electric-power system.'' [54] These systems were built to meet the vertically integrated utilities' retail native load obligations, not to support the development of a bulk power market.

32. Inadequate expansion of the transmission grid has contributed to increasing transmission congestion in most regions of the country. Transmission congestion has created fairly small local load pockets in primarily urban areas, *e.g.*, New York City, Long Island, Boston, parts of Connecticut, and the San Francisco Bay Area. Other load pocket concerns have arisen in parts of northern Virginia, and various load centers in SPP. Still other constraints are more regional in scope: (1) From the Midwest to the Mid-Atlantic, (2) from the Midwest to the Tennessee Valley Authority (TVA), (3) into and within California, (4) from TVA and Southern into Entergy, (5) from Mid-America Interconnected Network into Wisconsin-Upper Michigan Systems, and (6) into Florida. The existence of these and other constraints affecting transmission systems can result in an increase in the frequency of denials of requests for transmission service, and an increase in the frequency of transmission service interruptions and/or curtailments of transmission service. While not all congestion needs to be remedied (*i.e.*, if the cost of the congestion is less than the cost to relieve it), it is also true that undue discrimination and preferential treatment also are much more difficult to detect when the transmission grid is constrained, given the lack of transparency in ATC calculations and transmission system planning. Increased congestion also presents additional opportunities for undue discrimination. As a result, it is more difficult for the Commission to carry out its statutory responsibility to ensure that transmission providers provide nondiscriminatory open access transmission service.

33. In recognition of the lack of adequate infrastructure, a broad cross-section of the industry supports greater coordination in the planning and investment in transmission infrastructure between transmission providers, transmission customers and state regulatory agencies. A major focus of comments on our NOI was the need to plan and build infrastructure to facilitate regional electricity markets. For example, AEP argues that the most important issue faced by public utilities and their customers is not day-to-day OATT administration but the planning and expansion of the transmission grid. EEI likewise asserts that the focus should be on the need to develop energy infrastructure necessary to facilitate growth in wholesale electric market transactions. Santa Clara acknowledges that lack of needed infrastructure causes the grid to become constrained and less reliable, which sometimes provides even stronger incentives for owners to restrict access by others. The Nevada Companies urge the Commission to focus on ways Order No. 888 and the *pro forma* OATT can be revised to eliminate disincentives to the construction of additional transmission facilities. Xcel suggests that the

[47] We discuss these specific aspects of the *pro forma* OATT below in Parts V.A. and V.B.

[48] *E.g.,* Constellation, EPSA, Powerex, and Williams.

[49] Eric Hirst, *U.S. Transmission Capacity: Present Status and Future Prospects* (Aug. 2004), available at *http://www.eei.org/industry_issues/energy_infrastructure/transmission/USTransCapacity10-18-04.pdf* (Present Status and Future Prospects).

[50] EEI, *EEI Survey of Transmission Investment: Historical and Planned Capital Expenditures (1999–2008)* at 3 (May 2005), available at *http://www.eei.org/industry_issues/energy_infrastructure/transmission/Trans_Survey_Web.pdf.*

[51] Present Status and Future Prospects at v.

[52] Brendan Kirby (Oak Ridge National Laboratory, U.S. Department of Energy, *Barriers to Transmission Investment*, Technical Conference Presentation, (Docket No. AD05–5–000) (April 22, 2005) Transmission Independence and Investment.

[53] *Energy Policy Act of 2005: Hearings before the House Subcommittee on Energy and Commerce*, 109th Congress, First Sess. (2005) (Prepared statement of Thomas R. Kuhn, President of EEI).

[54] Present Status and Future Prospects at v.

Commission focus its efforts on ways to encourage investment in new energy infrastructure as a way of easing congestion and enabling growth in market transactions. Salt River contends that the Commission should increase incentives to participate in long-term regional planning processes. Midwest SATs argue that increased access for all transmission system users through policies that promote investment in transmission will do more to reduce undue discrimination than policies that seek to uncover and penalize such discrimination.

34. Customers also complain that there is often a lack of transparency in utility transmission planning processes, which the customers claim typically do not include economic system upgrades that would benefit non-affiliate users of the system. Customers also note the lack of clarity in the existing planning obligations required of transmission providers. They assert that these failures have contributed to the inadequate development of the transmission grid.

35. Order No. 888 contemplated that ISOs would enhance infrastructure development through open and regional planning processes, but these efforts have stalled in many regions of the country. Even where RTOs have been established, there have been concerns that the planning process has not always been sufficiently robust, inclusive or transparent to ensure that transmission investment occurs where it is reasonably needed for all users of the grid. For example, in its reply comments, TDU Systems urges the Commission to include RTOs in its planning reforms, contending that many RTO planning processes are not open to all stakeholders, nor are they collaborative and inclusive. Many commenters argue that RTO transmission planning regimes have failed to get needed transmission facilities built.[55]

36. We conclude that the inadequacy of the existing obligation to conduct joint and regional transmission system planning, coupled with the lack of transparency surrounding system planning generally, require reform of the *pro forma* OATT to ensure that transmission infrastructure is constructed on a nondiscriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers.

[55] *E.g.,* APPA, TDU Systems Reply Comments, and Williams Reply Comments.

D. A Consistent Method of Measuring ATC Has Not Been Established

37. Under Order No. 888, each public utility calculates the amount of transfer capability on its system that is available for sale to third parties.[56] However, Order No. 888 did not require that the methodology for ATC calculation be standardized across the industry, nor did it impose any specific requirements regarding the disclosure of the methodologies used by each transmission provider. As a result, there are a variety of ATC calculation methodologies in use today. Moreover, there is often very little transparency regarding the nature of these calculations, given that many transmission providers have filed only summary explanations of their ATC methodologies in Attachment C to the OATT. As a result, transmission providers retain unnecessarily broad discretion in calculating ATC. The resulting discretion is a significant problem because calculation of ATC, which varies greatly depending on the criteria and assumptions used, may allow the transmission provider to discriminate in subtle ways against its competitors. This discretion, coupled with the lack of transparency, also hampers the detection of undue discrimination and, thereby, undermines the Commission's ability to enforce the general requirement in Order No. 888 that transmission service be provided on a not unduly discriminatory basis.[57]

38. The comments on the NOI and the ATC NOI reflect these underlying problems. Many market participants complain that there is widespread misinformation regarding the actual ATC, which results in missed opportunities for transactions. ATC calculation errors often occur. A lack of transparency leaves transmission customers unaware of why some transmission requests are granted and others are denied.[58] Several ATC inputs, such as the capacity benefit margin (CBM) or the transmission reliability margin (TRM), can be calculated using overly conservative or otherwise faulty assumptions. Transmission customers often complain that transmission providers designate unreasonably high CBM or TRM levels, which limits the amount of remaining transfer capability available for other users of the system.

[56] Order No. 888 at 31,794 n.610.

[57] APPA submitted comments in Docket No. RM05–17–000 arguing that the calculation and posting of ATC ''sits at the pivot point among reliability, economic regulation and wholesale electric commerce.'' APPA at 5.

[58] *See, e.g.,* EEI at 18 (agreeing that the Commission should require transmission providers to make their ATC calculations more transparent).

39. As a result of these uncertainties, the Commission issued the ATC NOI to address the lack of clear and consistent methodologies for calculating ATC. In the ATC NOI, the Commission acknowledged that NERC has been working on specific recommendations for calculating and coordinating ATC and available flowgate capability (AFC).[59] That NERC effort culminated in a report and a number of recommendations. The Commission asked for comments on those recommendations, as well as comments on whether there should be common transmission calculation methodologies among regions. The Commission has reviewed those comments as part of this proceeding.[60]

40. Many commenters support the development of a consistent, industry-wide methodology for calculating ATC.[61] These commenters maintain that a requirement that all transmission providers use the same methodology to determine ATC would not only remedy the lack of clarity that surrounds these calculations and reservations, but would provide regulatory certainty and assist transmission customers in predicting the outcome of transmission service requests.

41. We agree. Although the industry has sought to pursue greater consistency in ATC calculations through existing NERC processes, those efforts to date have been largely unsuccessful. The lack of a consistent, industry-wide methodology for calculating ATC gives transmission providers the ability and the opportunity to unduly discriminate against third parties. We therefore propose below a number of reforms to the process of calculating ATC to provide clarity and transparency to users of the grid.

E. A Number of Transmission Pricing Policies May Impede the Use of the Grid

42. Transmission customers often complain about the level and scope of imbalance charges that are levied under the *pro forma* OATT and under individual interconnection agreements.

[59] *See* NERC, *Long-Term AFC/ATC Task Force Final Report* (2005) (NERC Report) at 2, available at *ftp://www.nerc.com/pub/sys/all_updl/mc/ltatf/LTATF_Final_Report_Revised.pdf.*

[60] Accordingly, we consolidate Docket No. RM05–17–000 with this proceeding. We will distinguish the comments received in the ATC NOI proceeding by the designation ''ATC NOI Comments.'' In addition, we also revise the name of the proceeding in Docket No. RM05–17–000 to ''Preventing Undue Discrimination and Preference in Transmission Service.''

[61] *E.g.,* Alcoa, AWEA, Constellation, Exelon, Occidental, and Renewable Energy.

Energy imbalance charges, including penalties on some systems, are imposed on a transmission customer when the amount of energy scheduled for delivery to the transmission grid does not equal the amount of energy withdrawn by that customer. Customers complain that these charges are excessive and not related to the actual costs incurred by transmission providers. They also argue that the inconsistency between these charges in different control areas is unnecessary, and that other means of compensating the transmission provider, such as return-in-kind, should be considered. Generator imbalance charges are levied on generators for deviations between the amount of energy they schedule and the amount they actually deliver to the grid. Generators likewise complain that these charges are excessive, that transmission providers refuse to credit generators with the revenues resulting from imbalance penalties that are collected, and that transmission providers prevent unaffiliated generators from purchasing or self-supplying generator imbalance services. In addition, owners of intermittent resources complain that generator imbalance penalties, which are imposed to provide an incentive for generators to schedule accurately, are inappropriate given their lack of control and ability to cure deviations.

43. Transmission providers and customers raise a number of concerns related to the pricing of transmission service under Order No. 888, contending that the Commission's pricing policies are in need of reform. For example, under the *pro forma* OATT, network customers can receive a credit toward their transmission charges for new facilities that they jointly plan with the transmission provider. Customers contend that this provision actually acts as a disincentive for joint planning because transmission providers can avoid granting credits if they fail to jointly plan with their transmission customers.

44. Finally, there is also concern about the appropriate rate for transmission capacity that has been resold by the original transmission customer. Under Order No. 888, such capacity may be priced at the higher of the original rate, the transmission provider's maximum stated firm rate, or the assignor's opportunity costs capped at the cost of expansion. Customers complain that this policy does not work when opportunity costs exceed the embedded cost rate, because the assignor must make a FPA section 205 filing with the Commission that estimates its opportunity cost over the term of the reassignment as well as the cost of system expansion. The time and effort required to complete the regulatory process appears to inhibit such reassignments.

45. Although Order No. 888 was primarily directed at establishing the non-rate terms and conditions of open access, the rule did adopt certain pricing policies that were associated with the form of open access being ordered. After reviewing the comments, we believe certain reforms are appropriate because some of the pricing policies associated with the *pro forma* OATT are no longer just and reasonable or are otherwise unduly discriminatory. However, we do not intend to pursue generic reform of other pricing policies that are better addressed on a region-or case-specific basis, such as the pricing of new transmission facilities.

F. EPAct 2005 Emphasized Certain Policies and Priorities for the Commission

46. The reforms we propose today also are consistent with the policies and priorities embodied in EPAct 2005, in which Congress emphasized many of the principles reflected in this NOPR.

47. First, Congress in EPAct 2005 placed special emphasis on the development of transmission infrastructure. Congress required the Commission to adopt a rule establishing incentive-based rates for new transmission infrastructure investment. The stated purpose of new FPA section 219 is to benefit ''consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.'' [62] FPA section 219 requires the Commission to ''promot[e] capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities.'' [63] Congress also gave the Commission certain ''backstop'' transmission siting authority, and authorized the creation of interstate compacts establishing transmission siting agencies.[64] Finally, the Commission was directed to ''exercise its authority'' under EPAct 2005 ''in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights* * * on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.'' [65] Although these provisions are, or will be, addressed primarily in other proceedings, our NOPR is consistent with these provisions because it supports new infrastructure by reforming the transmission planning process to ensure that it is open, transparent and nondiscriminatory.[66]

48. Second, Congress emphasized the need for greater transparency in electricity markets, including transmission service. EPAct 2005 added section 220 to the FPA, which requires the Commission to facilitate ''price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of [that market], fair competition, and the protection of consumers.'' [67] The Commission was authorized to ''prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of'' FPA section 220. Those rules ''shall provide for the dissemination, on a timely basis, of information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.'' Our NOPR similarly seeks to promote greater transparency in the provision of transmission service in many important areas, including ATC calculation and transmission planning.

49. Finally, Congress emphasized compliance with the Commission's regulations, increasing the civil and criminal penalties for violations of Commission-administered statutes and regulations.[68] This new authority buttresses the Commission's efforts to enforce public utility OATTs and the regulations requiring transmission information to be posted on OASIS. As we explained in the Enforcement Policy Statement, however, this new authority carries with it the responsibility to ensure that enforcement is firm but fair and that our rules are as clear as

[62] EPAct 2005 sec. 1241 (to be codified at section 219 of the FPA, 16 U.S.C. 824s). The Commission issued a NOPR implementing such an incentive rate program in November 2005. *See Promoting Transmission Investment through Pricing Reform*, 70 FR 71409 (Nov. 29, 2005), FERC Stats. & Regs. ¶ 32,593 (2005).

[63] FPA Sec. 219(b)(1).

[64] EPAct 2005 sec. 1221(a) (to be codified at section 216 of the FPA, 16 U.S.C. 824p).

[65] EPAct 2005 sec. 1233(a) (to be codified at section. 217(b)(4) of the FPA, 16 U.S.C. 824q).

[66] We note that we also have proposed to implement FPA section 217(b)(4) in a separate rulemaking in Docket No. RM06–8–000.

[67] EPAct 2005 sec. 1281 (to be codified at 16 U.S.C. 824t).

[68] EPAct 2005 sec. 1284(e)(1) (to be codified at section 316(A) of the FPA, 16 U.S.C. 825o–1 (2000).

practicable to facilitate compliance.[69] The NOPR is fully consistent with these principles because it seeks, in many areas, to clarify our rules to facilitate compliance by transmission providers.

IV. Summary, Scope and Applicability of the Proposed Rule

50. This section provides: (1) A summary of the major components of the NOPR, (2) a description of the core elements of Order No. 888 that we propose to retain, and (3) a discussion of the applicability of the proposed rule to various entities.

A. Summary of Proposed Reforms

51. *Consistency and transparency of ATC calculations.* The Commission finds that the lack of a consistent, industry-wide methodology for calculating ATC, and the lack of adequate transparency in ATC calculations, increases the potential for undue discrimination and also makes undue discrimination more difficult to detect. The lack of consistent standards can facilitate undue discrimination by giving a transmission provider the discretion, and hence the ability and opportunity, to favor itself and its affiliates over third parties in how it calculates and allocates ATC and, therefore, may be unjust, unreasonable, unduly discriminatory and preferential. As a result, we propose to give the industry specific guidance and a firm deadline to develop certain requirements to make the process of calculating ATC and the process of exchanging data between transmission providers about ATC more consistent. In addition, we propose to amend *pro forma* OATT requirements as well as our OASIS regulations to increase the transparency in how ATC is calculated.

52. *Requirement for coordinated, open and transparent transmission planning.* The Commission finds that Order No. 888 does not contain sufficient protections to guard against undue discrimination in transmission system planning. This, in turn, can affect a customer's ability to obtain transmission service and the price it pays for transmission. Specifically, Order No. 888 does not require sufficient coordination, openness, and transparency in transmission planning to ensure that new infrastructure is constructed to meet the needs of all eligible customers on a not unduly discriminatory basis. Without adequate coordination and open participation, market participants have minimal input or insight into whether a particular transmission plan treats all loads and generators comparably. To ensure that truly comparable transmission service is provided by all public utility transmission providers, including RTOs and ISOs, we propose to amend the *pro forma* OATT to require coordinated, open, and transparent transmission planning on both a sub-regional and regional level. To implement this remedy, we propose eight planning principles that each public utility transmission provider will be required to follow. We recognize that many regions have made significant progress in recent years in creating greater openness and transparency in transmission planning and believe our proposed reforms will build upon, strengthen, and improve this progress to reform transmission planning.

53. *Transmission Pricing Reforms.* Consistent with the focus of Order No. 888 on the non-rate terms and conditions of open access, the Commission does not intend to initiate broad reform of transmission pricing policy through this NOPR. However, we have identified several pricing rules that are part and parcel of OATT service that merit reform.

- *Energy and Generator Imbalance Charges.* We find that existing energy and generator imbalance charges may be excessive and otherwise unrelated to the cost of providing the service and, therefore, propose to reform energy and generator imbalance pricing. We propose to require that all such imbalance charges meet the following criteria: The charges must (1) be related to the cost of correcting the imbalance, (2) be tailored to encourage accurate scheduling behavior, such as by increasing the percentage of the adder as the deviations become larger, and (3) account for the special circumstances presented by intermittent generators, such as by waiving the higher ends of the deviation penalties.
- *Capacity Reassignment Pricing.* We find that the existing cap on the reassignment of point-to-point service may no longer be just and reasonable and, therefore, propose to eliminate the cap. We believe that removing the cap will eliminate an unnecessary impediment to the resale of capacity, which in turn should increase utilization of the grid and otherwise ensure that point-to-point service is just, reasonable and not unduly discriminatory. We seek comment on this proposal and, in particular, the nature of the reporting obligations that should be imposed as part of lifting the cap on reassignment.
- *Crediting of Customer-Owned Facilities.* We propose to retain most elements of our existing policy respecting the crediting of customer-owned facilities, including the requirement that such facilities meet the integration standard. However, we propose to eliminate the requirement that new facilities can receive credits only if they are ''jointly planned'' because this requirement may provide a disincentive to coordinated planning. Rather, we propose that such new facilities be eligible for credits if: (1) Such facilities are integrated into the operations of the transmission provider's facilities, and (2) such facilities would be eligible for inclusion in the transmission provider's annual transmission revenue requirement if owned by the transmission provider.

54. *Improvements to Point-to-Point Service.* The Commission concludes that the existing methods for evaluating requests for long-term firm point-to-point service may no longer be just, reasonable and not unduly discriminatory. When a transmission provider considers a new resource to serve native load, the transmission provider does not eliminate an otherwise economic option because the resource may not be deliverable in a few hours of the year. For transmission customers, however, the transmission provider evaluates whether service can be granted in every hour of the year that is modeled and, if not, it informs the customer that service cannot be provided out of existing transfer capability. Only if the transmission customer agrees to pay for time-consuming and costly facilities studies does the transmission provider evaluate redispatch options, including whether they are less expensive than the upgrade options. The Commission proposes to address this problem by clarifying that a transmission provider must use all of its available redispatch options to satisfy a request for firm point-to-point service and, at the transmission customer's option, these redispatch options must be studied before the customer is obligated to incur the costs and time delays associated with a facilities study. The Commission also seeks comment on whether this remedy is adequate or, alternatively, whether the Commission should modify the nature of point-to-point service to require that transmission providers offer a ''conditional firm'' service that would be subject to curtailment prior to firm service only a limited number of hours of the year.

55. *Reform of rollover rights.* The Commission concludes that section 2.2 of the *pro forma* OATT, which grants an

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

ongoing right to transmission customers to renew or ''rollover'' their contracts, is in need of reform. The Commission proposes to revise that provision to apply to contracts that have a minimum term of five years, rather than the current minimum term of one year. We conclude that this reform will ensure that the rollover right is enjoyed by transmission customers that have made a significant commitment to (and investment in) the transmission grid. In addition, the Commission proposes that a transmission customer eligible for rollover rights must provide notice of whether or not it will exercise its right of first refusal to renew the contract no less than one year prior to the expiration date of the transmission service agreement, rather than within the current 60-day period.

56. *Increases in transparency to lessen the opportunities to discriminate and reduce transaction costs.* In addition to the increased transparency we propose to require regarding the calculation of ATC and transmission planning, we propose to increase the transparency of transmission service provided under the *pro forma* OATT in several other respects. For example, we propose to require transmission providers and their network customers to use the transmission provider's OASIS to request designation of a new network resource and to terminate the designation of an existing network resource. In addition, we propose to require the transmission provider to modify its OASIS so that requests to designate and terminate a network resource can be queried. We also propose to require the transmission provider to post on its OASIS a list of its current designated network resources and all network customers' current designated network resources. Finally, we propose to require transmission providers to post on OASIS all their business rules, practices and standards that relate to transmission services provided under the *pro forma* OATT.

57. *Strengthening enforcement of the pro forma OATT.* Our proposed reforms include several clarifications of the terms and conditions of the *pro forma* OATT that have made undue discrimination difficult to detect and otherwise frustrated enforcement of the obligation to provide open access, non-discriminatory transmission service. Our new civil penalty authority under EPAct 2005 gives us ample power to remedy tariff violations, but it also places upon us an increased responsibility to make the rules as clear as possible. In addition, we propose a number of posting and reporting requirements that will provide the Commission and market participants with information about each transmission provider's performance of *pro forma* OATT obligations. For example, we propose to require transmission providers to post specific performance metrics related to their completion of studies required under the *pro forma* OATT. We note that the Commission will continue to audit compliance with the *pro forma* OATT, and toward that end propose to require transmission information kept on OASIS to be retained for audit purposes for five years. Finally, we make a number of proposals relating to operational penalties assessed under the *pro forma* OATT, including so-called ''over-use'' penalties, and the treatment of operational penalty revenues collected from transmission providers and their affiliates.

58. Miscellaneous OATT improvements. We propose a number of improvements to the terms and conditions of the *pro forma* OATT to incorporate the lessons learned over the past ten years. We briefly note these below:

Hourly Firm. We propose to require transmission providers to offer hourly firm service under the *pro forma* OATT.

Designation of network resources. We propose to make a number of clarifications related to the types of agreements that may be designated as network resources, the process for verifying whether agreements meet the requirements in the *pro forma* OATT, and the requirement for transmission providers to designate and undesignate network resources. We also propose to require customers to submit an attestation with each application to designate a new network resource.

Reservation priorities. We propose to change the priority rules to give priority to pre-confirmed transmission service requests submitted in the same time period. We also propose to add price as a tie-breaker in determining reservation queue priority when the transmission provider is willing to discount transmission service.

Clarifications related to network service. We propose to clarify that a network customer may not use secondary network service to bring energy onto its system to support an off-system sale if the purchased power does not displace the customer's own higher cost generation. We also propose clarifications related to use of network service on an ''as available basis'' and to ''redirects'' of network service.

Definitions. In addition to some minor revisions, we propose to add a definition of ''non-firm sales'' to the *pro forma* OATT and propose to amend the definition of Good Utility Practice to reference the definition of ''reliable operation'' adopted in EPAct 2005.

B. Core Elements of Order No. 888 That Are Retained

59. Although we are proposing many important reforms to Order No. 888 and the *pro forma* OATT, we also wish to emphasize that we propose to retain many of the core elements of Order No. 888. We note that many of these core elements enjoy broad support across many sectors of the industry. In their comments, APPA, EEI, and NARUC urge the Commission to proceed carefully in reforming Order No. 888, focusing on incremental reforms not industry restructuring. We share the view that Order No. 888 can be strengthened without discarding its fundamental structure. We discuss below the core elements that are being retained and, where appropriate, respond to the comments on these points that were received in the NOI.

1. Federal/State Jurisdiction

60. In Order No. 888, the Commission stated that it has exclusive jurisdiction over the rates, terms and conditions of unbundled retail transmission in interstate commerce.[70] Though the Commission adopted a test for determining which facilities were used for retail transmission, as opposed to local distribution to end-users,[71] the Commission stated that it generally would defer to determinations by state regulatory authorities concerning where to draw the jurisdictional line under that test.[72] The Commission declined to assert jurisdiction over bundled retail transmission, reasoning that ''when transmission is sold at retail as part and parcel of the delivered product called electric energy, the transaction is a sale of electric energy at retail.'' [73] The U.S. Supreme Court affirmed the Commission's decision to assert jurisdiction over unbundled but not bundled retail transmission, finding that the Commission made a statutorily permissible choice.[74]

61. We propose to retain the jurisdictional divide we established in Order No. 888. We also are mindful of the need for heightened cooperation between federal and state regulators in areas where there are overlapping federal and state policy concerns. Moreover, our jurisdictional determination was sustained by the U.S.

[70] Order No. 888 at 31,781.

[71] *Id.* at 31,771 (setting forth the seven-factor test).

[72] *Id.* at 31,781.

[73] *Id.*

[74] *See New York* v. *FERC,* 535 U.S. 1, 28 (2002).

Supreme Court and has been accepted by industry and state regulatory authorities. We see no reason to disturb that determination now.

2. Native Load Protection

62. Order No. 888 did not require transmission providers to unbundle transmission service to their retail native load nor did it require that bundled retail service be taken under the terms of the *pro forma* OATT.[75] Moreover, the Commission allowed a transmission provider to reserve, in its calculation of ATC, transmission capacity necessary to accommodate native load growth reasonably forecasted in its planning horizon.[76] As noted above, Order No. 888 granted a rollover right to existing firm service customers,[77] but allowed transmission providers to restrict that rollover right if the capacity was reasonably forecasted to be needed to serve native load customers, as long as that restriction was specified in the customer's service contract.[78]

63. Congress in section 1233 of EPAct 2005 added section 217 to the FPA, entitled ''Native Load Service Obligation,'' which addresses transmission rights held by load-serving entities. It allows load-serving entities to use their own and contracted-for transmission capacity to the extent required to meet their service obligations, without being subject to charges of unlawful discrimination. Among other things, FPA section 217 states that it does not require the abrogation of any contract or service agreement for firm transmission service or rights in effect as of the date of enactment.[79]

64. In the NOI, the Commission stated that it was not proposing to change the protection of native load embodied in Order No. 888.[80] The Commission sought comment on whether the approach the Commission took in Order No. 888 is the same as that set forth in FPA section 217.

Comments

65. Several commenters argue that the approach the Commission took in Order No. 888 is largely consistent with the treatment of native load preference in FPA section 217.[81] They state that Order No. 888 makes clear that native load has a priority right to a transmission providers' capacity and that transmission providers may reserve a portion of their capacity for native load growth.

66. Other commenters perceive varying degrees of difference between Order No. 888 and FPA section 217.[82] EEI states that FPA section 217 extends native load protection to all load-serving entities that have direct or indirect service obligations to end-users for terms of one year or more, while Order No. 888 does not. Nevada Companies and TAPS argue that the FPA section 217 requirement that the Commission exercise its authority to facilitate the planning and expansion of transmission facilities to satisfy the service obligations of load-serving entities necessitates changes to Order No. 888.

67. Several commenters argue that FPA section 217 requires the Commission to revisit its rollover rights policy.[83] Duke maintains that the current Commission approach is not the same as set forth in either Order No. 888 or FPA section 217 because the Commission's current approach to rollover rights does not meaningfully recognize the native load preference. Commission decisions since Order No. 888, according to Duke, have weakened the native load preference envisioned in Order No. 888 to the point where the Commission's treatment of the native load preference is not what Congress provides in FPA section 217. LPPC argues that FPA section 217 reverses Commission precedent that makes it impossible to recall capacity for native load once it is subject to a rollover right.

68. EEI states that in order to harmonize Order No. 888 rollover rights with the native load protections contained in FPA section 217, the Commission should revise the *pro forma* OATT to require a notice period for rollover rights that is consistent with the time needed to plan for and construct transmission facilities to serve native load customers and the rollover customer. EEI and Salt River argue that FPA section 217 requires that the Commission permit load-serving entities to implement curtailment procedures that recognize native load service priorities.

69. Metropolitan Water District argues that the mandate to preserve native load preference is complicated further when a transmission owner has transferred operational control to an ISO or RTO. In such a scenario, to honor the native load preference in FPA section 217, Metropolitan Water District contends that the Commission either should reconsider its prior rulings rejecting the allocation of physical rights to serve native load or should require ISOs and RTOs to issue financial rights options, in addition to financial right obligations, so that load-serving entities have a greater ability to avoid congestion costs in serving their native load.

Discussion

70. The Commission concludes that the protection of native load embodied in Order No. 888 is consistent with FPA section 217, and we reaffirm our commitment to the protection of native load. Order No. 888 gave public utilities the right to reserve existing transmission capacity needed for native load growth reasonably forecasted within the utility's current planning horizon. It also allowed transmission providers to restrict rollover rights based on a reasonably forecasted need at the time the contract is executed. This approach is consistent with FPA section 217, which protects the transmission rights of entities with service obligations to end-users or a distribution utility, to the extent required to meet their service obligations. Though commenters appear to believe FPA section 217 would support the cancellation of contracts that include rollover rights, FPA section 217 by its terms does not contemplate abrogation of existing transmission service contracts.[84] However, to the extent commenters argue that the terms of service and notice periods associated with the OATT rollover rights are too short to protect native load adequately, we note that we are proposing to extend them in this NOPR.

71. In response to Metropolitan Water District, the Commission finds that the issue of firm transmission rights in organized markets is best addressed as part of the long-term firm transmission rights rulemaking in Docket Nos. RM06–8–000 and AD05–7–000. We further note, in response to the comments of Nevada Companies and TAPS, that we are proposing a coordinated and regional planning process to facilitate the planning and expansion of transmission facilities pursuant to FPA section 217.

3. The Types of Transmission Services Offered

72. In Order No. 888, the Commission required all public utilities to offer on a non-discriminatory, open-access basis firm network service and firm and non-

[75] Order No. 888 at 31,745.

[76] *Id.* at 31,694.

[77] *Id.*; *pro forma* OATT section 2.2.

[78] Order No. 888–A at 30,198.

[79] 16 U.S.C. 217(f).

[80] NOI at P 9.

[81] *E.g.*, Memphis Light, Newmont Mining Reply Comments, Progress Energy, and TDU Systems.

[82] *E.g.*, Duke, EEI, Metropolitan Water District, and Southern.

[83] *E.g.*, Duke, Energy, LPPC, Progress Energy, Salt River, Santee Cooper, and Southern.

[84] *See* FPA section 217(f) (explaining that section 217 does not abrogate any firm service agreements or rights in effect as of the date of enactment).

firm point-to-point service. In the NOI, the Commission sought comments on whether the Commission should require transmission providers to offer transmission services in addition to, or in place of, the point-to-point and network services prescribed in the OATT.

73. Among other questions, the Commission asked whether network service alone or both network and point-to-point services should be converted into a single contract demand service.[85] Generally speaking, contract demand service is a hybrid of point-to-point and network services that is reservation-based and allows transmission customers to receive a firm entitlement to integrate multiple resources and deliver energy to multiple points, without paying a separate charge for each point of receipt or delivery. Contract demand service would allow current point-to-point customers to avoid having to arrange and pay for separate reservations for each point of receipt. And current network customers would be allowed to pay for transmission based on the amount of their reservation rather than customer loads at a delivery point.

Comments

74. Most commenters argue against requiring that network service alone or in combination with point-to-point service be converted into contract demand service.[86] Some warn that the imposition of this service would interfere with efficient transmission system planning and operation due to increased capacity reservations that would go unused.[87] They also argue that it would result in significant cost shifts among transmission customers if not priced correctly. FP&L argues that the current services are a better match for the actual use of the transmission system and thereby permit more ATC to be available.

75. Some commenters ask that the Commission require transmission providers to offer contract demand service as an additional transmission service option in the *pro forma* OATT.[88] AMP-Ohio argues that, as long as Commission policy requires network customers to pay load-ratio network transmission charges for load served with behind-the-meter generation, contract demand network service is essential to avoid unduly discriminatory transmission charges. Midwest Municipals and FMPA argue that the Commission should order contract demand service where the transmission provider does not plan and operate its system to meet total customer load because, as the Commission stated in Order No. 888, full network service is essential for achieving comparability and efficient integration of power supply and load. FMPA contends that where a customer needs network service from another system for only part of its load, it would benefit from being able to buy system power from multiple designated resources for part of its load. In this way, FMPA continues, the transmission provider would not have the planning obligation for the customer's entire load, perhaps avoiding or delaying expensive transmission additions. FMPA claims that such service would tend to benefit all transmission users because it would allow a more efficient use of the grid and provide additional transmission revenues.

76. Other commenters state that transmission providers should have the option whether to offer contract demand or other customized transmission services.[89] LPPC argues that the Commission should allow a transmission provider to voluntarily provide alternative forms of transmission service where circumstances support their implementation, with the caveat that such service must not place any market participant at a disadvantage or increase transmission rates for network or point-to-point customers. Southern proposes that the *pro forma* OATT be modified to include a process through which a transmission provider may propose to adopt new services that customers specifically request.

77. Commenters also raise general concerns regarding the use and potential abuse of network contract demand service. For example, MidAmerican argues that contract demand service should not be used as a means for transmission customers with behind-the-meter generation to avoid paying for a load-ratio share of a system that was built to support their entire load and on which they rely for service. Rather, MidAmerican continues, network contract demand service should be limited to situations in which deliverability is physically limited, such as where the integrated transmission system does not have the capacity to serve all the load at a designated point of delivery. EEI argues that the Commission should not convert network service to network contract demand service because conversion would result in a substantial reduction in ATC as it would provide contract rights on the transmission system on an around-the-clock basis that are equal to network load's monthly or annual peak loads.

Discussion

78. We propose to retain the services we ordered in Order No. 888: firm and non-firm point-to-point service and firm network service. We do not propose requiring transmission providers to adopt a network contract demand service, either as a replacement for network or point-to-point service or as a third category of service under the OATT. The Commission continues to believe that network and point-to-point services are the appropriate base-line service offerings in the OATT. Although forms of contract demand service have been approved by the Commission, and the service may provide benefits to certain customers, sufficient potential drawbacks exist that prevent us from concluding that it is a necessary transmission service that should be included in the *pro forma* OATT. For example, the service would require a departure from full load-ratio pricing for network customers, which may not be warranted to the extent the transmission provider plans its system to serve all native load. While the Commission concludes that it will not require all transmission providers to offer this service, we acknowledge that the introduction of this service on a voluntary basis may be appropriate in certain circumstances.

79. Although we are not proposing to require that transmission providers adopt contract demand service, we note that the commenters who support this service appear concerned principally with inequities in the pricing of network integration service. The Commission is addressing certain of these concerns elsewhere in the NOPR. For example, in this NOPR, we propose to modify our treatment of transmission credits for new transmission facilities and clarify that the transmission provider must satisfy the comparability requirement when including transmission facilities in its rate base for *pro forma* OATT purposes. We also address concerns regarding the linkage between how the transmission provider plans and

[85] For examples of contract demand service, the Commission cited *Florida Power Corp.*, FERC ¶ 61,248 (1995); *Wisconsin Electric Power Co.*, 72 FERC ¶ 61,033 (1995); and *Florida Power Corp.*, 81 FERC ¶ 61,247 (1997).

[86] *E.g.*, Ameren, APPA, Bonneville, Calpine, EEI, EPSA, Fallon Reply Comments, FP&L, NRECA, PacifiCorp, Southern, Suez Energy NA, TVA, TAPS, and TDU Systems.

[87] *E.g.*, EEI, FP&L, KCP&L, and TVA.

[88] *E.g.*, AMP-Ohio, APPA, Cogeneration Association of California Reply Comments, Constellation, EPSA, FMPA Reply Comments, Midwest Municipals, PacifiCorp, and Public Power Council.

[89] *E.g.*, LPPC, NRECA, and Southern.

operates its system through proposed revisions to planning and ATC.

4. Functional Unbundling

80. When the Commission proposed the open access policy that culminated in Order No. 888, there was considerable debate about whether corporate unbundling (in which a public utility's transmission and generation assets would be placed in separate corporate entities) was necessary to ensure non-discriminatory open access transmission service. The Commission decided to mandate functional, rather than corporate, unbundling of transmission and generation services. In Order No. 888, the Commission explained that functional unbundling has three components:

1. A public utility must take transmission services (including ancillary services) for all of its new wholesale sales and purchases of energy under the same tariff of general applicability as do others;
2. A public utility must state separate rates for wholesale generation, transmission, and ancillary services;
3. A public utility must rely on the same electronic information network that its transmission customers rely on to obtain information about its transmission system when buying or selling power.[90]

81. In the years following Order No. 888, a number of public utilities nonetheless underwent corporate unbundling. Many of these entities did so as a result of state-mandated restructuring laws. Others did so for corporate or tax reasons. Some entities divested all of their generation assets to a non-affiliate, while others simply restructured internally to place the generation assets in a different corporate subsidiary than the transmission assets. There remain, however, a significant number of vertically-integrated public utilities that have operated under the functional unbundling approach.

Comments

82. Retention of Order No. 888's functional unbundling approach is supported by a number of commenters. For example, the LPPC states that vertical integration remains a viable business model for serving customers reliably and at economic rates. LG&E posits that, absent a proven and real level of abuse, major structural changes are unwarranted. NARUC argues that the issue of whether there should be structural separation of generation from transmission is best left to the states. NPPD alleges that mandatory vertical unbundling would do more harm than good by threatening the continued economic operation of those utilities that continue to provide bundled service to their retail native load customers. The North Carolina Commission does not believe the evidence in that state supports the imposition of structural remedies.

83. Some commenters, however, continue to urge the Commission to impose structural separation. National Grid contends that the best way to eliminate the possibility of undue discrimination is to separate the ownership and operation of the transmission system from interests in the market. Calpine urges the Commission to structurally separate the merchant function that is engaged in selling power for resale from those who control access to transfer capability and service, not just those who operate the transmission system. TAPS argues that structural solutions are preferable to behavioral rules.

84. Many commenters favoring structural separation urge the Commission to impose an independent transmission coordinator requirement. These commenters would have transmission providers employ an independent entity to administer their OATTs, performing such functions as maintaining the utility's OASIS, granting or denying service requests, reviewing system impact and facilities study results, and overseeing decisions with respect to line ratings, transmission outages and generation dispatch.[91] Other commenters oppose the imposition of a potentially costly new layer of bureaucracy, at least on a generic basis.[92]

Discussion

85. We propose to preserve the functional unbundling approach adopted by Order No. 888. For public utilities that kept transmission and generation assets in the same corporate entity, the Commission imposed strict Standards of Conduct that required separation of the utilities' transmission system operations and wholesale marketing functions.[93] These Standards of Conduct were replaced by a broader set of rules adopted in Order No. 2004.[94] These rules require that employees engaged in transmission functions operate separately from employees of energy affiliates and marketing affiliates. A number of information sharing restrictions also apply, which prohibit transmission providers from allowing employees of their energy and marketing affiliates to obtain access to transmission or customer information, except via OASIS.

86. The Commission aggressively enforces the Standards of Conduct. The Commission's Office of Enforcement is well-suited to investigate potential violations of the Standards of Conduct and to propose remedies, including structural remedies if necessary, to ensure that the separation of function and information restrictions in Order No. 2004 are implemented.

87. The Commission has resolved a number of complaints related to the Standards of Conduct and the accompanying OASIS posting requirements.[95] In Order No. 888, the Commission noted that the possibility of filing a complaint under FPA section 206 is an additional safeguard if a public utility seeks to circumvent the functional unbundling requirement. The Commission's Enforcement Hotline likewise is available to customers that do not wish to file a formal complaint.

88. In addition, one of the criticisms of the functional unbundling requirement is that Order No. 888 leaves vertically integrated utilities with too much discretion in applying the OATT and gives them an incentive to use this discretion to their advantage. We agree that the existing *pro forma* OATT provides too much discretion in certain important areas. It is for this reason—as explained elsewhere in the NOPR—that we are proposing to require greater clarity and transparency in several areas of OATT administration. We believe these reforms will limit the discretion of transmission providers and make any remaining attempts to discriminate much easier to detect.

89. We believe that this increased clarity and transparency, when coupled with the Standards of Conduct and a rigorous enforcement program, will ensure that the functional unbundling requirement will serve its original purpose. As a result, just as the Commission concluded in Order No.

[90] Order No. 888 at 31,654.

[91] *E.g.,* Arkansas Commission, Calpine, Constellation, EPSA, and PPL.

[92] *E.g.,* APPA, NRECA, and TAPS.

[93] Order No. 889 at 31,595.

[94] *See Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134 (Dec. 11, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, 69 FR 23562 (Apr. 29, 2004), FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g,* Order No. 2004–B, 69 FR 28371 (Aug. 10, 2004), FERC Stats. & Regs. ¶31,166 (2004), *order on reh'g,* Order No. 2004–C, 70 FR 284 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,172 (2005), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *appeal docketed sub nom. National Gas Fuel Supply Corporation* v. *FERC,* No. 04–1183 (D.C. Cir. June 9, 2004), codified at 18 CFR Part 358 (2005).

[95] *See Aquila Energy Marketing Corp.* v. *Niagara Mohawk Power Corp.,* 87 FERC ¶ 61,328 (1999)(finding that off-OASIS communicagtion between utilty and its marketing affiliate led to preferential treatment of the affiliate).

888 that more intrusive and costly corporate unbundling was not necessary, the Commission again concludes that there is no need to impose a corporate or structural unbundling requirement at this time. We believe that the *pro forma* OATT, if properly clarified and enforced, will enable us to eliminate the opportunity for undue discrimination in the provision of transmission service.

90. For the same reasons, we also decline to mandate an independent transmission coordinator for all transmission providers. We have concluded that such entities may be appropriate in certain circumstances and we support voluntary efforts to rely on them.[96] We do not agree, however, that there is sufficient basis for requiring them as a generic remedy for undue discrimination.

91. Our proposal to retain the functional unbundling approach of Order No. 888 does not suggest, however, a lack of support for structural changes that may be undertaken on a voluntary basis by each region, such as transmission-only companies, RTOs, or other reforms. We continue to support such efforts as potentially providing significant benefits in several areas, including, but not limited to, increased infrastructure investment and addressing regional issues such as cost recovery, pancaked rates, loop flow, and congestion management. At this time, we believe such efforts are best developed on a voluntary basis.

C. Applicability of the Proposed Rule

1. Public Utility Transmission Providers

92. Pursuant to its authority under FPA sections 205 and 206, the Commission in Order No. 888 required all public utilities that owned, controlled, or operated facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs that contained minimum terms and conditions of non-discriminatory service. The Commission recognized, however, that there may be circumstances in which a public utility believes that the *pro forma* OATT does not provide sufficient flexibility.[97] In addition, the Commission acknowledged that a public utility might be willing to offer superior non-rate terms and conditions. As a result, the Commission allowed a transmission provider to justify variations from the non-price terms and conditions of the *pro forma* OATT under two circumstances. First, certain provisions of Order No. 888 specifically allowed public utilities to use alternatives that were justified by ''regional differences.'' When submitting those provisions, public utilities were permitted to follow regional practices when doing so was ''reasonable, generally accepted in the region, and consistently adhered to by the transmission provider,''[98] as long as the utilities identified the regional practices in their compliance filings. Second, in subsequent FPA section 205 proceedings, public utilities were permitted to propose changes to any *pro forma* OATT provision that were ''consistent with or superior to'' the terms of the *pro forma* OATT.

93. In the NOI, the Commission expressed the preliminary view that reforms to the *pro forma* OATT and public utilities' OATTs appear necessary and sought comment on how best to accomplish that. In particular, the Commission sought comment on whether reforms to Order No. 888 should be applied to all public utility transmission providers, including those that are approved ISOs, RTOs, or independent transmission coordinators.

Comments

94. Independent system operators such as MISO, CAISO, and ISO New England submit that many of the concerns raised by the Commission in the NOI already have successfully been addressed by the operation of ISOs and RTOs. Similarly, EEI argues that many of the issues addressed in the NOI are not applicable to RTOs and ISOs because RTOs and ISOs are independent of all market participants and therefore are presumed to not engage in undue discrimination or preferential treatment. PJM argues that, because of its independence, the transparency of its procedures, and the progress achieved in developing effective financial and non-financial congestion management tools, PJM structurally addresses the continuing concerns of the Commission regarding persistent undue discrimination and preference in the industry.

95. EPSA states that it may not be necessary to apply all aspects of the new OATT to ISOs or RTOs. However, rather than delineating either each term that would not apply to an RTO or how such terms might be modified in an RTO tariff, EPSA recommends that the Commission require RTOs, ISOs, and independent transmission coordinators to submit compliance filings upon issuance of the new *pro forma* OATT but allow them to propose waivers of the new requirements based upon appropriate justification.

96. EEI argues that, to the extent that the Commission requires RTOs and ISOs to amend their open access transmission tariffs, the Commission should establish flexible procedures that provide the RTOs and ISOs the right to customize their OATTs consistent with their independent status.

97. Other commenters argue that reforms to existing OATTs should be applied to all market entities, including ISOs, RTOs and independent transmission coordinators.[99] LPPC states that there is little reason for the Commission to be more deferential in considering deviations from the *pro forma* OATT proposed by RTOs or ISOs than it is with respect to investor-owned utilities.

Discussion

98. The Commission proposes to apply the final rule to all public utility transmission providers. The Commission proposes to require all such transmission providers to submit FPA section 206 compliance filings, within 60 days following publication of the final rule in the **Federal Register**, that contain the non-rate terms and conditions set forth in the final rule. We note that certain non-rate terms and conditions, such as Attachment C relating to the transmission provider's ATC calculation methodology and Attachment K relating to the transmission provider's transmission planning process, may require more than 60 days to prepare. We seek comment on an appropriate time period in which to require the submission of these attachments.

99. As we did in Order No. 888, after making their FPA section 206 compliance filings, we propose to allow transmission providers to submit filings under FPA section 205 proposing rates for the services provided for in the tariff as well as non-rate terms and conditions that differ from those set forth in the final rule if those provisions are ''consistent with or superior to'' the *pro forma* OATT.

100. With respect to an RTO or ISO, we recognize that such an entity may already have tariff terms and conditions that are superior to the *pro forma* OATT. Thus, we propose to require RTO and ISO transmission providers to submit FPA section 206 compliance filings, within 90 days following publication of the final rule in the

[96] *See Duke Power,* 113 FERC ¶ 61,288 (2005); *MidAmerican Energy Co.,* 113 FERC ¶ 61,274 (2005); *see also Entergy Services, Inc.,* 110 FERC ¶ 61,295 (2005), *order clarificaiton,* 111 FERC ¶ 61,222 (2005), *order conditionally approving filing,* 115 FERC ¶ 61,095 (2006).

[97] Order No. 888 at 31,770.

[98] *Id.*

[99] *E.g.,* Calpine, LPPC, NRECA, and Santa Clara.

Federal Register, that contain the non-rate terms and conditions set forth in the final rule or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions to the *pro forma* OATT. Similarly, after making their FPA section 206 compliance filings, we propose to allow RTOs and ISOs to submit filings under FPA section 205 proposing rates for the services provided for in their tariffs as well as non-rate terms and conditions that differ from their existing tariffs and those set forth in the final rule if those provisions are ''consistent with or superior to'' the *pro forma* OATT.

101. We generally note that the purpose of this NOPR is not to redesign approved, fully-functional RTO or ISO markets. We do not expect that substantial changes to those markets would be required as a result of this NOPR. For example, some RTOs or ISOs have eliminated point-to-point service for internal transactions in favor of a form of more flexible network service. Thus, we would not expect our reforms to ATC to require changes to the way in which such RTOs or ISOs assess whether capacity for traditional network or point-to-point service is available within their footprints. However, there may be elements of the proposed reforms that are superior to what currently exists in some RTOs or ISOs, *e.g.*, transparency, data exchange or planning, which would require the RTO or ISO to conform to the *pro forma* OATT.

2. Non-Public Utility Transmission Providers/Reciprocity

102. In Order No. 888, the Commission conditioned non-public utilities' use of public utility open access services on an agreement to offer comparable transmission services in return.[100] The Commission found that while it did not have the authority to require non-public utilities to make their systems generally available, it did have the ability and the obligation to ensure that open access transmission is as widely available as possible and that Order No. 888 did not result in a competitive disadvantage to public utilities.

103. Under the reciprocity provision in section 6 of the *pro forma* OATT, if a public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. Under the OATT, a public utility may refuse to provide open access transmission service to a non-public utility if the non-public utility refuses to reciprocate. A non-public utility may satisfy the reciprocity condition in one of three ways: first, it may provide service under a tariff that has been approved by the Commission under the voluntary ''safe harbor'' provision. A non-public utility using this alternative submits a reciprocity tariff to the Commission seeking a declaratory order that the proposed reciprocity tariff substantially conforms to, or is superior to, the *pro forma* OATT. The non-public utility then must offer service under its reciprocity tariff to any public utility whose transmission service the non-public utility seeks to use. Second, the non-public utility may provide service to a public utility under a bilateral agreement that satisfies its reciprocity obligation. Finally, the non-public utility may seek a waiver of the reciprocity condition from the public utility.[101]

104. In EPAct 2005, Congress authorized, but did not require, the Commission to order non-public utilities (or ''unregulated transmitting utilities'') to provide transmission services. Section 1231 of EPAct 2005 establishes a new section 211A in Part II of the FPA, which states in part that the Commission ''may, by rule or order, require an unregulated transmitting utility to provide transmission services'' at rates that are comparable to those it charges itself and under terms and conditions (unrelated to rates) that are comparable to those it applies to itself and that are not unduly discriminatory or preferential. The language does not limit the Commission to ordering transmission services only to the public utility from whom the non-public utility takes transmission services, but rather it can reasonably be read to permit the Commission to order the non-public utility to provide ''open access'' transmission service, *i.e.*, service to all eligible customers.

105. In the NOI, we sought comment on whether the Commission should exercise the authority granted to it by Congress in FPA section 211A. If so, we asked whether the Commission should impose this requirement on all unregulated transmitting utilities through a rulemaking proceeding, or whether the Commission should instead apply this new law on a case-by-case basis, through complaints, motions seeking enforcement, or sua sponte action by the Commission.

Comments

106. Several non-public utility commenters suggest that the Commission should not use the authority granted by FPA section 211A in a generic fashion.[102] They argue that there is no need to require unregulated transmitting utilities either to file open access tariffs with the Commission or to require that they adhere to a *pro forma* OATT. APPA asserts that while the Commission may act under FPA section 211A to remedy particular issues that are brought to its attention with respect to lack of access, there is simply no basis for concluding that there currently exists a general problem regarding the provision of transmission service by non-public utility transmission providers which calls for a generic solution. LPPC proposes a regime of voluntary compliance with a set of proposed comparability guidelines.

107. Many commenters argue that the Commission should exercise its authority granted by FPA section 211A by establishing a rule to require unregulated transmitting utilities to provide service under the *pro forma* OATT.[103] EEI believes a rulemaking is essential to ensure that all utilities required to provide open access under FPA section 211A do so and that the Commission should, at a minimum, require unregulated transmitting utilities to file and provide service under the *pro forma* OATT. EPSA and Sempra Global suggest an approach that would not require an unregulated transmitting utility to file an OATT with the Commission until it receives a request for service.

108. EEI argues that the Commission should use FPA section 211A to require unregulated transmitting utilities to provide all services they are capable of providing, not just those that they provide to themselves. In contrast, APPA states that FPA section 211A establishes a ''comparability'' standard applicable to non-public utility transmission owner rates, and a ''comparable and not unduly discriminatory or preferential'' standard for terms and conditions. APPA further states that FPA section 211A requires that unregulated transmitting utilities provide transmission service to others at

[100] These entities are not FPA public utilities and therefore are not subject to the Commission's jurisdiction under sections 205 and 206 of the FPA.

[101] *See* Order No. 888–A at 30,285–86.

[102] *E.g.,* Chelan, Douglas, LDWP, LPPC, Northwest Unregulated TUs, Public Power Council, Rural Utilities Service, Sacramento, Santee Cooper, Snohomish, Tacoma, TAPS, and TVA.

[103] *E.g.,* Ameren, California Commission, Calpine, Cinergy, EEI, First Energy, Memphis Light, Nevada Companies, Northwest IPPs, PNM–TNMP, PPL, Progress Energy, and Suez Energy NA.

rates, terms and conditions ''comparable to those under which the unregulated transmitting utility provides transmission services to itself,'' rather than transmission services that they are ''reasonably capable of providing.''

109. The Canadian Electricity Association believes that the adoption of FPA section 211A requires the Commission to revisit the reciprocity requirement of Order No. 888. According to the Canadian Electricity Association, EPAct 2005 lowered the bar for domestic unregulated transmitting utilities, requiring them only to provide service under terms and conditions that are comparable to those they apply to themselves, rather than terms and conditions that substantially conform or are superior to those in the *pro forma* OATT. If the Commission does not make corresponding changes to the manner in which the reciprocity requirement currently applies to Canadian entities, it argues, the result will be domestic unregulated transmitting utilities being treated better than Canadian entities, which would violate the national treatment obligations under the North American Free Trade Agreement. The Canadian Electricity Association argues that the reciprocity requirement under Order No. 888 must be modified to require that a Canadian entity that seeks open access in the U.S. must provide access to its own transmission system under terms and conditions that are comparable to those the Canadian entity is subject to itself.

Discussion

110. The Commission proposes to retain the current reciprocity language in the *pro forma* OATT, as well as Order No. 888's three alternative provisions for satisfying the reciprocity condition, which are described above: a non-public utility that owns, controls, or operates transmission and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement, seek a waiver of the OATT reciprocity condition from the public utility, or file a safe harbor tariff with the Commission.[104]

111. We do not propose a generic rule to implement the new FPA section 211A.[105] Rather, we will apply its provisions on a case-by-case basis, such as when a public utility seeks service from an unregulated transmitting utility that has not requested service under the public utility's OATT and the reciprocity obligation therefore does not apply.[106] A customer may file an application with the Commission seeking an order compelling the unregulated transmitting utility to provide transmission service that meets the standards of FPA section 211A. Further, as we indicate below, we expect unregulated transmission providers to participate in the open and transparent regional planning processes that we propose to order and note that, if there are complaints about such participation, we will address them on a case-by-case basis.

112. We disagree with the position of the Canadian Electricity Association. EPAct 2005 did not repeal the reciprocity obligation in Order No. 888. Rather, it granted a new avenue of authority to the Commission to order comparable transmission service from non-public utilities. We are proposing not to exercise this new authority at this time. Rather, we are proposing to retain our reciprocity policy, which was adopted pursuant to sections 205 and 206 of the FPA. By maintaining the same reciprocity requirement for domestic, non-public utilities as for foreign utilities doing business in the United States, the Commission will ensure that foreign entities will continue to be treated no less favorably than domestic, non-public utilities.

V. Proposed Modifications of the OATT

A. Consistency and Transparency of ATC Calculations

113. In Order Nos. 888 and 889, the Commission directed transmission providers to offer their unused transfer capability to the market and to post the amount of ATC[107] on OASIS. At the time those orders were issued, the Commission noted that formal methods did not exist for calculating ATC, but recognized that there were industry efforts underway to develop a consistent, industry-wide method for calculating it.[108] Instead of prescribing a specific methodology for calculating ATC in Order Nos. 888 and 889, the Commission encouraged the industry efforts and required that transmission providers base their ATC calculation methodologies on current industry practices, standards and criteria.[109] In addition, the Commission directed transmission providers to include a description of their ATC calculation methodologies in Attachment C of their tariffs.

114. Ten years later, however, although some progress has been made, the industry still has not developed a consistent, industry-wide methodology for evaluating ATC. In the intervening years, the industry, working through the North American Electric Reliability Council (NERC), has adopted a general definition of ATC, which establishes a basic methodology for evaluating ATC. NERC also has developed a set of guiding principles for calculating ATC and has encouraged further consistency of ATC calculation methodologies on a regional level. NERC defines ATC as the transfer capability remaining on the system for further commercial activity over and above already committed uses. This value is determined by deducting existing transmission commitments (ETC)[110] (including transmission reservations, network and retail customer service), capacity benefit margin (CBM),[111] and transmission reliability margin (TRM)[112] from total

[104] For non-public utilities that choose to use the safe harbor tariff, we note that its provisions must be substantially conforming or superior to the new *pro forma* OATT. A non-public utility that already has a safe harbor tariff may amend its tariff so that its provisions substantially conform or are superior to the new *pro forma* OATT if it wishes to continue to qualify for safe harbor treatment. As the Commission stated in Order No. 888–A, a non-public utility may limit the use of its voluntarily offered safe harbor reciprocity tariff only to those transmission providers from whom the non-public utility obtains open access service, as long as the tariff otherwise substantially conforms to the *pro forma* OATT. *See* Order No. 888–A at 30,289.

[105] We note that LPPC has committed to voluntary compliance with a set of guidelines for the provision of comparable service under FPA section 211A.

[106] We do, however, propose to amend our regulations to make clear that an applicant in a FPA section 211A proceeding against a non-public utility that has submitted an acceptable safe harbor tariff shall have the burden of proof to show why service under the safe harbor tariff is not sufficient and why a FPA section 211A order should be granted. *See* revised 18 CFR 35.28(e)(1)(ii).

[107] *See supra* note 7.

[108] Order No. 889 at 31,607.

[109] *Id.*

[110] NERC does not have a formal definition or standard methodology for ETC.

[111] NERC defines CBM as the amount of firm transmission transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on that transmission service provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements. Preservation of CBM for a load-serving entity allows that entity to reduce its installed generating capacity below that which may otherwise have been necessary without interconnections to meet its generation reliability requirements. The transmission transfer capability preserved as CBM is intended to be used by the load-serving entities only in times of emergency generation deficiencies. *See* North American Electric Reliability Council, *Glossary of Terms Used in Reliability Standards,* (Effective April 1, 2005), (NERC Glossary) available at *ftp://www.nerc.com/pub/sys/all_updl/standards/sar/Glossary_07Feb06.pdf.*

[112] NERC defines TRM as the amount of transmission transfer capability necessary to provide reasonable assurance that the interconnected transmission network will be secure. TRM accounts for the inherent uncertainty in system conditions and the need for operating flexibility to ensure reliable system operation as system conditions change. *See* NERC Glossary.

transfer capability (TTC).[113] However, NERC's calculation methodology is not prescriptive; it establishes a framework for evaluating ATC, which leaves open to each transmission provider's interpretation and discretion the specific algorithm, data inputs and assumptions needed to assess ATC.[114] Consequently, transmission providers have developed numerous ways to evaluate ATC using their own algorithms, data and modeling assumptions.[115]

115. Although transmission providers across the Nation have developed various methodologies, in general, there are two main approaches to calculating ATC used in the industry. The first is the contract path approach, which is more commonly used by transmission providers in the Western Electricity Coordinating Council (WECC) region.[116] The contract path methodology derives ATC directly from predetermined TTC, ETC, CBM, and TRM values derived consistent with contract path transmission rights. The second method is the flowgate [117] approach, which is used more widely in the Eastern Interconnection.[118] The flowgate methodology is based on physical power flow models. The flowgate calculation first determines AFC and then converts AFC into ATC and derives TTC for the OASIS posting. The differences between the two approaches may not result in significantly different ATC values if consistent data inputs and industry acceptable modeling assumptions are used. Without a consistent and transparent approach to evaluating ATC, transmission customers will remain wary when service is denied and transmission providers will be the subject of suspicion and heightened scrutiny, especially given the increasingly congested state of the Nation's electric grid.

Consistency

116. Generally, transmission providers calculate ATC by creating a base model of their system using a set of data inputs and assumptions, which are determined by the transmission provider. The transmission provider uses the model to perform various computer simulations of the operations of its system to determine the levels of transfer capability available on the system. The types of data and assumptions used in the models include, for example, facility ratings, the operating status of facilities, and generation dispatch, which might be supported by history, transmission plans, or the judgment of the transmission provider. For example, a transmission provider could use its judgment to reduce a facility rating or model certain facilities as out of service, which would have the effect of calculating a lower TTC value. A transmission provider also may use generation dispatch assumptions to limit transfer capability that otherwise would have been available to independent generators, thereby favoring the transmission provider's own generation. A transmission provider usually assumes that designated network resources are dispatched in economic merit order. However, a transmission provider has the discretion to decide which of the generators that are not designated network resources will be modeled in-service. Assumptions like these influence the loading on transmission lines in the model and heavily influence the resulting ATC. Having standards in place that address the calculation of ATC components, data inputs, and modeling assumptions would help ensure non-discriminatory treatment by limiting a transmission provider's ability to use discretion to the disadvantage of competitors and the market.

117. As noted above, NERC does not have a formal definition of ETC. Without clear criteria for what should be included in a transmission provider's ETC, a transmission customer might not know whether ETC is being over- or underestimated. For example, a transmission provider could set aside more capacity for native load than is realistically expected to occur. This could happen if a transmission provider includes in ETC excess capacity for a load-serving entity (such as capacity to meet generation reserve requirements) but then also has a CBM component in its calculation of ATC that includes the same capacity. A transmission provider also could overestimate its ETC by double-counting the same transmission reservations in its ATC calculation. For example, this could happen if a transmission provider fails to replace a transmission reservation with the associated real-time schedule, and as a result does not release non-firm ATC. A consistent process for calculating ETC will limit the subjectivity of the transmission provider's decisions and provide a more uniform method for estimating ETC.

118. With respect to the modeling of a particular transaction, when information concerning the source is unknown, a transmission provider has the discretion to select which generator(s) will be used as a source.[119] There are no standards for how that modeling should be done and, consequently, a transmission provider could model a source using single or multiple generators by increasing (scaling up) their output. In general, modeling a transaction using multiple generators as a source is less conservative for the transmission system than modeling a transaction using a single generator as a source. Modeling a transaction using multiple generators as a source typically results in a higher ATC value. Conversely, when a transmission provider models a transaction using a single generator as a source, this can result in a lower ATC value depending on the location of the generator. Modeling of contingency outages used for calculating ATC is another area within the discretion of the transmission provider. Although the type of contingency, such as single contingency (n–1), is determined by governing reliability criteria,[120] the transmission provider determines which specific contingencies will be used for the ATC calculation. The common industry practice is to consider the loss

[113] NERC defines TTC as the amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way of all transmission lines (or paths) between those areas under specified system conditions. *See* NERC Glossary.

[114] *See* NERC, *Available Transfer Capability Definitions and Determination: A Framework for Determining Available Transfer Capabilities of the Interconnected Transmission Networks for a Commercially Viable Electricity Market* (1996) available at *ftp://www.nerc.com/pub/sys/all_updl/docs/pubs/atcfinal.pdf.*

[115] *See supra* note 59.

[116] *See, e.g.,* Determination of Available Transfer Capability within the Western Interconnection (June 2001), available at *http://www.wecc.biz/documents/library/procedures/ATC-apprdec01.pdf.*

[117] A flowgate is a designated point on the transmission system used in the modeling of power flows. While NERC currently does not have a formal definition for AFC, the power industry commonly defines AFC as a measure of the capability remaining on a flowgate for future uses, after considering the effect of prior sales. Mathematically, the industry measures AFC as AFC = Flowgate rating—[(base case flow)—(impacts of existing reservations)]—$\text{Flowgate}_{\text{CBM}}$—$\text{Flowgate}_{\text{TRM}}$.

[118] *See, e.g.,* PJM Manual 2: Transmission Service Request (April 14, 2005), available at: *http://www.pjm.com/contributions/pjm-manuals/pdf/m02v08.pdf*

[119] Transmission providers do not always know the generator used as a source of energy provided under contracts that qualify as designated resources; the only requirement is that the network customer have an executed contract that commits it to purchase noninterruptible power. *See Wisconsin Public Power Inc.* v. *Wisconsin Public Service Corp.,* 84 FERC ¶ 61,120 at 61,650–51 (1998).

[120] Standard TPL–001–0, Table I. Transmission System Standards—Normal and Emergency Conditions, NERC Reliability Standards for the Bulk Electric Systems of North America (effective April 1, 2005).

of each transmission facility at voltage 100 kV and above. However, the lack of standards governing transfer analysis allows the transmission provider to use its discretion to monitor outages only of facilities at 230 kV and above, ignoring the limitations that may exist for the loss of the facilities at lower voltages, such as 115 kV or 138 kV. Consequently, ATC values may vary substantially, with ATC being much higher when monitoring contingencies of facilities at 230 kV and above, and much lower while monitoring the loss of all facilities (voltage 100 kV and above).

119. Furthermore, in calculating ATC, transmission providers set aside a portion of transfer capability in the form of CBM and/or TRM to provide for adequate generation reserves and account for uncertainties or contingencies, respectively. Generally, CBM is the amount of firm transmission transfer capability held back by the transmission provider so that load-serving entities, whose loads are located on the transmission provider's system, can access remote generation reserve from interconnected systems in times of emergency generation deficiencies. Some believe it is necessary for transmission providers to set aside a portion of their TTC to ensure that their ties with other systems remain available for this purpose. There are no consistent industry-wide standards, however, for determining how much transfer capability should be set aside as CBM. There is also no common approach to whether the capacity is set aside for Native Load Customers, as defined in section 1.19 of the *pro forma* OATT, for retail load, or for all load-serving entities. The lack of consistent criteria and clarity with regard to the entity on whose behalf CBM has been set aside has the potential to result in the transmission provider setting aside capacity that it might not otherwise need to, thus increasing costs for native load customers and blocking other firm uses of the transmission system.[121]

120. Similarly, TRM is the amount of transmission transfer capability reserved by the transmission provider to ensure that the transmission network will be secure under a reasonable range of uncertainties in system conditions. Because TRM and CBM are both maintained in part for the loss of generators, there exists the possibility of double-counting reliability margins for the loss of the same generation.

121. Moreover, a transmission provider also can use more conservative inputs and assumptions for calculating ATC and performing system impact studies (that tend to minimize ATC) when it is assessing a long-term transmission service request, but use less conservative inputs and assumptions (that tend to maximize ATC) when it is performing system planning for retail native load. This creates the potential for undue discrimination where a transmission provider uses one set of data and assumptions to evaluate third party requests and another set of data and assumptions to plan its system to serve its own load.

Data Exchange Among Transmission Providers

122. The lack of a consistent ATC calculation methodology combined with limited coordination between transmission providers can result not only in inefficiencies but unjust and unreasonable terms and conditions of service, especially for a customer seeking contiguous transmission service from multiple transmission providers. The ATC values posted by a transmission provider are often inaccurate for reasons beyond the control of the transmission provider. A transmission provider may post ATC values in good faith and attempt to provide transmission service based on these values only to discover later that the transfer capability that it thought was available no longer exists due to decisions made by other transmission providers that it did not know about at the time it made its calculations. Accurate ATC calculation requires reliable and timely information about such things as load, generation dispatch, facility outages, and transactions on neighboring systems. Transmission providers also may apply differing assumptions and criteria to ATC calculations, which may produce wide variations in posted ATC values for the same transmission paths. All of these considerations make it difficult for an individual transmission provider that operates one part of an interconnected grid to calculate ATC accurately.

123. This lack of communication and coordination between transmission providers of ATC data can also affect reliability. As discussed above, a transmission provider could grant transmission service without being aware of the real impact that service may have on an adjacent transmission provider's system, thus degrading the reliability of the interconnected system. Inaccurate ATC values can cause overselling of transfer capability, which can lead to curtailments or transmission loading relief (TLR) actions to avoid exceeding thermal, voltage, and/or stability limits.

Transparency

124. As discussed, the lack of a consistent, industry-wide methodology for assessing ATC makes undue discrimination difficult to detect. This problem is further exacerbated by a lack of transparency surrounding the calculation methodology used by transmission providers. Although the Commission requires transmission providers to file their methodologies for calculating ATC in their tariffs, transmission providers often have responded by filing very general narrative descriptions of their calculation methodologies (often simply referring to the general NERC definition)[122] without further specification of the mathematical algorithm, data inputs, and modeling assumptions used to perform the calculation.

125. Other than the description of the ATC methodology provided in transmission providers' tariffs, third parties often have limited access to information concerning the specific algorithms, data and assumptions used by transmission providers to evaluate their ATC, which makes it difficult to verify or challenge a transmission provider's ATC calculations. The Commission requires each transmission provider to calculate and post ATC and TTC values for each posted path.[123] Transmission providers also are required to make publicly available, on request, all data used to calculate ATC and TTC for any constrained path.[124] Additionally, transmission providers are required to make publicly available, on request, system planning studies or

[121] The Commission has explained that the *pro forma* OATT requires both transmission customers and transmission providers using the transmission system to serve network load (including bundled retail native load) to designate their resources and loads so that the transmission customers and transmission providers would have no incentive to designate network resources above their needs and, in so doing, tie up valuable transmission capacity. *Aquila Power Corp.* v. *Entergy Services, Inc.*, 90 FERC ¶ 61,260, *reh'g denied*, 92 FERC ¶ 61,064 (2000), *reh'g denied*, 101 FERC ¶ 61,328 (2002), *aff'd sub nom. Entergy Services, Inc.* v. *FERC*, 375 F.3d 1204 (D.C. Cir. 2004) (*Aquila*).

[122] *See, e.g.*, the OATTs of Aquila, Inc., Southern, and Tucson Electric Power Company.

[123] *See* 18 CFR 37.6 (b) (2005). A posted path is defined as any control area to control area interconnection; any path for which service is denied, curtailed or interrupted for more than 24 hours in the past 12 months; and any path for which a customer requests to have ATC or TTC posted. *Id.* 37.6 (b)(1)(i).

[124] *Id.* 37.6 (b)(2)(ii). A constrained posted path is defined as any posted path having an ATC value less than or equal to 25 percent of TTC at any time during the preceding 168 hours or for which ATC has been calculated to be less than or equal to 25 percent of TTC for any period during the current hour or the next 168 hours. *Id.* 37.6 (b)(1)(ii).

network impact studies performed for customers to determine network impacts. Furthermore, subsequent to Order Nos. 888 and 889, the Commission required each transmission provider to post (and update) the CBM value for each path for which it already posts ATC and TTC, as well as a narrative explanation of its CBM practices.[125]

126. Yet, despite these requirements, third parties often are unable to gain access to sufficient information surrounding a transmission provider's ATC calculation methodology. As a preliminary matter, we note that while the OASIS requirements regarding the availability of information related to ATC and TTC calculations are still in effect, they have been affected by restrictions that have been placed upon the availability of critical energy infrastructure information (CEII) in the interest of national security.[126] Therefore, system planning and network impact studies and models typically are no longer available on a transmission provider's OASIS. Furthermore, transmission customers are often unable to access other information such as load flow base cases and associated files. In sum, although existing Commission regulations are intended to provide a certain level of transparency, this transparency is undermined by a number of factors, including the absence of detailed descriptions of the data inputs, assumptions, and criteria used to determine the data included in ATC calculations, as well as the inability of customers to access certain of this data because of, among other reasons, security concerns.

Recent Industry Efforts To Improve the Consistency and Transparency of ATC Calculations

127. The industry recently has taken some steps to address the lack of consistency and transparency in the way ATC is calculated. NERC formed a Long-Term AFC/ATC Task Force to review NERC's standards on ATC, which issued a final report in 2005 (NERC Report)[127] that made recommendations for greater consistency and greater clarity in the calculation of ATC. The task force also recommended greater communication and coordination of ATC information to ensure that neighboring entities exchange relevant information. Based on the recommendations in the NERC Report, NERC has two Standards Authorization Request (SAR) proceedings underway to revise the standards on ATC. The first SAR proceeding proposes changes to the existing standards on ATC to, among other things, further establish consistency (on a regional basis) in the calculation of ATC and to increase the clarity of each transmission provider's ATC calculation methodology. The second SAR proceeding proposes certain changes to NERC's existing standards on the ATC components of CBM and TRM. This proceeding also calls for greater regional consistency and transparency in how CBM and TRM are treated in transmission providers' ATC calculations. Also, based on the recommendations in the NERC Report, the North American Energy Standards Board (NAESB) has a proceeding underway to develop business practice standards to enhance the processing of transmission service requests, which use TTC, ATC and/or AFC.

128. Following the release of the NERC Report, the Commission issued the ATC NOI[128] seeking comments on the contents of the NERC Report. More specifically, the Commission sought comments on the NERC Report's recommendations on areas in which CBM and TRM could be more specific and whether these recommendations go far enough in promoting a common CBM and TRM methodology within each region. The Commission also sought comments on the definitions of ATC, AFC, CBM and TRM. The Commission also solicited comments on the advisability of revising and standardizing ATC, AFC, TRM and CBM values. In addition, the Commission sought comments on the advisability of developing interconnection-wide standards for the Eastern Interconnection and WECC. Finally, the Commission asked for comments on the most expeditious way to obtain industry-wide standards for ATC calculations.

129. Furthermore, in the NOI, the Commission sought comments on whether undue discrimination is most likely to occur in areas such as ATC calculation where the transmission provider retains discretion as to how to implement a particular tariff provision.

Comments

Comments on Consistency

130. Many commenters express general support for some level of increased consistency in ATC calculations.[129] Some commenters urge the Commission to develop a consistent, industry-wide methodology for calculating ATC.[130] Constellation asserts that although transmission providers need to be innovative and flexible in many respects, a requirement that all transmission providers use the same methodology to determine ATC would not only remedy the lack of clarity that surrounds these calculations and reservations, but would provide regulatory certainty and assist transmission customers in predicting the outcome of transmission service requests. This, in turn, Constellation suggests, would expand the commercial opportunities for transmission customers. According to Alcoa, AWEA and Renewable Energy, the industry-wide methodology should be a flow-based methodology, rather than a contract path methodology because they believe that a flow-based analysis provides a more realistic view of actual system usage and results in a more accurate assessment of ATC. Exelon further suggests that this uniform methodology should also apply to all transmission providers, including RTOs.

131. Other commenters argue against a one-size-fits-all approach, but rather express a preference for greater uniformity at a regional level to recognize regional differences.[131] These commenters suggest that due to differences in transmission systems or regions, it may not be practical or possible to standardize the ATC calculation methodology on an industry-wide basis. For example, Powerex cautions that nationwide standardization may not take into account the unique characteristics of particular systems or regions, such as the differences attributable to the West's contract-path model and the East's flow-based model, as well as differences attributable to the primarily hydro-

[125] *Capacity Benefit Margin in Computing Available Transmission Capacity*, 88 FERC ¶ 61,099 (1999) (CBM Order).

[126] *See Critical Energy Infrastructure Information,* Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003), *order on reh'g,* Order No. 630–A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003), *order on clarification,* Order No. 662, 70 FR 37031 (Jun. 28, 2005), FERC Stats. & Regs. ¶ 31,189 (2005); *see also* 18 CFR 388.113 (2005).

[127] *See supra* note 115.

[128] *Supra* note 9.

[129] *E.g.,* Alcoa, Ameren, AWEA, Calpine, Constellation, Cottonwood ATC NOI Comment, ELCON, Exelon, FTC ATC NOI Comment, Midwest ISO ATC NOI Comment, Midwest SATS, New York Commission ATC NOI Comment, North Carolina Commission, Occidental, South Carolina E&G, TAPS, and TransAlta.

[130] *E.g.,* Alcoa, AWEA, Constellation, Exelon, Occidental, and Renewable Energy.

[131] *E.g.,* Alberta Intervenors, APPA, Bonneville, International Transmission, ISO/RTO Council, LDWP, MidAmerican, Nevada Companies, Powerex, Progress Energy, Public Generating Pool, Public Power Council, Salt River, Santa Clara, Snohomish, Tacoma Power, TANC, and TDU Systems.

based systems in the Pacific Northwest.[132] Similarly, TANC argues that flowgate terminology and application in ATC calculation should not be required in the West because it does not adequately represent the nature of the many transmission constraints in the West. Other commenters caution that too much uniformity of the ATC calculation methodology could have an adverse effect on grid reliability.[133] In addition, some commenters urge the Commission not to adopt an ATC methodology that is so prescriptive that it inhibits new or better practices or imposes a wholesale revision of accepted market designs and processes that are working within established markets.[134]

132. Several commenters argue against any efforts to further standardize ATC calculations.[135] In its comments filed in the ATC NOI proceeding, LDWP asserts that the alleged problems with ATC are overstated. Moreover, it argues, the benefits of squeezing additional ATC from existing systems have not been established given that transmission customers can already request any capacity they need regardless of the posted ATC and transmission providers are required to make a good-faith effort to evaluate each request. Several commenters argue that the circumstances of individual transmission customers vary and often ATC calculations rely on the individual transmission provider's knowledge of its facilities and system conditions.[136] For example, Southern contends that too many factors go into the calculation of ATC to make the adoption of a static set of standards feasible. In fact, Southern and EEI maintain, standardization of ATC calculations is inconsistent with maintaining reliability because the circumstances of transmission providers vary significantly, and they must operate their systems based on their specific circumstances. In addition, LG&E maintains that standardizing ATC will not necessarily eliminate the need for TLR procedures to deal with load forecast errors and unplanned generation and transmission outages. Furthermore, some commenters argue that increased uniformity could impose significant costs upon utilities.[137]

133. Some commenters urge the Commission to increase the consistency of the elements of the ATC calculation, such as the kind of data inputs that transmission providers consider when evaluating ATC—including load levels, generator outage information, transmission outage information and generation dispatch information.[138] Exelon also urges the Commission to establish the assumptions that transmission providers use in their ATC methodologies—such as how transmission reservations are accounted for and which reservations to model. Exelon also cites an example of modeling transaction counterflows, noting that uniform rules for data inputs are needed to ensure that transaction counterflows are modeled identically in both the planning and ATC/AFC calculation processes. In addition, commenters urge the Commission to establish the procedures for determining ATC (and its components) and to require a transmission provider to show that it has properly followed all required procedures.[139] Among other things, commenters suggest that the Commission should establish how frequently ATC is calculated, how frequently inputs are updated, require transmission providers to determine AFC instead of ATC, and require transmission providers to recognize all third-party flowgates that are requested to be monitored. In addition, several commenters state that the Commission should require that the methodology and inputs for ATC calculations be consistent with the transmission provider's planning or operating criteria.[140]

134. Several commenters urge the Commission to allow the industry, working through NERC and NAESB, to complete efforts already underway to further increase consistency of ATC (and its components), as well as certain related business practices.[141] However, many of these commenters urge the Commission to give the industry, working through these organizations, specific guidance on what issues to decide and the parameters for the discussions.[142] Furthermore, commenters state that the Commission should establish a date certain for completion of these industry efforts,[143] and should also take an active role in the process.[144]

135. Other commenters suggest that the Commission should require that an independent entity develop and/or monitor a transmission provider's ATC methodology and its ATC calculations.[145] For example, Constellation states that it does not believe that the solution is to prohibit the transmission provider entirely from exercising its discretion, but instead to require transmission providers to retain an independent entity that can perform certain functions on a consistent, unbiased basis. In addition, the Arkansas Commission asserts that section 1281 of EPAct 2005 [146] gives the Commission the authority to require the use of an independent coordinator of transmission to provide independent and verifiable transparency over critical Order No. 888 functions, such as ATC calculations.

136. Several commenters specifically address the lack of consistency in the industry on the definition and use of CBM and TRM. For example, TAPS notes that NERC does not require any transmission provider to reserve CBM. In addition, TAPS states, even in those regions that use CBM, there is often no regional methodology; it is up to the vertically integrated transmission provider to determine whether it wants to reserve CBM at all and at which interfaces, with no effective review of that determination. TAPS also states that TRM should be clearly defined and, if truly required for reliability, then all transmission providers should reserve it. According to TAPS, the Commission should define TRM in a manner that leaves no discretion as to whether, where, and how much capacity to set aside. EPSA also notes that there is a disconnect between the planning and expansion processes and the assumptions transmission providers use to calculate CBM and TRM.

137. TANC states that the Commission should closely examine the necessity of CBM in ATC calculations. Bonneville argues that there should only

[132] Accord LDWP ATC NOI Comment, Public Power Council, Salt River, Snohomish, Tacoma, and TANC.

[133] *E.g.,* NERC ATC NOI Comment, Public Power Council, and TVA.

[134] *E.g.,* ISO/RTO ATC NOI Comment and Powerex.

[135] *E.g.,* Cinergy, EEI, LG&E, LDWP ATC NOI Comment, National Grid, PPL, Public Generating Pool, San Diego G&E, Southern, TVA, and Xcel.

[136] *E.g.,* Southern and TVA.

[137] *E.g.,* International Transmission and LG&E.

[138] *E.g.,* Exelon and TDU Systems.

[139] *E.g.,* Ameren and Exelon.

[140] *E.g.,* Exelon, ISO/RTO ATC NOI Comment, MISO, and NERC.

[141] *E.g.,* Ameren, APPA ATC NOI Comment, Duke, EEI, Exelon, International Transmission Company ATC NOI Comment, ISO/RTO Council ATC NOI Comment, KCP&L, MidAmerican ATC NOI Comment, MISO ATC NOI Comment, Progress Energy, Southern, TAPS, TDU Systems, TransAlta, and WestConnect ATC NOI Comment.

[142] *E.g.,* APPA ATC NOI Comment and International Transmission ATC NOI Comments.

[143] *E.g.,* Duke and Exelon.

[144] *E.g.,* APPA ATC NOI Comment, TAPS, and TransAlta.

[145] *E.g.,* Arkansas Commission, Calpine, Constellation, EPSA, New York Commission, Occidental, and TDU Systems.

[146] EPAct 2005 sec. 1281(to be codified at section 220 of the FPA, 16 U.S.C. 824t), which concerns electricity market transparency rules.

be one commercial margin instead of multiple margins (TRM, CBM, and others).

Comments on Data Exchange Among Transmission Providers

138. Several commenters argue that the Commission should establish standards for resolving seams issues between transmission providers where each transmission provider uses a different methodology for calculating ATC.[147] Constellation and BC Transmission assert that when different transmission providers have different methods for determining ATC, this can lead to inefficiencies, including market confusion, lost sales/purchase opportunities, and unnecessary curtailments.

139. Commenters identify various elements of the ATC calculation methodology that they argue should be more consistent. For example, BC Transmission states that some of the elements that are calculated differently at the seams include the level of TRM, the level of CBM, the approach regarding the sale (or not) of TRM as non-firm capacity, assumptions regarding controlling interchange and assumptions regarding operating conditions. Similarly, MidAmerican in its response to the ATC NOI suggests that greater coordination is needed on partial path review, policies for decrementing AFC and redispatch policies. For example, MidAmerican references problems associated with coordination between transmission providers on partial path treatment. Specifically, when transmission service involves a path across multiple systems, a given flowgate may be evaluated several times by various providers on the transmission path. Because of a lack of coordination between these providers, AFC on the flowgate may be decremented multiple times for the same transmission service request, and service may be denied even when the true available capacity on the flowgate is sufficient to allow the request to be granted. Exelon also states that certain data inputs must be coordinated across all transmission providers in an interconnection including load levels, transmission outages, generation outages and generation dispatch. In addition, Exelon states, the Commission should establish how transmission providers account for transmission reservations in an ATC/AFC calculation.

140. Moreover, NY Commission suggests that this problem goes beyond the non-independent transmission providers. According to NY Commission, in order for RTOs to properly determine tie flow limits, they need access to certain information from the control region on the other side such as load levels and distributions, generator dynamic capability and expected outputs, phase shifter positions and standard contingencies required by that control area. In addition, NY Commission states, these inputs need to be updated daily.

141. Finally, Alcoa states that the potential for underestimating ATC is likely another consequence of the fundamental conflict between the contract path model and the electricity path model of contracting for electric energy. According to Alcoa, outside of ISO/RTO systems, utilities may not have enough data available to compute ATC, since they may not be able to accurately complete all relevant parallel path transactions.

Comments on Transparency

142. Commenters are overwhelmingly in favor of greater transparency in the ATC calculation methodology to provide more assurance that a transmission provider is not performing its ATC calculations in an inconsistent or unduly discriminatory manner.[148] EEI suggests that transmission providers could make their base case load flow studies on which they base their calculation of ATC available to transmission customers, subject to security and confidentiality protections. Other commenters state that greater transparency could be achieved through the imposition of additional posting requirements on OASIS.[149] These commenters argue that the Commission should require transmission providers to post their discrete methodologies and algorithms for evaluating ATC, as well as their transmission modeling information and their various assumptions. Commenters further suggest that transmission providers should be required to provide information regarding planned outages, and to ensure consistent treatment of outage information between control areas.[150]

143. In its reply comments, Southern acknowledges that greater transparency would reduce concerns of undue discrimination, but cautions the Commission against imposing unnecessary and duplicative posting requirements and notes that much of the information that commenters have asked the Commission to make transparent is in fact already publicly available through a variety of sources.

144. In addition, some commenters urge the Commission to impose meaningful reporting requirements.[151] In this regard, Constellation asserts that the Commission should modify the *pro forma* OATT to require that transmission providers post systematic, timely and accurate reporting of certain service metrics such as transaction requests approved, rejected, confirmed, and curtailed. Similarly, Cottonwood states that transmission providers should be required to provide information detailing why a particular transmission request was denied and whether there are other available alternatives. In addition, several commenters argue that transmission providers also should be required to post their relevant business practices, operating standards, protocols and internal guidelines that affect transmission service.[152] TDU Systems also urge the Commission to require transmission providers to explain why transactions are allowed to flow even when the posted ATC value was zero.

145. EPSA argues that capacity is unnecessarily held from the market when transmission providers reserve excessive amounts for their native load and when they fail to make capacity available through redispatch. EPSA states, however, that there is no way of knowing whether there is a hoarding problem because there is no requirement to post the necessary real time information on transmission utilization, and recommends a requirement to post such information. Powerex contends there is an incentive for transmission providers to hoard because grandfathered or other firm rights held by the transmission provider to serve native load are subsequently used for wholesale marketing purposes. It further states, however, that evidence of anticompetitive practices is difficult to obtain because of a lack of transparency. Powerex supports increased requirements for both uniform and transparent ATC calculation.

146. Several commenters urge the Commission to establish compliance review procedures and impose sanctions for violations to ensure that transmission providers are accountable

[147] *E.g.,* BC Transmission, Constellation, Exelon, NY Transmission, Renewable Energy, and TDU Systems.

[148] *E.g.,* Alcoa, Ameren, APPA, Calpine, CEOB, Cinergy, Constellation, Cottonwood, Duke, EEI, ELCON, HQ Energy, LDWP, MidAmerican, Midwest ISO, Midwest SATs, Powerex, PPL, Progress Energy, Public Generating Pool, Public Power Council, Salt River, Southern, TANC, TAPS, TDU Systems, TransAlta, and TVA.

[149] *E.g.,* Calpine and PPL.

[150] *E.g.,* H.Q. Energy and Powerex.

[151] *E.g.,* Constellation, Cottonwood, and TDU Systems.

[152] *E.g.,* Powerex and TransAlta.

for ensuring that their ATC calculations are correct.[153] In its response to the ATC NOI, Cottonwood states that the Commission should develop specific tests (benchmarks) to monitor transmission providers' performance. In addition, HQ Energy states that the Commission should conduct periodic reviews of whether non-independent transmission providers have properly calculated and allocated ATC. ELCON states that the Commission should place the burden of proof to depart from its ATC methodology on the transmission provider and include specific penalties in the tariff for transmission providers that are found to be in violation.

147. HQ Energy and Powerex also state that the Commission should require transmission providers to ensure that staff is available at all times to respond to customer inquiries regarding real-time transactions.

Discussion

148. We propose to address the potential for remaining undue discrimination in the determination of ATC by requiring industry-wide consistency and transparency of certain definitions, data, modeling assumptions and components of ATC. We propose to provide general guidance regarding the aspects of ATC calculation that we believe should be more consistent and direct public utilities, working through NERC and NAESB, to use our guidance to revise the relevant standards and business practices. In addition, we propose to require increased detail in the *pro forma* OATT regarding the method of calculating ATC and to amend our OASIS regulations to require increased transparency.

149. Though NERC and NAESB currently are working on certain proposals to address the problems we have identified,[154] we are concerned that without guidance, direction and a firm deadline, these industry developments may not succeed due to other conflicting priorities. We believe that the existing NERC and NAESB processes are well-suited to achieving greater consistency in ATC calculations. It is our expectation that NERC and NAESB will expand on the work they have already undertaken to achieve the goals we propose to set out for them.

150. We propose to take this action pursuant to our obligation under FPA section 206 to remedy undue discrimination in the provision of transmission service. Transmission providers in general enjoy substantial discretion in establishing and interpreting the specific algorithms, data, and assumptions needed to assess ATC. Though we do not believe it is possible or necessary to entirely eliminate discretion, unchecked discretion affords a transmission provider the ability and opportunity to discriminate in its favor (and its affiliate's favor) against third parties in how it calculates and allocates ATC and, therefore, may be unjust, unreasonable, unduly discriminatory and preferential. Transmission providers have an incentive to understate ATC on transmission paths that would be valuable to power sellers that are competitors to the transmission providers' own (or their affiliates') power sales. Where transmission congestion exists, the methodology for calculating ATC will effectively determine whether competitors have access to the transmission grid, and the lack of any consistent methodology for calculating ATC gives transmission providers excessive discretion in making this determination.

151. The lack of consistency and detail in the determination of ATC can facilitate undue discrimination in a variety of ways. Transmission providers may use generation dispatch assumptions that result in limited capacity being available to merchant generators. They also may use different inputs and assumptions for purposes of calculating ATC for third parties than they do for system planning for retail native load. As noted above, a transmission provider could reduce a facility rating or model certain facilities as out of service, which would have the effect of underestimating TTC. In determining ETC, transmission providers have discretion to determine the capacity needed and set aside for native load usage. Each of these exercises of discretion has a significant effect on ATC.

152. The lack of transparency into how a transmission provider calculates and allocates its ATC (including all assumptions and data inputs) makes it difficult to detect discriminatory behavior. This lack of transparency frustrates and increases the costs of compliance and enforcement efforts. Many transmission providers have urged the Commission to provide greater clarity in the rules for OATT service,[155] particularly given the threat of the Commission's new civil penalty authority.

153. In addition to our preliminary finding that the lack of consistent, industry-wide ATC calculation standards is unjust and unreasonable under FPA section 206, we believe that it poses a threat to the reliable operation of the bulk-power system. A transmission provider needs to know how much electricity its system can carry. The lack of a consistent, industry-wide methodology for evaluating ATC and the lack of data sharing among transmission providers often leads to problems in determining the appropriate ATC value. Despite a transmission provider's good faith attempt to calculate and post accurate ATC levels, it can find that transmission that it thought was available on its system no longer exists because it was unaware of decisions by other transmission providers. This, in turn, can threaten the reliable operation of the interconnected transmission system.[156]

154. As a result of reliability effects of inconsistent ATC calculations, our proposal for greater consistency and transparency also is supported by our new authority under section 215 of the FPA, which gives the Commission jurisdiction to certify an Electric Reliability Organization (ERO) and to approve reliability standards that are just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also has authority to order the ERO to submit a reliability standard that the Commission considers appropriate to implement FPA section 215.[157] On April 4, 2006, NERC submitted an application to be certified as the ERO, as well as proposed reliability standards.[158] In this NOPR, we direct our guidance to public utilities and recommend that they implement our direction by working with NERC. However, this is not intended to prejudge the outcome of the ERO proceeding. Though the Commission

[153] *E.g.,* Cottonwood ATC NOI Comment, ELCON, HQ Energy, NRECA, Occidental, and Powerex.

[154] We understand that two NERC standard authorization requests related to ATC/ TTC/AFC and CBM/TRM were approved earlier this year, and that drafting of the standards' revision is underway. We further understand that NAESB has a concurrent drafting effort underway for associated business practices that will follow a coordinated path with the NERC process. See *http://www.nerc.com/filez/standards/MOD-V0-Revision.html.*

[155] *E.g.,* Ameren, APPA ATC NOI Comments, Duke, EEI, Exelon, International Transmission Company ATC NOI Comments, ISO/RTO Council ATC NOI Comments, KCP&L, MidAmerican ATC NOI Comments, MISO ATC NOI Comments, Progress Energy, Southern, TAPS, TDU Systems, TransAlta, and WestConnect ATC NOI Comments.

[156] According to NERC, ''the lack of standardization and more ignificantly, limited coordination can negatively impact both the market, through the need for a large number of [TLR] actions (or curtailments in WECC) and, on occasion, reliability when even the use of TLRs provides insufficient relief on some critical interfaces.'' See NERC Report at 1.

[157] Section 215(d)(5).

[158] *See* Docket Nos. RR06–1–000 and RM06–16–000.

will act independently on the reliability standards proposed by NERC in Docket No. RM06–16–000, we believe it is prudent to provide our guidance now on NERC's reliability standards related to ATC by providing specific direction on what should be more consistent and a timeframe for completion of NERC's efforts.[159] As we indicated above, the lack of consistency, data exchange and transparency in ATC calculations not only can increase the opportunities for undue discrimination but also can threaten reliability. We therefore believe that Commission action pursuant to FPA section 215 may be appropriate on reliability standards related to ATC calculation. Any action on these reliability standards that is taken in Docket No. RM06–16–000 (the ERO standards rulemaking) will be coordinated and consistent with our determinations regarding ATC calculation in this proceeding.[160]

Consistency

155. The Commission proposes to require public utilities, working through NERC, to develop the standards we set forth below within 6 months of the final rule in this proceeding. Consistent with NERC's existing efforts, we propose to require the development of standards for: (1) ATC/AFC, TTC/Total Flowgate Capacity (TFC), ETC, CBM, and TRM calculation methodologies, (2) data inputs, (3) modeling assumptions, (4) ATC calculation frequency, and (5) data exchange and coordination processes. We further propose to require public utilities, working through NAESB, to work with NERC to identify the appropriate business practices to complement the standards developed by NERC. We discuss below each of the elements for which we propose to require more consistency. We seek comment on these elements of the ATC calculation and, in particular, whether certain elements are more susceptible to further consistency than others and whether certain elements should be prioritized over others because they represent the source of most disputes between transmission providers and customers. We recognize the need to focus on those elements of the ATC calculation that are most susceptible to further consistency and most important in terms of eliminating opportunities for undue discrimination.

156. The Commission recognizes that transmission providers use several basic types of ATC calculation methodologies (with various permutations), and does not believe that a single ATC calculation methodology must be applied by all transmission providers.[161] However, we agree with commenters who argue that the amount of discretion in the existing ATC calculation methodologies gives transmission providers the ability and opportunity to unduly discriminate against third parties. Accordingly, we propose to achieve greater consistency in ATC calculations by directing the development of consistent definitions of the components of ATC, as well as consistent data inputs, data exchange and coordination protocols, and modeling assumptions, as discussed further below. We believe that this level of consistency will go a long way toward producing more coherent and uniform determinations of ATC across a region, thereby helping to eliminate the potential for undue discrimination.[162]

157. We propose to direct public utilities, working through NERC, to develop consistent practices for TTC/TFC calculation methodologies. We recognize that the NERC reliability regions have historically calculated transfer capability using different approaches.[163] However, we expect that guidelines can be developed for the calculation of transfer capability that use a common approach to model power transfers. In addition, we believe that the criteria used for identifying flowgates and determining TTC/TFC can be more consistent.

158. The Commission believes that the lack of consistency of ETC permits too much discretion in determining how much capacity a transmission provider sets aside for native load, including its network customers. We believe that the development of an industry-wide methodology can limit this discretion. Therefore, we propose to require the development of a consistent methodology for determining the capacity needed and set aside for native load usage. In addition, we propose that accounting for transmission reservations in an ATC/AFC calculation also should be more consistent. Presently, there are two main methods in use. One method models all ''appropriate reservations'' [164] in the power flow base case model. The other method models only those reservations that are expected to be actually scheduled and accounts for others by decrementing flowgate AFC. It is important for consistency to use the same calculation technique when modeling these types of reservations. Therefore, we propose that public utilities, working through NERC, establish and specifically identify which reservations they use in determining ETC.

159. The Commission has previously addressed the lack of a consistent industry-wide methodology for determining CBM. Following a two-day technical conference, the Commission held in the CBM Order [165] that transmission providers continue to wield significant latitude in interpreting how CBM is determined. The Commission directed that the CBM set-aside be more transparent, more accurate, and more widely available.[166] We remain concerned, however, that transmission providers have preferential access to the interface capacity that is set aside. This interface capacity is paid for by all transmission customers whether or not they receive a benefit from the set-aside. In general, we believe that the latitude associated with CBM undermines the certainty and transparency that is needed for non-discriminatory, open-access transmission service.

160. The current *pro forma* OATT offers two means of reserving transfer capability, either of which implicitly provides some financial discipline to overreservations. The first is the requirement to designate a network resource on the other side of the interface and assume the associated financial responsibility of either owning the resource or executing a firm power purchase agreement. The other is to contract for firm point-to-point service on the interface, which requires the payment of a point-to-point reservation charge. In either case there is a disincentive to reserving transfer capability simply to prevent someone else from using it on a firm basis. With

[159] In this NOPR, we direct our guidance to NERC, though the reliability standards relating to ATC ultimately will be adopted by the ERO.

[160] We note that Commission staff recently released a preliminary assessment of the proposed ATC-related reliability standards, stating that they ''may result in unnecessary regional variations not justified by technical differences and inconsistent applications.'' Staff Preliminary Assessment of the North American Reliability Council's Proposed Mandatory Reliability Standards at 80 (May 11, 2006).

[161] For example, there are two primary ATC calculation methodologies: The contract path approach and the flowgate approach. *See generally* P 115. However, the ATC values that result from application of either method should largely be the same if consistent data inputs and modeling assumptions are used.

[162] As discussed further below, for consistency to be fully effective, it should be coupled with increased transparency. As such, we also propose greater transparency below.

[163] One approach models power transfers by scaling up/down the load, a second approach scales generation up/down, and yet another approach uses a combination of changes in load and generation.

[164] ''Appropriate reservations'' takes into account the time frame (*e.g.*, yearly, monthly) and ATC product (*e.g.*, firm, non-firm) being calculated.

[165] *Capacity Benefit Margin in Computing Available Transmission Capacity*, 88 FERC ¶ 61,099 (1999) (CBM Order).

[166] CBM Order at 61,237–38.

these processes in mind, the Commission has identified three possible options to provide the necessary certainty, transparency, and financial discipline necessary to remedy the potential for undue discrimination associated with inappropriate ATC set-asides for CBM. These options need not be mutually exclusive.

161. One option is to require that clear standards be developed for how the CBM value should be determined and allocated across transmission paths, and for which customers CBM should be used.[167] Consistent with the standards development process that is already in progress, we propose that these standards specify how CBM should be reserved to allow any load-serving entity to meet generation reliability criteria on a nondiscriminatory basis. In addition, we propose that NERC specify emergency generation deficiency conditions during which a load-serving entity will be allowed to use the transfer capability reserved as CBM. We believe that CBM should be reserved only when there is insufficient local generation capacity to meet generation reliability standards, and it should always have a zero value in the calculation of non-firm ATC.

162. Another approach may be to develop a specific charge for setting aside ATC for CBM. This approach would treat CBM as a service that would be available to customers serving load within the transmission provider's service area. To do this, the Commission would propose that an entity for which transfer capability has been set aside to meet generation reliability criteria be charged a separate rate for this service. We seek comment on this proposal to charge a separate rate, as well as comment on the potential impacts on overall rates and revenues. We also seek comment on whether there are credible situations in which the proposal would not be feasible. Commenters are encouraged to provide specific examples.

163. A third option may be to eliminate CBM and replace it with specific transfer capability reservations associated with designated network resources. In several cases, the Commission addressed instances when transmission providers had taken advantage of their ability to preserve interface capability to serve their own load while limiting the ability of competing suppliers to access customers on their systems. In these orders, the Commission position was that if a utility wanted to use firm transmission capacity on an interface to serve its native load, it was required to designate a network resource associated with that capacity on the other side of the interface pursuant to the requirements of the *pro forma* OATT.[168] Specifically, the Commission stated that the *pro forma* OATT requires the transmission provider to designate all network resources, including those acquired for the purpose of meeting generation reserves, in the same manner as network customers do.[169] The retention of this obligation would require the transmission provider to replace any existing set-aside of firm transfer capability as CBM with reservations for specific designated resources. We seek comment on the reasonableness of eliminating CBM and any impacts on the reliable operation of the transmission system. Commenters are encouraged to provide specific examples of transmission providers that currently do not use CBM and, alternatively, conditions under which CBM must be used. We also ask for comments on how eliminating CBM would affect the ability of load-serving entities to meet existing generation reliability adequacy requirements.

164. The Commission proposes that public utilities, working through NERC, develop clear standards for how TRM is determined, allocated across transmission paths, and used. In addition, we propose to require that the standards ensure that there will be no contingency double-counting when calculating TRM, TTC and CBM. We also propose that the standards developed should specify the uncertainties that are accounted for in TRM and the methods used to determine their impacts on TRM values. The Commission proposes that TRM can be used to accommodate uncertainties such as: (1) Load forecast and load distribution error, (2) variations in facility loadings, (3) uncertainty in transmission system topology, (4) loop flow impact, (5) variations in generation dispatch, including intermittent resources, (6) automatic sharing of reserves, and (7) other uncertainties identified through the NERC forums.

165. The Commission acknowledges that accurate data and system models are essential to accurately simulate the performance of the electric system when calculating ATC. The data and models used by the transmission provider should be consistent, to the maximum extent practicable, with the data and models used for the planning, operation, and expansion of the transmission system. While NERC's current ATC-related standards (MOD–001—MOD–009) require that steady state and dynamic data be submitted and that steady state and dynamic system models be prepared, there is no requirement to periodically benchmark these models and appropriately modify them against actual system events.[170] Therefore, the Commission proposes that public utilities, working through NERC, modify the ATC-related standards to incorporate a requirement for the periodic review and modification of these models (including load flow base cases, short circuit data, transient and dynamic stability simulation data, contingency,[171] subsystem and monitoring files, and production cost models), in order to ensure that they are up to date.

166. Modeling assumptions are a crucial element in the calculation of ATC. The Commission proposes that public utilities, working through NERC, develop consistent assumptions for use in ATC determinations. The Commission proposes that the assumptions used in the calculation of ATC be made consistent among transmission providers, to the maximum extent practicable. In general, the Commission believes that the assumptions used in the determination of ATC should be consistent with those used when planning the operation and expansion of the transmission system. This is necessary to remedy the potential for undue discrimination between the manner in which a transmission provider plans and operates its system to serve native load and the manner in which it calculates ATC for service to third parties. Consequently, the models for short- and long-term ATC calculation should be developed using consistent assumptions regarding the load level, generation dispatch, transmission and generation facilities maintenance schedules, contingency outages and topology as those used in the planning for operation and expansion. In addition, the long-term ATC models should rely to the maximum extent practicable upon the

[167] NERC has already contemplated developing a standard to address CBM issues. *See http://www.nerc.com/~filez/standards/MOD-V0-Revision.html.*

[168] *See Aquila supra* note 121; *see also Morgan Stanley Capital Group* v. *Illinois Power Co.*, 83 FERC ¶ 61,204, *clarified*, 83 FERC ¶ 61,299 (1998), *order on reh'g*, 93 FERC ¶ 61,081 (2000).

[169] *Wisconsin Public Power Inc. SYSTEM* v. *Wisconsin Public Service Corp.*, 83 FERC ¶ 61,198 at 61,857–58 (1998).

[170] *See* U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, Recommendation Number 24 (April 2004). *See http://reports.energy.gov/.*

[171] Contingency files should contain information on special protection schemes and remedial action plans.

same assumptions regarding new transmission and generation facilities additions and retirements as those used in the planning for expansion.

167. More specifically, the Commission proposes to direct public utilities, working through NERC, to establish consistent assumptions that are related to the modeling of: (1) Representative load levels, (2) generation dispatch, (3) transmission reservations and (4) counterflows, in addition to any other modeling assumptions identified by NERC. Regarding the assumptions used for load level modeling in the ATC calculation, the Commission proposes to require all transmission providers to have a consistent approach to modeling of load levels. With respect to the base generation dispatch, we propose that public utilities, working through NERC, establish a method for determining which generators should be modeled in service, including guidance on how independent generation should be considered. With respect to modeling of particular transactions, the Commission believes that a consistent approach is needed on how to simulate power flows from points of receipt to points of delivery when sources are unknown. Accounting for transmission reservations in an ATC/AFC calculation also should be consistent.[172] We note that the purpose of more consistent modeling assumptions is to eliminate discretion and the potential for undue discrimination. This proposal is not intended to change the manner in which native load customers are served. We seek comment on whether (and, if so, how) this proposal would affect service to native load customers.

168. The Commission also supports the development of clear standards on how often ATC/AFC and its individual components are calculated and updated. The Commission proposes that public utilities, working through NERC and NAESB, develop standards requiring that the calculation be performed on a consistent time interval among transmission providers and in a manner that closely reflects the actual topology of the system concerning generation and transmission outages, load forecast, interchange schedules, transmission reservations, facility ratings, and other necessary data. The Commission also supports uniform updating of ATC values and components by adjacent control areas.

169. The Commission believes that significant improvements in the communication, coordination, and exchange of data across all transmission providers in an interconnection are needed to produce accurate determinations of ATC. Therefore, we propose that public utilities, working through NERC, develop consistent protocols that would enable and require the exchange of data among transmission providers. We propose that the following data, at a minimum, should be exchanged among transmission providers for the purposes of ATC modeling: (1) Load levels, (2) transmission planned and contingency outages, (3) generation planned and contingency outages, (4) base generation dispatch, (5) existing transmission reservations, including counterflows, (6) ATC calculation frequency, and (7) source/sink modeling identification. In addition, NERC may identify other data needs through the standards development process. We seek comment as to how much data sharing is workable; whether there are additional data that should be provided; whether access to such data should be limited to transmission providers; and if there are existing forums by which these or similar data are already shared.

170. In order to facilitate the process for achieving consistency in ATC calculations we have proposed in this NOPR, the Commission directs Staff to hold a technical conference. The technical conference will be transcribed to provide the Commission and NERC a record of the comments received at the conference. The Commission will provide further guidance regarding the date of the technical conference and the topics it intends to address at the technical conference in a subsequent notice.

Transparency

Pro forma OATT

171. Though the Commission's requirement that a transmission provider describe its ATC calculation methodology in its OATT has not changed, that requirement has been interpreted in various ways. Some transmission providers post a detailed explanation of how they calculate ATC, while other transmission providers post very general descriptions that fail to offer sufficient detail for third parties to understand how ATC has been derived. The Commission is concerned that the lack of transparency in some of the descriptions provided by transmission providers gives these transmission providers too much discretion to change ATC practices without sufficient oversight and review. The Commission also is concerned that this lack of transparency could allow transmission providers to unduly discriminate against their competitors when allocating transmission service. We agree with commenters that greater transparency is needed into how transmission providers calculate and allocate ATC. Accordingly, in order to ensure that transmission service is provided in a nondiscriminatory manner, we propose to require transmission providers to take certain measures to make their ATC calculation process more transparent. We believe that these proposed changes will give transmission customers access to sufficient information to be able to examine the integrity of the process. Moreover, our proposal for greater consistency in the way ATC is calculated should aid in transparency because there will be far fewer differences in the way individual transmission providers calculate ATC. This will make it less difficult to determine whether ATC is being calculated in an unduly discriminatory manner.

172. Specifically, we propose to require transmission providers to include, at a minimum, in Attachment C of their OATT, the following information concerning their ATC calculation methodology (including the calculation of AFC, if applicable). First, we propose to require transmission providers to state their specific mathematical algorithm used to calculate their firm and non-firm ATC (and AFC, if applicable) for their scheduling horizon (same day and real-time), operating horizon (day ahead and pre-schedule) and their planning horizon (beyond the operating horizon). Second, we propose that transmission providers provide a process flow diagram that illustrates the various steps through which the ATC/AFC is calculated.

173. In addition, we propose to require transmission providers to include in Attachment C a detailed explanation of how each of the ATC components is calculated for both the operating and planning horizons. Thus, for TTC, a transmission provider should: (1) Explain its definition of TTC; (2) explain its TTC calculation methodology (*e.g.*, load flow, short circuit, stability, transfer studies); (3) list the databases used in its TTC assessments; and (4) explain the assumptions used in its TTC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

[172] Currently, one method models all appropriate reservations in the power flow base case model, when another models only those reservations that are expected to be scheduled, and accounts for others by decrementing flowgate AFC.

174. For ETC, we propose to require a transmission provider to explain: (1) Its definition of ETC; (2) the calculation methodology used to determine the transmission capacity to be set aside for native load and non-OATT customers; (3) how point-to-point service requests are incorporated; (4) how rollover rights are accounted for; and (5) its processes for ensuring that non-firm capacity is released properly (*e.g.*, when real time schedules replace the associated transmission service requests in its real-time calculations). With regard to (5), we seek comment on whether transmission providers currently are keeping track of when firm service reservations are not scheduled and should be released as non-firm.

175. If a transmission provider uses an AFC methodology to calculate ATC, we propose to require it to explain: (1) Its definition of AFC; (2) its AFC calculation methodology (*e.g.*, load flow, short circuit, stability, transfer studies); (3) its process for converting AFC into ATC; (4) what databases are used in its AFC assessments; (5) the assumptions used in its AFC assessments; and (6) the reliability criteria used for contingency outages simulation.

176. For TRM, we propose to require a transmission provider to explain: (1) Its definition of TRM; (2) its TRM calculation methodology (*e.g.*, its assumptions on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources); (3) the databases used in its TRM assessments; (4) the conditions under which the transmission provider uses TRM; and (5) the process used to prevent double-counting of contingency outages used in its TTC and TRM calculations. We propose to require transmission providers that do not reserve TRM to reflect that in Attachment C. We seek comment on the above proposal, specifically on what type of showing a transmission provider could make with regard to the process used to prevent double-counting.

177. Furthermore, in the CBM Order, the Commission required transmission providers to post a specific and self-contained narrative explanation of their CBM practices, including who performs the assessment (transmission or merchant staff), the methodology used to perform generation reliability assessments (*e.g.*, probabilistic or deterministic), whether the assessment method reflects a specific regional practice, the assumptions used in those assessments and the basis for the selection of paths on which CBM is set aside. In addition, the Commission directed transmission providers to post their procedures for allowing CBM during emergencies (with an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies and the procedures which must be followed by the transmission providers' merchant function and other load-serving entities when they need to access CBM). The Commission further stated that if a utility's practice was not to reserve CBM, it should reflect that in Attachment C. We propose to require transmission providers to include this narrative in Attachment C of their OATTs.

178. In addition, for CBM, we propose to require a transmission provider to: (1) Explain its definition of CBM; (2) list the databases used in its CBM calculations; and (3) prove that there is no double-counting of contingency outages when performing CBM calculations.

179. Though we are proposing to require transmission providers to provide greater clarity in the description of their ATC calculations, it is our expectation that the reforms we propose for greater consistency of ATC methods will minimize the burden on transmission providers and customers of assessing various ATC calculation methodologies. Ultimately, when the ATC standards development process we propose is completed, we expect that Attachment C will refer to the NERC standards and will differ by transmission provider only with respect to the limited elements of the ATC calculation that may not have been made consistent.

OASIS

180. The Commission's existing regulations require certain ATC-related information to be posted on each transmission provider's OASIS, while other information is required to be provided on request. To ensure that relevant information is available on a timely basis to all market participants, we propose to amend our regulations to allow potential customers greater access to information that will enable them to obtain service on a non-discriminatory basis from any transmission provider.[173] We believe that our proposed reforms will not only enhance the amount and accuracy of information available to customers, but will also increase the ability of the Commission and others to detect any potentially unduly discriminatory behavior in a transmission provider's calculation and allocation of ATC.

181. Our regulations state that a transmission provider's[174] ATC and TTC calculations shall be performed according to consistently applied methodologies referenced in the transmission provider's OATT and shall be based on current industry practices, standards and criteria.[175] We propose to revise this provision to include compliance with the reliability standards developed by the ERO—*i.e.*, ATC and TTC calculations shall be performed according to consistently applied methodologies referenced in the transmission provider's OATT and shall be based on the ERO reliability standards as well as current industry practices, standards and criteria.

182. The regulations further state that, on request, a transmission provider must provide all data used to calculate ATC and TTC for any constrained paths.[176] Transmission providers also are required to make any system planning studies or specific network impact studies performed for customers to determine network impacts publicly available on request and to post a list of such studies on the OASIS.[177] The Commission proposes to maintain these requirements.

183. The Commission's OASIS regulations require transmission providers to calculate and post ATC and TTC for each posted path.[178] The regulations define two classes of posted paths based on usage: ''constrained'' and ''unconstrained.'' A constrained posted path is any posted path for which ATC has been less than or equal to 25 percent of TTC at any time during the preceding 168 hours or is calculated to be less than, or equal to, 25 percent of TTC for any period during the current hour or the next 7 days. An unconstrained posted path is any posted path that is not a constrained posted path.[179] The Commission proposes to amend the regulations relating to the data posted for constrained posted paths, but largely to retain the existing

[173] *See* 18 CFR 37.2 (2005).

[174] We note that various provisions of the OASIS regulations use the term ''Responsible Party,'' which means the transmission provider or an agent to whom the transmission provider has delegated the responsibility of meeting any of the requirements of the regulations. For simplicity, however, we will use the term ''transmission provider'' here.

[175] *See* 18 CFR 37.6(b)(2)(i) (2005).

[176] *See* 18 CFR 37.6(b)(2)(ii) (2005).

[177] *See* 18 CFR 37.6(b)(2)(iii) (2005).

[178] *See* 18 CFR 37.6 (2005).

[179] *See* 18 CFR 37.6(b)(1)(iii) (2005). Our regulations require transmission providers to post ATC and TTC for specific time horizons for constrained posted paths and unconstrained posted paths. The Commission proposes to maintain the existing time horizons. *See* 18 CFR 37.6(b)(3)(i)–(ii) (2005).

posting requirements for unconstrained posted paths, as set forth below.

184. First, in the CBM Order, the Commission required transmission providers, with respect to each path for which the utility already posts ATC, to post (and update) the CBM figure for that path. The Commission also required transmission providers to make any transfer capability set aside for CBM available on a non-firm basis and to post this availability on OASIS. The Commission proposes to incorporate these CBM posting requirements into its regulations.

185. With respect to paths for which the utility already posts ATC, TTC, and CBM, we further propose to require each transmission provider to also post (and update) the TRM value for that path.

186. Our existing regulations require ATC and TTC on constrained paths to be updated when: (1) Transactions are reserved, (2) service ends, or (3) whenever the TTC estimate for the path changes by more than 10 percent. We do not believe that this regulation has resulted in sufficient information to determine why ATC values changed. To provide a transmission customer with useful information to assist with its evaluation of monthly and yearly firm transmission service options, we propose to supplement the existing regulations by requiring the transmission provider to post a brief, but specific, narrative explanation of the reason for the posted change in the monthly and yearly ATC values on a constrained path. This narrative would describe, for example: (1) Scheduling of planned outages and occurrence of forced transmission outages; (2) de-ratings of transmission facilities; (3) scheduling of planned generation outages and occurrence of forced generation outages; (4) changes in load forecast, (5) changes in new facilities in-service dates, or other events or assumption changes that cause the ATC value to change. We seek comment on whether the posting of this new information would provide adequate transparency to the customer on a frequent enough basis without imposing an undue burden on the transmission provider. We seek comment on whether a similar narrative also should be required when ATC remains unchanged at a value of zero for some specified period of time.

187. We propose to maintain the requirement in 18 CFR § 37.6(e)(2)(i) that a transmission provider must post the reason for a denial of a request for service. We propose, however, to amend this provision to require a transmission provider to maintain and make available information supporting the reason for the denial for five years. In addition, we propose to extend the time period for which transmission providers must maintain transmission service information for audit. Our regulations currently require audit data to be retained and made available upon request for download for three years from the date when they are first posted.[180] We propose to change the period from three to five years.

188. In the CBM Order, the Commission stated that the level of ATC set aside for CBM can and should be reevaluated periodically to take into account more certain information (such as assumptions that may not have, in fact, materialized). Thus, the Commission directed transmission providers to periodically reevaluate their generation reliability needs so as to make known the availability of CBM and to post on OASIS their practices in this regard. We propose to incorporate these requirements in the Commission's regulations and to obligate transmission providers to reevaluate the CBM set aside at least quarterly.

189. We also propose to require the transmission provider and network customers to use the transmission provider's OASIS to request designation of a new network resource and to terminate the designation of a network resource. As with other transmission request information posted on OASIS, the transmission provider should keep designation and termination information posted on OASIS for 90 days and should make designation and termination information available upon request for five years, consistent with 18 CFR 37.7(b) (2005). Transmission customers will be able to query requests to designate and terminate a network resource under 18 CFR 37.6(a)(6)(2005). We propose to require the transmission provider to post on its OASIS a list of its current designated network resources and all network customers' current designated network resources. The list of network resources should include the name of the resource, its geographic and electrical location, and the amount of capacity from the unit to be designated as a network resource.

190. Finally, we remind transmission providers that transfer capability associated with transmission reservations that are not scheduled in real time must be included in non-firm ATC and posted on OASIS.[181]

CEII

191. Shortly after the attacks on September 11, 2001, the Commission removed from public viewing certain documents that were likely to contain detailed specifications of critical infrastructure facilities. CEII is information concerning proposed or existing critical infrastructure (physical or virtual) that: (1) Relates to the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the location of the critical infrastructure. Accordingly, access to transmission-related information collected by the Commission has been restricted by the Commission's CEII regulations. Thus, for example, information filed in FERC Form No. 715 (including base case power flow data and transmission system maps) as well as system planning and network impact studies and models are no longer publicly available. However, requesters with a particular need (such as transmission customers and consultants with legitimate needs) have the opportunity to access information designated as CEII from the Commission by submitting a request to the Commission under the procedures set forth in our regulations. In Order No. 643,[182] the Commission addressed situations in which its regulations require public utilities to disclose information directly to the public. The Commission ruled that potential CEII disclosed directly from the public utility to the public should be evaluated under the same rules addressing the disclosure of CEII from the Commission to the public, *i.e.*, if an entity concludes that certain of its information is CEII, it must designate it as such and provide other specified information about obtaining access to the CEII through the Commission's process. The Commission also held that it did not intend to restrict an entity's ability to reach appropriate arrangements for sharing CEII, and that all persons with a legitimate need for CEII should be able to gain access to it with a minimum of difficulty.[183]

192. We believe that much of the information we propose to require transmission providers to provide in this proposed rulemaking will not pose CEII concerns. If commenters believe

[180] *See* 18 CFR 37.7(b) (2005).

[181] Our regulations require non-firm ATC and TTC for constrained posted paths to be posted in the same manner as firm ATC and TTC, except that monthly and seasonal capability need only be posted if requested. *See* 18 CFR 37.6(b)(3)(i)(B)(2005).

[182] *Amendments to Conform Regulations with Order No. 630,* Order No. 643, 68 FR 52089 (Sep. 2, 2003), FERC Stats. & Regs. ¶ 31,149 (2003).

[183] *Id.* at P 16.

that any of the information is CEII, they should explain the basis for that view. We recognize that requiring interested persons to use the existing CEII process to access information we propose to require transmission providers to provide in this rulemaking could undermine our goal of providing increased transparency to information necessary to evaluate the use of the transmission system. As a result, we seek comment on procedures that could be adopted by transmission providers to streamline the resolution of CEII concerns and allow timely disclosure of information from the transmission providers to interested persons.

Additional Data Posting

193. Notwithstanding our proposed reforms requiring greater consistency of and increased transparency into ATC calculation methodologies, certain aspects of ATC calculation may remain committed to the discretion of the transmission provider. Thus, we believe that additional reporting requirements may be necessary to detect undue discrimination. Accordingly, we propose to add a requirement in our regulations for transmission providers to post on OASIS certain metrics related to the provision of transmission service under the *pro forma* OATT. Specifically, we propose to require transmission providers to post data each month concerning transmission service requests associated with particular paths or flowgates that would clearly identify the number of requests that have been accepted and the number of requests that have been denied during the prior month. The posted data would show: (1) The number of non-affiliate requests for transmission service that have been rejected and (2) the total number of non-affiliate requests for transmission service that have been made. This posting would distinguish between the length of the service request (*e.g.*, short-term or long-term requests) and between the type of service requested (*e.g.*, firm point-to-point, non-firm point-to-point or network service). We also propose that the transmission provider post similar information for affiliate transactions. In other words, the transmission provider would also post: (1) The number of affiliate requests for transmission service that have been rejected, and (2) the total number of affiliate requests for transmission service that have been made. Similarly, this posting would distinguish between the length of the service request (*e.g.*, short-term or long-term requests) and between the type of service requested (*e.g.*, firm point-to-point, non-firm point-to-point or network service).

194. Another area of discretion is the load forecasts used by the transmission provider when computing ATC. The Commission recognizes that the lack of transparency regarding transmission providers' forecasted and actual use of the transmission system makes it difficult to determine whether an appropriate amount of capacity is being set aside for service to native load. To address this concern, we are considering additional posting requirements. For example, should transmission providers make available their underlying load forecast assumptions for all ATC calculations? In addition, should transmission providers post, on a daily basis, their actual daily peak load for the prior day? We believe that this posting of forecasted and actual loads would allow the Commission and others to make a meaningful comparison of these elements. We invite comment on whether this information would be helpful for such a comparison. We also seek comment on the overall benefits of posting metrics and on potential alternative metrics.

195. For all of our proposed OASIS reforms, we propose to require public utilities, working through NAESB, to develop standards for consistent methods of posting the new requirements on OASIS so that a common format is used.

B. Transmission Planning—Coordinated, Open and Transparent Planning

196. Order No. 888 set forth certain minimum requirements for transmission system planning. For example, the *pro forma* OATT requires transmission providers to plan for the transmission needs of their network customers on a comparable basis (section 28.2), and it requires them to expand their systems to accommodate firm point-to-point customer requests (sections 13.5 and 15.4) that cannot be satisfied due to transmission constraints or satisfied more economically via redispatch. In addition, in Order No. 888–A, the Commission encouraged utilities to engage in joint planning with other utilities and customers and to allow affected customers to participate in facilities studies to the extent practicable. The Commission also encouraged regional planning so that the needs of all participants are represented in the planning process.[184] However, the Commission did not require joint planning between transmission providers and their customers or between transmission providers in a given region,[185] nor did it impose any specific requirements regarding the manner in which transmission providers should coordinate their transmission system planning with their *pro forma* OATT customers. The only section of the *pro forma* OATT that directly speaks to joint planning is section 30.9, which provides that for facilities constructed by a network customer, the network customer must receive credit where such facilities are jointly planned and installed in coordination with the transmission provider.[186]

197. In the NOI, the Commission asked several questions about joint planning between transmission providers and their customers. For example, we asked whether joint planning should be made mandatory, particularly when transmission requests affect adjacent transmission systems. We also inquired whether joint planning should be subject to an annual reporting requirement or audits. Additionally, we asked for comment on a number of issues designed to determine whether any *pro forma* OATT reforms are necessary to ensure that the transmission system is expanded so that customers have adequate transmission service. As the comments below indicate, commenters generally all believe that joint and regional planning are necessary and desirable, but there is a split over whether it should continue to be voluntary or should be made a requirement.

Comments Supportive of Mandatory Joint and Regional Planning

198. A number of commenters contend that joint planning between transmission providers and their customers should be required by the *pro forma* OATT. Most of these commenters also advocate joint planning among transmission providers in a given region. In perhaps the strongest comments on the topic, TDU Systems and TAPS request that the Commission mandate an open, regional transmission expansion planning process that provides opportunities for transmission customers to join and participate in the planning process. Many other commenters also support joint and regional planning in some form or

[184] *See* Order No. 888–A at 30,311.

[185] *See id.*

[186] *Pro forma* OATT section 21.2, ''Coordination of Third-Party System Additions,'' provides for certain rights for transmission providers to coordinate construction of facilities on their systems associated with point-to-point customer requests and related construction on a third-party transmission system, but imposes no obligation on transmission providers.

another, with some focusing particularly on requiring such planning when adjacent transmission systems are affected.[187] Bonneville and Williams also assert that there is already Commission precedent for joint planning in our procedures on large generator interconnections, which require the coordination of studies when interconnection requests affect other systems. EPSA states that the Commission should require that neighboring systems formalize the process under which broad regional models are developed and used to study requests on any system within a broadly defined region. Powerex points out that the lack of regional transmission planning is one of the most difficult issues faced in the Pacific Northwest, and PPL asserts that transmission planning and expansion in the Western Interconnection does not support a competitive market.

199. In addition, many commenters contend that transmission providers should be required to report on an annual basis the joint and regional planning that has occurred or been requested.[188] TAPS states that an annual filing notice by the Commission that gives the public an opportunity to comment should be buttressed with audits, in order to ensure that transmission providers are taking joint planning with their network customers (and neighboring systems) seriously. EPSA likewise contends that transmission providers should be required to report to the Commission on an annual basis the joint planning that has occurred or been requested on their systems, and that the Commission should conduct audits to determine the level of compliance with any joint planning requirement or agreement.

200. The commenters that advocate mandatory joint and regional planning assert that it is needed because transmission providers unduly discriminate against their customers when planning their transmission systems. For example, a number of commenters assert that transmission providers meet their own needs for transmission planning and construction before (and often without) meeting those of their customers.[189] NRECA asserts that since the implementation of Order No. 888, a number of public utility transmission providers—despite clearly stated obligations in the *pro forma* OATT—have not planned for their load-serving transmission customers on a basis comparable to that of their own bundled retail native load. TDU Systems believes that joint and regional transmission planning is a critical component of ensuring comparability between a transmission provider's use of the transmission system and a network customer's use of the transmission system, largely because transmission providers have an incentive to thwart the expansion planning process. Both NRECA and TDU Systems argue that the planning processes in RTOs and ISOs also are insufficient because they often only allow customer input after transmission plans are developed by individual transmission providers.

201. TAPS asserts that the absence of joint planning has resulted in unduly discriminatory transmission service. For comparable service to be a reality, TAPS asserts that the transmission system must be planned and built for customer needs, just as it must be planned and built to meet the transmission providers' need to provide service to their native loads. Old Dominion contends that transmission providers often locate transmission in such a way that it favors their own generation. According to Lafayette, transmission providers have increased their generation dominance by inadequately planning for the needs of their transmission customers so that they are unable to turn to alternative suppliers. East Texas Cooperatives also argues that some transmission providers continue to plan their systems in isolation from the needs of other load-serving entities. EPSA concludes that the transmission needs of non-transmission provider customers are simply not integrated effectively into the planning process. APPA notes that the original goal of the *pro forma* OATT—an inclusive planning process that takes into account on a comparable basis the load growth and new generation resource needs of all loads served using the transmission provider's system—has not been achieved. Many commenters assert that joint and regional transmission planning is necessary in order to ensure adequate infrastructure development.[190] Others focus on the need for joint and regional planning to address the fact that changes on one system often affect transmission service on adjacent systems.[191] Lastly, APPA blames substantial and rising congestion costs on inadequate transmission planning, and EPSA contends that better transmission planning is needed to support a competitive electricity market.

Comments Supportive of Voluntary Joint and Regional Planning

202. Another large group of commenters, including many investor-owned utilities, stress that joint and regional planning, while laudable, should not be mandatory and that it should continue to be voluntary or that processes are already in place to encourage regional planning.[192] Progress Energy, for example, contends that there are several formalized processes in place today that foster joint and regional planning, such as the process in North Carolina. Southern points out that in addition to participating in Southeastern Electric Reliability Council (SERC) planning activities, it is engaged in other types of joint regional planning (*e.g.*, through the Georgia Integrated Transmission System (Georgia ITS)).[193] Nevada Companies supports the approach already used in the WECC, which employs interconnection-wide models for planning. Nevada Companies explains that these studies are then made available to all other WECC transmission providers. In addition, APS, Tacoma, and WAPA point to numerous forums (*e.g.*, the Southwest Area Transmission planning group and the Southwest Transmission Expansion Plan process) where transmission providers and other industry stakeholders coordinate their transmission plans. LPPC also states that the Georgia ITS has provided benefits to participants and the region—in the form of improved investment in infrastructure and through the introduction of new sources of capital.

[187] *E.g.*, AEP, Alcoa, APPA, Bonneville, Calpine, EPSA, Lafayette, National Grid, NCPA, NRECA, Old Dominion, Trans-Elect, Williams, and Xcel. Though it does not generally support mandatory joint and regional planning, EEI recommends that the Commission modify the *pro forma* OATT to address planning when transmission requests require upgrades on or otherwise adversely affect adjacent transmission systems.

[188] *E.g.*, East Texas Cooperatives, EPSA, FMPA, MidAmerican, and TAPS.

[189] *E.g.*, FMPA, Midwest Municipals, NCPA, and NRECA.

[190] *E.g.*, AEP, Calpine, Constellation, East Texas Cooperatives, ELCON, NRECA, and TransAlta.

[191] *E.g.*, Alcoa and EPSA. EEI acknowledges the planning difficulties that arise when a transmission request on one system causes the need for upgrades to another system.

[192] *E.g.*, Cinergy, Entergy, KCP&L, LPPC, MidAmerican, Nevada Companies, North Carolina Commission, Northwestern, PNM–TNMP, Progress Energy, Salt River, Snohomish, South Carolina Regulatory Staff, Southern, Tacoma, and WAPA. Nevertheless, KCP&L, Nevada Companies, and Progress Energy join with EPSA in calling for a more formalized process for addressing base case and expansion plans.

[193] Georgia ITS consists of jointly-owned transmission facilities, which are owned by the Southern subsidiary Georgia Power, the Municipal Electric Authority of Georgia, the Georgia Transmission Corporation—a cooperative utility—and Dalton Utilities—a municipal system.

Lastly, some commenters point out that collaborative regional planning already occurs in RTO and ISO regions.[194] With regard to PJM, however, TDU Systems argues that better transmission planning is required due to PJM's ''rubber-stamping'' of transmission provider identified transmission upgrades. Exelon states that the Northeastern ISO/RTO Planning Coordination Protocol is a formal agreement, executed in 2004, among the PJM Interconnection, the New York Independent System Operator, and ISO New England, pursuant to which the three organizations conduct a comprehensive process of coordinating system planning activities.

203. With regard to the imposition of reporting requirements, many commenters argue that transmission providers already are required to report joint planning activities.[195] EEI, for example, contends that joint planning activities under section 30.9 of the *pro forma* OATT currently are required to be reported on each transmission provider's OASIS. EEI argues that audits should not be required. Bonneville contends that, at least in the Pacific Northwest, annual reporting and audits are not needed. Bonneville states that transmission planning staffs already bear a heavy workload; for example, Bonneville's planning staff must address many requests for transmission and interconnection service, as well as conduct regional planning efforts and comply with regional and national reliability initiatives. Northwestern states that reporting requirements or audits are not needed and would be burdensome to the transmission provider, distracting it from performing its joint planning responsibilities.

Current pro forma OATT Planning Responsibilities

204. Order No. 888 and the *pro forma* OATT require that transmission providers plan and upgrade their transmission systems to provide comparable open access transmission service for their transmission customers. For example, with regard to network service, section 28.2 of the *pro forma* OATT provides that the transmission provider ''will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System.'' Section 28.2 also provides that the Transmission Provider shall, consistent with Good Utility Practice, ''endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers.''

205. The *pro forma* OATT also requires that new facilities be constructed to meet the service requests of long-term firm point-to-point customers. Section 13.5 of the *pro forma* OATT requires the transmission provider to consider redispatch of the system to relieve any constraints that are inhibiting a transmission customer's point-to-point service if it is economical to do so; but if redispatch is not economical, the transmission provider is obligated to expand or upgrade its system. This expansion obligation on the part of the transmission provider for point-to-point service is found in section 15.4 of the *pro forma* OATT, which provides that when a transmission provider cannot accommodate a point-to-point transaction because of insufficient capability on its system, it will ''use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service.'' Section 15.4 goes on to provide that ''the Transmission Provider will conform to Good Utility Practice in determining the need for new facilities and in the design and construction of such facilities.'' Importantly, however, the transmission provider's obligation to upgrade or expand its system to provide point-to-point service as detailed in section 15.4 is contingent on the transmission customer agreeing to compensate the transmission provider for such costs pursuant to the terms of section 27 (providing for cost responsibility for upgrades and/or redispatch ''to the extent consistent with Commission policy''). Order No. 888 does not, however, require that transmission providers coordinate with either their network or point-to-point customers in transmission planning or otherwise publish the criteria, assumptions, or data underlying their transmission plans.[196]

The Need for Reform

206. As discussed more fully in Part III.C above, in the ten years since Order No. 888 was issued, the Nation has witnessed a decline in transmission investment relative to load growth. As a result, transmission capacity per MW of peak demand has declined in every NERC region, and it has been estimated that capital spending must increase significantly to ensure system reliability and to accommodate wholesale electric markets. Many have argued that inadequate expansion of the transmission grid has contributed to the widespread transmission constraints that plague most regions of the country, as reflected in the limited amounts of ATC posted in many regions, increased frequency of denied transmission services requests, and increasingly common transmission service interruptions or curtailments, all of which make it more difficult for transmission customers to transfer power. In short, it has become clear that since Order No. 888 was issued, the Nation's transmission grid has not been planned and developed adequately and projections suggest that without reform this trend will continue.

207. The need for transmission planning reform also has been recognized by the Consumer Energy Council of America (CECA), a public interest energy policy organization with a 30-year history of bringing stakeholders together to find solutions to contentious energy policy issues. CECA launched its Transmission Infrastructure Forum in early 2004,[197] which published its conclusions in January 2005 in a final report titled ''Keeping the Power Flowing: Ensuring a Strong Transmission System to Support Consumer Needs for Cost-Effectiveness, Security and Reliability'' (CECA Report).[198] Among other things, the CECA Report concludes that regional transmission planning with consumer input early in the process is needed to ensure the development of a robust transmission system capable of meeting consumer needs reliably and at

[194] *E.g.*, Ameren, CAISO, Exelon, ISO New England, and MidAmerican.

[195] *E.g.*, Bonneville, EEI, KCP&L, PNM–TNMP, Salt River, Tacoma, and WAPA.

[196] Certain transmission data is required to be provided annually in the FERC Form 715 (*e.g.*, Part 2—Power Flow Base Cases, Part 3—Transmitting Utility Maps and Diagrams, Part 4—Transmission Planning Reliability Criteria, Part 5—Transmission Planning Assessment Practices, and Part 6—Evaluation of Transmission System Performance). As discussed below, we do not believe that the FERC Form 715 reporting requirements have satisfied the need for transparency with regard to transmission planning.

[197] The CECA Transmission Infrastructure Forum included representatives from such diverse constituencies as investor-owned utilities, rural electric cooperatives, municipal power systems, federal power systems, independent power producers, equipment manufacturers, the U.S. Congress, the Commission, the U.S. Department of Energy, state legislatures, state public utility commissions, state energy offices and consumer advocates, consumer and environmental organizations, independent consultants, and academic institutions.

[198] Available at *http://www.cecarf.org/Publications/PublicationsAllDate.html.*

reasonable cost over time. The CECA Report stresses that regional transmission planning must address inter-regional coordination, the need for both reliability and economic upgrades to the system, as well as critical infrastructure to support national security and environmental concerns.[199]

208. Transmission providers have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area. As the Commission noted in Order No. 888, ''[i]t is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves.'' [200] This statement continues to be true today. In upholding the Commission's authority to require open access in Order No. 888, the court in *TAPS* v. *FERC* noted that ''[u]tilities that own or control transmission facilities naturally wish to maximize profit. The transmission-owning utilities thus can be expected to act in their own interest to maintain their monopoly and to use that position to retain or expand the market share for their own generated electricity, even if they do so at the expense of lower-cost generation companies and consumers.'' [201] Thus, even when transmission providers do address congestion, they have an incentive to do so in a manner that benefits their own generation or loads rather than the generation or loads of their competitors. These disincentives frustrate new investment that could remedy both ''local'' congestion (*i.e.*, within the transmission provider's control area) and congestion between control areas, as well as remedy undue discrimination and increase bulk power trade. For example, a transmission provider does not have an incentive to relieve local congestion that restricts the output of a competing merchant generator if doing so will make the transmission provider's own generation less competitive. A transmission provider also does not have an incentive to increase the import or export capacity of its transmission system if doing so would allow cheaper power to displace its higher cost generation or otherwise make new entry more profitable by facilitating exports.

209. The existing *pro forma* OATT does not adequately address the above-referenced problems. As noted, there is no general requirement that a transmission provider coordinate its transmission planning with customers, market participants, or its interconnected neighbors.[202] Additionally, though the *pro forma* OATT does require transmission providers to plan for the needs of their network customers and to expand their systems to provide service to point-to-point customers, there is no requirement that the overall transmission planning process be open to customers, competitors, and state commissions. Rather, the transmission provider currently is allowed to create its own transmission plan with limited or no input from affected market participants or other affected entities, such as state commissions. There is also no requirement that the planning process be transparent. While we recognize that certain planning information is required to be filed annually in FERC Form No. 714—Annual Electric Control and Planning Area Report and FERC Form 715—Annual Transmission Planning and Evaluation Report, this does not appear to provide sufficient transparency to remedy the remaining concerns expressed in this proceeding about the potential for undue discrimination in planning.

210. Taken together, this lack of coordination, openness, and transparency results in opportunities for undue discrimination in transmission planning. Without adequate coordination and open participation, market participants have no input into whether a particular plan treats all loads and generators comparably. Without sufficient transparency, market participants have no means to determine whether the plan developed by the transmission provider in isolation is discriminatory. Moreover, the process is inefficient. Disputes over discrimination occur primarily after-the-fact because there is insufficient coordination and transparency between transmission providers and their customers for purposes of planning. The Commission has a duty to prevent undue discrimination in the rates, terms, and conditions of public utility transmission service, and therefore, an obligation to remedy these transmission planning deficiencies. The Commission's authority to remedy undue discrimination is broad.[203] In addition, new section 217 of the FPA requires the Commission to use its FPA authorities in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities. Finally, we note that a more transparent and coordinated regional planning process can support the DOE's responsibilities under EPAct 2005 section 1221 to study transmission congestion and issue reports designating National Interest Transmission Corridors.

211. We are encouraged that since the adoption of open access in Order No. 888, a number of voluntary coordinated and regional planning efforts have been developed throughout the country, including those administered by RTOs and ISOs. For example, each of the Commission-approved RTOs in the Northeast, Midwest and Southwest, as well as CAISO, provide for a coordinated and regional planning process with stakeholder input from each industry segment. The Commission also notes that there are several other promising efforts to establish voluntary coordinated and regional planning efforts around the country. For example, WECC is in the process of expanding its reliability responsibilities to include comprehensive transmission planning to address the regional economic transmission needs of its members and other stakeholders in its regional footprint. In addition, each of the subregions in WECC has a coordinated transmission planning process that, in varying degrees, is open to market participants and, in some instances, has resulted in significant new transmission being built on a joint ownership basis. In North Carolina, Duke, Progress Energy, and two other organizations—North Carolina Electric Membership Corporation and ElectriCities of North Carolina, Inc.—have endeavored to create and implement a collaborative electric transmission planning process in that state. This process provides for broad stakeholder input as well an independent facilitator. Other models

[199] *See, e.g.*, CECA Report at 10–11.

[200] Order No. 888 at 31,682.

[201] 225 F.3d at 684; *see also New York* v. *FERC*, 535 U.S. at 8–9 (addressing Order No. 888's open access requirements, the Court noted that ''public utilities retain ownership of the transmission lines that must be used by their competitors to deliver electric energy to wholesale and retail customers. The utilities' control of transmission facilities gives them the power either to refuse to deliver energy produced by competitors or to deliver competitors' power on terms and conditions less favorable than those they apply to their own transmissions.'') (citation and footnote omitted).

[202] As discussed more fully in Part V.C.2, section 30.9 of the current pro forma OATT may inhibit coordinated planning by making transmission providers reluctant to engage in coordinated planning, because of the requirement to give customers credits for jointly planned facilities. We are proposing to sever the link between credits and planning, and treat the two issues separately within the *pro forma* OATT.

[203] *See* Order No. 888 at 31,669 (noting that the FPA ''fairly bristles'' with concern for undue discrimination (citing *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 998 (D.C. Cir. 1987)).

for coordinated planning include the Georgia ITS and joint ownership arrangements like it around the country.

212. We fully support these voluntary efforts and believe they are consistent in significant respects with the nature of the reforms we are proposing for transmission planning under the *pro forma* OATT. In those regions and subregions that already have adopted significant reforms, our proposal may require only modest changes, while other regions and subregions may need to undertake more significant changes to the way in which the transmission system is planned today.

213. Today, numerous competing interests have a need to utilize the transmission grid, and yet in many areas of the country that grid is planned much the same way as it was before the electric industry matured into a regional business and Order No. 888 was implemented. That is, the same public utilities that own and control the grid also control the planning process that governs when and how the grid is expanded and upgraded. In short, the transmission grid is being utilized in a fundamentally different way, consistent with the intent of open access, and a decade of experience has shown us that in order to remedy undue discrimination, the existing provisions of the *pro forma* OATT respecting transmission system planning must be reformed. Accordingly, in order to provide for more comparable open access transmission service, eliminate the potential for undue discrimination and anticompetitive conduct, and satisfy our statutory responsibilities under section 217 of the FPA, we propose that each public utility transmission provider participate in an open and transparent local and regional planning process that addresses certain fundamental principles of transmission planning. As we indicated above, existing regional planning processes will be expected to meet or exceed the transmission planning principles we outline in this proposed rule.

Coordinated, Open, and Transparent Transmission Planning

214. In order to eliminate the potential for undue discrimination as described above, and to ensure that comparable transmission service is provided by all public utility transmission providers, including RTOs and ISOs, we propose to amend the *pro forma* OATT to require coordinated, open, and transparent transmission planning on both a local and regional level. We propose to require each public utility transmission provider to submit, as part of its compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the following coordinated and regional planning principles.[204] In the alternative, transmission providers may make a compliance filing in this proceeding describing their existing coordinated and regional planning process and showing that it is consistent with or superior to the requirements set forth below. Moreover, we expect municipal, cooperative, and other public power entities to participate in these processes as well, consistent with their obligation to provide reciprocal transmission service as detailed in Order No. 888. An open and transparent regional planning process cannot succeed unless all transmission owners participate.

Under our proposal in this NOPR, a coordinated, open and transparent process must satisfy the following eight principles:

1. *Coordination*—The transmission provider must meet with all its transmission customers and interconnected neighbors to develop a transmission plan on a nondiscriminatory basis. The Commission seeks comment on specific requirements for this coordination, such as the minimum number of meetings to be required each year, the scope of the meetings, the notice requirements, the format, and any other features deemed important by commenters.

2. *Openness*—Transmission planning meetings must be open to all affected parties (including all transmission and interconnection customers, and state commissions). The Commission seeks comment on whether there are any circumstances under which participation should be limited, *e.g.*, to address confidentiality concerns.

3. *Transparency*—The transmission provider is required to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie its transmission system plans. The Commission seeks comment on whether the information provided in FERC Form 715 is adequate and, if not, what additional detail should be provided. The Commission also seeks comment on the format for disclosure, including protections to address confidentiality concerns.

4. *Information Exchange*—Network transmission customers are required to submit information on their projected loads and resources on a comparable basis (*e.g.*, planning horizon and format) as used by transmission providers in planning for their native load; and point-to-point customers are required to submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. The Commission seeks comment on whether specific requirements should be adopted for this information exchange.[205] The transmission provider must allow market participants the opportunity to review and comment on draft transmission plans.

5. *Comparability*—After considering the data and comments supplied by market participants, the transmission provider is to develop a transmission system plan that: (1) Meets the specific service requests of its transmission customers; and (2) otherwise treats similarly situated customers (*e.g.*, network and retail native load) comparably in transmission system planning.

6. *Dispute Resolution*—The transmission provider must propose a dispute resolution process, such as requiring senior executives to meet prior to the filing of any complaint and using a third-party neutral. The Commission's Dispute Resolution Service is available to assist transmission providers in developing a dispute resolution process. In addition to informal dispute resolution, affected parties would have the right to file complaints with the Commission under FPA section 206. The Commission seeks comment on whether any specific dispute resolution processes should be required.

7. *Regional Participation*—In addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, the transmission provider is required to coordinate with interconnected systems to: (1) Share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data, and (2) identify system enhancements that could relieve ''significant and recurring'' transmission congestion (defined below). The Commission strongly encourages that such coordination encompass as broad a region as possible, given the interconnected nature of the transmission grid and the efficiency of addressing these issues in a single forum. The Commission also recognizes that, as in the West, it may be appropriate to organize regional planning efforts on both a subregional

[204] The revised *pro forma* OATT reflects the proposed planning requirement in sections 15.4, 16.1, 17.2(x), 28.2, 29.2, 31.6, and Attachment K.

[205] For network service, some of this information already is required by sections 29, 30 and 31 of the *pro forma* OATT, but to the extent it is not, we propose to require customers to provide additional information as necessary for the transmission provider to develop a system plan.

and regional level. The Commission seeks comment on whether there are existing institutions (such as the NERC regional councils or subregional planning groups) that are well situated to perform or coordinate this function.

8. *Congestion Studies*—The transmission provider is required annually to prepare studies identifying ''significant and recurring'' congestion and post such studies on its OASIS. The studies should analyze and report on the location and magnitude of the congestion; possible remedies for the elimination of the congestion, in whole or in part; the associated costs of congestion; and the cost associated with relieving congestion through system enhancements (or other means). The Commission seeks comment on how to define ''significant and recurring'' congestion, such as by reference to generation redispatch, repeated denials of service requests, zero ATC, frequent curtailments or a combination of these factors. The required congestion studies would address both ''local'' congestion (*i.e.*, within the transmission provider's system) and congestion between control areas and subregions. The purpose of this requirement is to ensure that affected market participants, state commissions, and this Commission understand both the costs of recurring transmission congestion and the remedies. The Commission seeks comment on how this information should be used by the transmission provider and market participants to address significant and recurring congestion.

215. The Commission encourages the use of an independent third party to oversee or coordinate the planning process. The Commission is not proposing to require an independent third party to control the process, but does believe that independence can provide greater confidence in the planning process and resulting studies. Independence can take many forms, from having an independent entity resolve disputes over planning assumptions and decisions (as in an RTO) to having an independent consultant coordinate and otherwise perform the annual congestion studies referred to above. The Commission seeks comment on the levels of independence that can provide benefits and the institutions that could offer such independence, such as whether Regional Entities under the ERO could provide such independence.

216. Additionally, the Commission strongly encourages the participation of state commissions and other state agencies, particularly with regard to regional planning, in the coordinated transmission planning processes being proposed in this NOPR. The participation and support of state commissions and other state agencies is important because state commissions regulate the cost of transmission that is included in bundled retail rates and states also perform transmission siting. Many states also have traditionally been involved in utility planning in some way for their state or region. The Commission seeks comment on how best to accommodate effective state participation.

217. The Commission seeks comment on several aspects of this proposal. First, the Commission seeks comment on how much flexibility each transmission provider in a region should be given in implementing any principles adopted. Second, the Commission seeks comment, by way of examples, on transmission planning processes that comply with the proposed transmission planning reforms in principle.

218. Third, we seek comment on whether there are other principles or requirements that should be adopted to support the construction of needed new infrastructure and otherwise ensure that all market participants are treated on a comparable basis. For example:

a. We seek comment on whether there should be a principle or guideline to govern the recovery and allocation of costs associated with funding the regional planning requirement. To devote the resources necessary to support an open and transparent regional planning process, we recognize that the participating entities must be assured of recovery of their costs, as well as assured that the costs will be borne equitably by all parties benefiting from the process.

b. We seek comment on whether there should be a requirement that, at least for large new transmission projects (such as new regional backbone facilities), there be an open season to allow market participants to participate in joint ownership of these projects. We believe that such a requirement could stimulate more investment in the grid and ensure that all customers have the ability to participate in new projects on a nondiscriminatory basis, including smaller market participants that cannot support the construction of large new facilities on their own.[206] We seek comment on whether to include such a requirement and, if so, what conditions or limitations should be associated with it.

c. We further seek comment on whether there should be a specific study process to identify opportunities to enhance the grid for purposes beyond maintaining reliability or reducing current congestion. Such a process would allow interested entities, including state resource agencies, siting bodies and commissions, load-serving entities, or other market participants to request that the transmission provider model grid upgrades needed to accommodate the construction of new resources, *e.g.*, remote coal, nuclear or wind on a local and regional basis and prior to the existence of an actual proposal for such resources. Such a process could provide the information necessary to allow interested entities to proactively evaluate, on a nondiscriminatory basis, different resource options in light of the differing transmission infrastructure needs associated with them. We recognize that resource planning is traditionally performed at the state level and do not believe that any such study process would conflict with these state prerogatives. To the contrary, we believe such a study process could provide states better information to evaluate all relevant resource options in exercising their resource adequacy authority.

d. We also seek comment on whether we should require public utilities to develop cost allocation principles to address the sharing of the costs of new transmission projects. Would the development of specific cost allocation principles provide greater certainty and hence support the construction of new infrastructure? Or is cost allocation better handled on a case-by-case basis? We also seek comment on how, as part of any cost allocation process, to address the fact that upgrades that may not be needed for reliability in the near term (*e.g.*, 3–5 years) may be necessary to support reliability in the longer term (*e.g.*, 10–15 years). Furthermore, because transmission upgrades, particularly multi-state regional backbone facilities, often can require 10 to 15 years to construct, we seek comment on whether the planning process proposed here should be

[206] We note that transmission providers in the Western Interconnection already participate in regional and sub-regional transmission planning processes that include the opportunity for joint financing and ownership of transmission facilities. Such facilities are typically owned by the participants as ''tenants in common'' with each participant owning a pro rata share of the land and common facilities and sharing the costs and expenses in proportion to their ownership percentage in each project. Additionally, all owners participate in the oversight and administration of jointly-owned projects through representation on various administration committees. Among other benefits, this has allowed all participating utilities, large and small, to take advantage of the economies of scale associated with larger transmission projects.

required to look out at least as far as the longest time it would take to build such an upgrade in the region in question.

219. Finally, the Commission seeks comment on the level of detail to be required in transmission providers' OATTs.

C. Transmission Pricing

220. Order No. 888 and the *pro forma* OATT included primarily non-rate terms and conditions of open access non-discriminatory transmission service. The Commission required transmission providers to propose corresponding rates in a subsequent filing under FPA section 205. Similarly, here we do not propose to undertake a comprehensive overhaul of our transmission pricing policies. We do, however, propose a number of reforms to several discrete provisions in the *pro forma* OATT, as further described below. We also provide a clarification of our policy for pricing of system expansions.

1. Imbalances

Energy Imbalances

221. In Order No. 888, the Commission concluded that six ancillary services must be included in an OATT.[207] One of those ancillary services is energy imbalance service under Schedule 4 of the *pro forma* OATT.[208] Energy imbalance service is provided when the transmission provider makes up for any difference that occurs over a single hour between the scheduled and the actual delivery of energy to a load located within its control area.[209] The Commission recognized that the amount of energy taken by load in an hour is variable and not subject to the control of either a wholesale seller or a wholesale requirements buyer.[210]

222. The Commission found that the energy imbalance service should have an energy deviation band appropriate for load variations and a price for exceeding the deviation band that is appropriate for excessive load variations.[211] The deviation band established by the Commission is an hourly deviation band of ±1.5 percent (with a minimum of 2 MW) for energy imbalance. The Commission explained that this deviation band promotes good scheduling practices by transmission customers, which ensures that the implementation of one scheduled transaction does not overly burden another.[212]

223. With respect to compensation associated with the hourly energy deviation band, the Commission explained that for energy imbalances within the deviation band, the transmission customer may make up the difference within 30 days (or other reasonable period generally accepted in the region) by adjusting its energy deliveries to eliminate the imbalance (*i.e.*, return energy in kind within 30 days).[213] In addition, the Commission explained that the transmission customer must compensate the transmission provider for each imbalance that exceeds the hourly deviation band and for accumulated minor imbalances that are not made-up within 30 days.[214] With respect to the price of energy imbalance service, the Commission explained that it intentionally did not provide detailed pricing requirements.[215] Instead, the Commission required transmission providers to propose rates for energy imbalance service.[216]

224. Although transmission providers have different energy imbalance charges, they typically require customers to correct energy imbalances within the deviation band through return in kind or a financial settlement that requires payment for underdeliveries of energy equal to 100 percent of the transmission provider's system incremental cost for the hour the deviation occurred. For energy overdeliveries, the transmission customer would receive a payment equal to 100 percent of the transmission provider's decremental cost for the hour the deviation occurred.[217] Outside the deviation band, transmission providers either charge the transmission customer: (1) A percentage of the utility's system cost, such as 110 percent of incremental costs for underscheduling or 90 percent of decremental costs for overscheduling, or (2) the greater of a percentage of system costs or a fixed charge, such as $100 per MWh.[218]

Generator Imbalances

225. While the Commission found in Order No. 888 that energy imbalance was an ancillary service, it also recognized that differences arise between energy scheduled for delivery from a generator and the amount of energy actually generated in an hour,[219] commonly called generator imbalance. It concluded, however, that a generator should be able to deliver its scheduled hourly energy with precision and expressed concern that if it were to allow the generator to deviate from its schedule by 1.5 percent without penalty, so long as it returned the energy in kind at another time, it would discourage good generator operating practices.[220] The Commission stated that a generator's interconnection agreement with its transmission provider or control area operator should specify the requirements for the generator to meet its schedule and any consequence for persistent failure to meet its schedule.[221]

226. Subsequently, however, the Commission, in a number of cases, accepted modifications to a transmission provider's OATT to include generator imbalance provisions.[222] Moreover, in Order No. 2003–B, the Commission permitted the transmission provider to include a provision for generator balancing service arrangements in individual interconnection agreements.[223] Further, in a NOPR concerning generator imbalance provisions for intermittent resources, the Commission proposed to establish a standardized schedule under the *pro forma* OATT to address generator imbalances created by

[207] Order No. 888 at 31,703.

[208] *Id.*

[209] *See id.* at 31,960.

[210] Order No. 888–A at 30,230.

[211] *Id.*

[212] *Id.* at 30,232.

[213] *Id.* at 30,229.

[214] *Id.* The Commission further stated that the *pro forma* OATT permits schedule changes up to twenty minutes before the hour at no charge, and that it would allow the transmission provider and the customer to negotiate and file another deviation band more flexible to the customer, if the same deviation band is made available on a not unduly discriminatory basis. *Id.* at 30,232–33.

[215] *Id.* at 30,234.

[216] *Id.*

[217] *See, e.g.*, Arizona Public Service Co., FERC Electric Tariff, Twelfth Revised Volume No. 2, Schedule 4 (Energy Imbalance Charge), accepted in *Arizona Public Service Co.*, Docket No. ER04–442–003 (Sep. 30, 2004) (unpublished letter order); Public Service Company of New Mexico, FERC Electric Tariff, Second Revised Volume No. 4., Schedule 4 (Energy Imbalance Charge), accepted in *Public Service Co. of New Mexico*, Docket No. ER04–416–002 (Sep. 30, 2004) (unpublished letter order).

[218] *See Arizona Electric.*; *see also Idaho Power Co.*, 102 FERC ¶ 61,351 (2003); *see also* Duke Electric Transmission FERC Electric Tariff, Third Revised Volume 4, Original Sheet No. 120 accepted in *Duke Energy Corp.*, Docket No. ER04–812–001 (Jul. 2, 2004) (unpublished letter order).

[219] Order No. 888–A at 30,230.

[220] *Id.*

[221] *Id.*

[222] *See, e.g.*, *Niagara Mohawk Power Corp.*, 86 FERC ¶ 61,009 (1999) (*Niagara Mohawk*); *PacifiCorp*, 95 FERC ¶ 61,145, *order on reh'g and clarification*, 95 FERC ¶ 61,467 (2001); *Alliant Energy Corporate Services, Inc.*, 93 FERC ¶ 61,340 (2000); *Wolverine Power Supply Coop.*, 93 FERC ¶ 61,330 (2000); *Commonwealth Edison Co.*, 93 FERC ¶ 61,021 (2000); *FirstEnergy Operating Cos.*, 93 FERC ¶ 1,200 (2000), *order denying reh'g & granting clarification*, 94 FERC ¶ 61,184 (2001); *Tampa Electric Co.*, 90 FERC ¶ 61,330 (2000), *reh'g denied*, 95 FERC ¶ 61,101 (2001); *Florida Power Corp.*, 89 FERC ¶ 61,263 (1999); *Consumers Energy Co.*, 87 FERC ¶ 61,170 (1999).

[223] Order No. 2003–B at P 74–75.

intermittent resources and to clarify the application of the current energy imbalance provision of the *pro forma* OATT.[224] In particular, the Commission proposed that generator imbalance provisions for intermittent resources would reflect a deviation band of ±10 percent (with a minimum of 2 MW) and allow net hourly intermittent generator imbalances within the deviation band to be settled at the system incremental cost at the time of the imbalance.[225] The Commission also reiterated its policy that a transmission provider may only charge the transmission customer for either hourly generator imbalances or hourly energy imbalances for the same imbalance, but not both.

227. A variety of different deviation bands and pricing methods are on file for generator imbalances. Rates for generator imbalance underdeliveries range from the greater of $100/MWh or 110 percent of system incremental cost to the greater of $150/MWh or 200 percent of the incremental cost.[226] Generator imbalance rates for overdeliveries range from 90 percent [227] of system decremental cost to 50 percent [228] of the decremental cost.

228. In the NOI, we asked several questions about the need to modify the treatment of energy and generator imbalances. For example, with respect to energy imbalances, the Commission asked whether the deviation band of ±1.5 percent continues to be appropriate and whether penalty charges should be eliminated entirely for transmission customers, or whether transmission customers should be charged no more than the control area's cost of supplying energy to correct the imbalance. With respect to generator imbalances, the Commission asked if comparability in the treatment of generator imbalances is needed, how generator imbalances should be priced, and whether a generator imbalance provision should be included as a schedule in the *pro forma* OATT rather than in generator interconnection agreements.[229]

Comments

229. Many commenters assert that the deviation band of 1.5 percent for energy imbalances continues to be appropriate. EEI argues that the deviation band for energy imbalance service is reasonable because it appropriately balances the need to protect transmission system reliability and the need for operational flexibility. LG&E argues that the deviation band of ±1.5 percent and associated penalties for transactions that fall outside this band are an appropriate means of disciplining market participants. Southern argues that allowing a larger deviation band could encourage gaming and leaning on the system, which ultimately would jeopardize reliability. Southern adds that allowing deviations of more than 1.5 percent without penalty could cause, among other things, inefficient use of generation resources and inappropriate cost shifting from those most able to control imbalances to those lacking such control.

230. Several commenters assert that the deviation band for energy imbalances should be modified. APPA argues that imbalances outside the deviation band currently must be paid off at rates that often bear no resemblance to the actual cost that the transmission provider likely incurs to deal with the imbalance. APPA recommends revising Schedule 4 to increase the deviation band and to institute a graduated series of increasing penalties outside of the expanded deadband. Public Power Council states that there is no forecast model that accurately predicts actual fluctuations in loads within the deviation band and therefore penalties will not induce parties to schedule more accurately. Public Power Council states that the 1.5 percent deviation band encourages loads to over-schedule and encourages the Commission to either expand the deviation band or adopt a multi-band system similar to the one Bonneville has in place. Snohomish notes that Bonneville has two deviation bands beyond the 1.5 percent that have greater penalties when customers cannot manage their energy imbalances within the first deviation band and states that this approach seems equitable because it gives customers the proper incentives to keep their schedules accurate.

231. Constellation argues that the Commission should eliminate energy imbalance penalties and require that imbalances be netted across all suppliers and with respect to each customer. EPSA contends that imbalances outside the deviation band should be netted on a system-wide basis and settled at incremental costs. Snohomish states that it prefers an approach that provides for netting and penalizes intentional deviation. Nevada Companies explains that its energy imbalance tariff nets all negative and positive imbalances such that penalties are only invoked if there is a net positive or a net negative imbalance outside of the deviation band. PPL also advocates that the Commission should allow suppliers the flexibility to net and trade imbalances in areas where no imbalance market exists.

232. Duke contends that requiring transmission providers to supply imbalance service at a system incremental cost may eliminate the erroneous perception that the existing charges are discriminatory, but such an approach does nothing to solve the problems that imbalances cause, nor does such an approach reflect the actual costs of leaning on and dumping on the system. A number of commenters argue that penalties should be imposed because without penalties there is insufficient economic incentive for transmission customers to properly schedule and, as such, reliability could be harmed.[230] WAPA states that if a balancing authority has very limited generation capacity (either physical or market) available for the provision of energy imbalance service, the assessment of penalties is warranted in order to establish a disincentive to improper behavior that potentially may affect reliability.

233. Powerex notes that some mechanism should be in place that distinguishes between intentional or repeated deviations and unit outages or *force majeure* events and argues that penalties should be tiered so that they increase exponentially as a generator's imbalances increase.

234. With regard to generator imbalances, EEI, Entergy, MidAmerican, and Southern contend that the Commission should continue its current policy, as established in Order No. 2003, of requiring that generator imbalances be addressed either in the OATT or in the generator interconnection agreement. EEI, MidAmerican and Entergy contend that the Commission

[224] *Imbalance Provisions for Intermittent Resources; Assessing the State of Wind Energy in Wholesale Electricity Markets*, Notice of Proposed Rulemaking, 70 FR 21349 (Apr. 26, 2005), FERC Stats. & Regs. ¶ 32,581 at P 9 (2005) (Imbalance Provisions Proceeding).

[225] The Commission defined incremental cost as ''the transmission provider's actual average hourly cost of the last 10 MW dispatched to supply the transmission provider's native load, based on the replacement cost of fuel, unit heat rates, start-up costs, incremental operation and maintenance costs, and purchased and interchange power costs and taxes.'' *Id.* at P 9 n.17 (citing *Consumers Energy Co.*, 87 FERC ¶ 61,170 at 61,179 (1999).

[226] *See Duke Energy Corp.*, Docket No. ER05–855–000 (Dec. 20, 2005) (unpublished letter order) (accepting Duke Electric Transmission's Large Generator Interconnection Agreement with Power Ventures Group, LLC (Duke Delegated Letter Order)).

[227] *See Entergy Services, Inc.*, 90 FERC ¶ 61,272 (2000) (concerning various generator imbalance agreements).

[228] *See* Duke Delegated Letter Order.

[229] NOI at P 31.

[230] *E.g.*, MidAmerican, NorthWestern, PacifiCorp, PNM–TNMP, Powerex, Progress Energy, Salt River, and Southern.

should retain the flexibility of transmission providers to deal with the issue of generator imbalances on a case-by-case basis, subject to the requirement that they do not engage in unduly discriminatory or preferential treatment with respect to other generators on the system. Calpine contends that requiring transmission providers to treat generator imbalances in the *pro forma* OATT in the same way regardless of the generator, and in all control areas, would provide greater certainty and consistency for generators and help to eliminate the opportunity for transmission providers to engage in discriminatory behavior. Bonneville argues that its three-tiered pricing and penalty approach for energy imbalances also is appropriate for generator imbalances.

235. PNM–TNMP states that the 1.5 percent deviation band for imbalance service continues to be appropriate except for intermittent resources. For those resources, it maintains, imbalance energy costs should not be punitive, but rather should be designed to allow the transmission provider to recover its full costs of providing the generator imbalance service. NRECA urges the Commission not to revise imbalance provisions in a manner that singles out wind generators for preferential treatment. Northwestern, on the other hand, argues that a generator imbalance service schedule should be included in the *pro forma* OATT for intermittent resources and the service should not apply to traditional generators.

236. Commenters argue that the treatment of imbalances should be made comparable with the treatment of inadvertent energy for transmission providers. APPA argues that Schedule 4 raises concerns about discriminatory treatment because Schedule 4 is not applicable to OATT transmission providers, who clear their imbalances through the use of inadvertent interchange, if they operate their own control areas. TDU Systems contend that transmission providers that operate control areas hold a competitive advantage over non-control area operators solely by virtue of the fact that they have access to balancing options, such as inadvertent interchange, that are not available to all market participants, including customers of the transmission providers. TDU Systems argue that this advantage can be decisive when sellers that do not operate control areas try to compete with control area operators for sales to entities concerned about exposure to the penalties imposed under existing imbalance tariff provisions.[231] East Texas Cooperatives argue that control area utilities, moreover, enjoy a double benefit because: (1) They are not subject to penalties themselves, and (2) the control area operator's own generation is used to provide imbalance service to the other transmission customers in the control area. TAPS asserts that comparability requires affording transmission dependent utilities the same return-in-kind treatment control areas use for inadvertent energy. It maintains that, at a minimum, the Commission should eliminate the $100/MWh penalty, except in egregious circumstances and/or the Commission should expand the return-in-kind deviation band substantially.

237. EEI and Entergy, on the other hand, argue that inadvertent energy and energy imbalances are not comparable and should thus be treated differently. EEI states that a NERC-certified control area is responsible for supporting the reliability of its own area as well as supporting the reliability of the interconnected power system grid. EEI explains that the inadvertent energy that a control area experiences reflects the moment-by-moment netting of load, generation and schedules into or out of the control area, and that inadvertent energy reflects the loads, generator output and schedules of all entities within the control area, and not simply the loads and generation of the transmission provider. Entergy explains that control area interchange imbalances may involve the failure of control areas to match their scheduled inflows and outflows due to contingencies occurring even in another control area.[232]

Discussion

238. The existing energy imbalance charges under Schedule 4 of the *pro forma* OATT and the generator imbalance charges described in Order No. 2003 are the subject of significant concern and confusion in the industry. The Commission is concerned about the variety of different methodologies used for determining imbalance charges and whether the level of the charges provides the proper incentive to keep schedules accurate without being excessive. The Commission proposes to modify the current *pro forma* OATT Schedule 4 treatment of energy imbalances and to adopt a separate *pro forma* OATT schedule for the treatment of generator imbalances. More specifically, the Commission seeks to balance the needs of transmission providers to operate their transmission systems in a reliable manner with the needs of transmission customers to have reasonable access to those systems at just and reasonable rates, as well as the needs of a variety of transmission customers with different generator sources.

239. To achieve this, the Commission proposes to create new energy and generator imbalance schedules based on the following three principles: (1) The charges must be based on incremental cost or some multiple thereof; (2) the charges must provide an incentive for accurate scheduling, such as by increasing the percentage of the adder above (and below) incremental cost as the deviations become larger; and (3) the provisions must account for the special circumstances presented by intermittent generators and their limited ability to precisely forecast or control generation levels, such as waiving the more punitive adders associated with higher deviations.

240. Bonneville has taken an energy imbalance pricing approach that appears consistent with the three principles outlined above and seems to be working well. Bonneville's imbalance pricing approach is based on a three-tiered deviation band that would appear workable for both energy imbalance service and generator imbalance service. Under this proposal, imbalances of less than or equal to 1.5 percent of the scheduled energy (or two megawatts, whichever is larger) would be netted on a monthly basis and settled financially at 100 percent of incremental or decremental cost at the end of each month. Imbalances between 1.5 and 7.5 percent of the scheduled amounts (or two to ten megawatts, whichever is larger) would be settled financially at 90 percent of the transmission provider's system decremental cost for overscheduling imbalances that require the transmission provider to decrease generation or 110 percent of the incremental cost for underscheduling imbalances that require increased generation in the control area. Imbalances greater than 7.5 percent of the scheduled amounts (or 10 megawatts, whichever is larger) would be settled at 75 percent of the system decremental cost for overscheduling imbalances or 125 percent of the incremental cost for underscheduling imbalances. Intermittent resources are exempt from the third-tier deviation band and would pay the second-tier deviation band charges for all deviations greater than the larger of 1.5 percent or two megawatts.

[231] *Accord* APPA, Constellation, EPSA, Steel Manufacturers Association, and TAPS.

[232] *Accord* Progress Energy, Salt River, and Southern.

241. The Commission seeks comment on whether this approach should be adopted for inclusion in the *pro forma* OATT for energy and generator imbalances. Does this approach provide sufficient incentives to ensure that transmission systems can be operated in a reliable manner and ensure that customers are treated in a just and reasonable manner?

242. We note that the Bonneville provision allows for greater charges when a customer has an ''intentional deviation.'' [233] We seek comment on whether the *pro forma* OATT imbalance provision should provide for penalties for behavior that represents deliberate reliance on the transmission provider's generation resources, as opposed to scheduling errors, with such penalties being subject to prior notice and approval by the Commission and based on the facts and circumstances of the individual transmission provider.

243. If the Commission adopts revised energy and generator imbalance schedules consistent with the principles proposed in this NOPR, that would eliminate the need for a final rule in the Imbalance Provisions Proceeding in Docket No. RM05–10–000 concerning generator imbalance provisions for intermittent resources. As such, the Commission would expect to terminate that docket concurrent with the adoption of revised energy and generator imbalance schedules in this proceeding.

244. With respect to the pricing of energy and generator imbalances, the Commission believes that charges based on incremental costs or multiples of incremental costs will provide the proper incentive to keep schedules accurate without being excessive. In deriving such charges, the Commission proposes that incremental cost be defined to include both energy and commitment [234] costs (to the extent additional commitments are needed). The Commission seeks comment on how such charges should be calculated, as well as how they would be applied to transmission customers. How should additional demand and energy costs, if incurred in responding to imbalances, such as redispatch, commitment, or additional regulation reserves be appropriately reflected in the calculation of imbalance charges and which customers should be charged for such costs? Who should receive any additional revenue from the charges above incremental costs?

245. The Commission proposes to continue to allow inadvertent energy to be treated differently than energy and generator imbalances.[235] The Commission believes that these two types of service are not comparable. Inadvertent energy represents the difference between a control area's net actual interchange and the net scheduled interchange. It is caused by the combined effects of all the generation and loads in the control area and not simply the loads and generation of the transmission provider. Further, management of inadvertent energy is needed to adhere to NERC standards and to ensure reliability. Many of the variables of inadvertent interchange are beyond the control of individual transmission providers. Because of the nature of inadvertent energy and historical practices, transmission providers pay back imbalances in kind, and the Commission has accepted this treatment as just and reasonable. In contrast, allowing customers to pay back all energy and generator imbalances in kind would not provide sufficient incentives for them to minimize imbalances. Some commenters have argued that the return-in-kind approach to inadvertent energy between control areas is discriminatory because OATT customers are required to bear actual charges for their imbalances. As we have described, we believe the two services are different and hence do not believe that the two should have precisely the same treatment. However, we seek comment on whether the current return-in-kind approach to inadvertent energy encourages leaning on the grid in times of shortage, and therefore whether any reforms in this area are appropriate. Would pricing inadvertent energy at incremental cost (or some variant thereof) be an appropriate disincentive? If any reforms in this area are appropriate, should they be pursued under FPA section 215 as part of the review of reliability standards?

246. Furthermore, we propose to add provisions to schedule 4—Energy Imbalance Service and schedule 9—Generator Imbalance Service of the *pro forma* OATT to reflect the Commission's policy that a transmission provider may only charge a transmission customer for either hourly generator imbalances or hourly energy imbalances for the same imbalance, but not both.[236] We also clarify that this policy only applies to a transmission customer that otherwise would be charged for both generator imbalances and energy imbalances for the same imbalance occurring within the same control area.

247. Finally, the Commission seeks comment on whether or not it is appropriate to allow a transmission customer to net energy and generator imbalances for a particular transaction within a single control area to the extent they offset. For example, if a transmission customer schedules 100 MWh over an hour but has a load of 120 MWh, it would face an imbalance of 20 MW. However, if it also dispatches its generation to the same 120 MWh, should there be no net charge? Similarly, what if a transmission customer schedules 100 MWh but has a load of 80 MWh and dispatches its generation to 80 MWh? Does the potential to allow netting for offsetting imbalances contradict the principle of encouraging good scheduling practices? We also seek comment on what would be a reasonable percentage to net without concerns that allowing such netting would lead to reliability concerns from using unscheduled transmission or would cause redispatch costs by the transmission provider.

2. Credits for Network Customers

248. Section 30.9 of the *pro forma* OATT states that a network customer owning existing transmission facilities that are integrated with the transmission provider's transmission system may be eligible to receive cost credits against its transmission service charges if the network customer can demonstrate that its transmission facilities are integrated into the plans or operations of the transmission provider to serve its power and transmission customers. The section also states that new facilities are eligible for credits when the facilities are jointly planned and installed in coordination with the transmission provider. In the NOI, we asked several questions regarding the Commission's

[233] *See* 2006 Transmission and Ancillary Service Rate Schedules, approved in *United States Dep't of Energy—Bonneville Power Administration*, 112 FERC ¶ 62,258 (2005). The Bonneville tariff provides that ''For any hour(s) that an imbalance is determined by [Bonneville] to be an Intentional Deviation: (1) No credit is given when energy taken is less than the scheduled energy, (2) When energy taken exceeds the scheduled energy, the charge is the greater of: (i) 125% of [Bonneville's] highest incremental cost that occurs during that day, or (ii) 100 mills per kilowatthour.'' An ''Intentional Deviation'' is defined as ''a deviation that is persistent during multiple consecutive hours or at specific times of the day,'' a ''pattern of under-delivery or over-use of energy,'' or ''persistent over-generation or under-use during Light Load Hours, particularly when the customer does not respond by adjusting schedules for future days to correct these patterns.'' *Id.* at 46.

[234] ''Capacity commitment'' generally is defined as the generating capacity committed by a utility to provide capability for another utility to attain its reserve level. *See, e.g., Central & South West Services, Inc.*, 48 FERC ¶ 61,197 at 61,731 n.9 (1989).

[235] *See* Order No. 888–A at 30,233.

[236] Imbalance Provisions Proceeding at 32,123 (citing *Niagara Mohawk*, 86 FERC at 61,028).

policy on credits for new facilities, including whether the Commission should reconsider its policy of denying credits for transmission facilities owned by point-to-point customers.

Comments

249. Many commenters argue that the existing credit requirement has the effect of discouraging joint transmission planning.[237] NRECA asserts that making the existence of joint planning a condition of a customer's eligibility for credits or revenue requirement recovery simply provides another excuse for public utility transmission providers to refuse to engage in joint planning.

250. EEI contends that if the transmission provider is required to provide credit against the customer's cost of transmission service, the cost of the customer's jointly planned and integrated transmission facilities should be automatically added to the transmission provider's cost of service. EEI states that the Commission has adopted a similar approach with respect to third party supply of reactive capability. EEI also argues that automatic credit for customer facilities is inappropriate because in instituting open access and requiring transmission providers to offer network service, the Commission made it clear that it did not direct a merging of the parties' transmission systems or the operation of a joint transmission network.[238] EEI argues that the Commission should retain the requirement that customer transmission facilities are eligible for credits from transmission providers other than RTOs and ISOs only if they meet the integration standard.

251. Some commenters argue that the OATT should not be reformed to include credits for transmission facilities built by point-to-point customers.[239] EEI states that the question posed in the NOI appears to contemplate providing credits to a point-to-point customer who constructs new facilities that are jointly planned with the transmission provider regardless of whether those facilities meet the Commission's standards for integration of customer-owned transmission facilities. Instead, EEI argues, the Commission should apply the test from *Consumers Energy Co.*, which provides that a transmission customer should receive credits against its transmission bill when the transmission provider uses facilities owned by that customer to provide service to other transmission customers.[240] Bonneville and PNM–TNMP state that if applied to existing facilities, credits for point-to-point customers could cause major cost shifts. Bonneville argues that these problems would be especially severe in the Northwest, where there are numerous areas of multiple transmission ownership, both in series and in parallel, and where transmission owners purchase large amounts of transmission from each other. Southern states that to effectuate this proposal, the Commission would need to revise its ''higher of'' pricing requirements, otherwise no point-to-point customer would build transmission facilities when it can require the transmission provider to do so and costs are rolled into rate base. Entergy opposes providing credits for transmission facilities owned by point-to-point service customers because those facilities are not used to integrate resources and loads in the same way that facilities owned by network customers are.

252. Other commenters argue that the Commission should modify the *pro forma* OATT to include a provision allowing credits for transmission facilities built by a point-to-point customer.[241] TAPS states the Commission should re-evaluate its bright line denial of credits for transmission facilities owned by point-to-point customers. TAPS contends that the current section 30.9 integration test may be appropriate for long-term (*e.g.*, at least 5 years) point-to-point customers. South Carolina E&G supports modifying the *pro forma* OATT to provide credits for facilities built by point-to-point customers, but asserts that credits should apply only when the customer's facilities are in service. South Carolina E&G states that after the passage of a defined period of inactivity, such as when a customer takes a facility out of service, the credits should be suspended, to reduce the burden on other customers.

Discussion

253. Section 30.9 of the *pro forma* OATT establishes two categories of facilities owned by network customers that are eligible for credits. First, existing transmission facilities ''integrated with the Transmission Provider's Transmission Systems,'' are eligible for credits if the network customer can ''demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers.'' The second category comprises new facilities (*i.e.*, facilities constructed by the network customer after the service commencement date in the OATT), if the facilities ''are jointly planned and installed in coordination with the Transmission Provider.''

254. We agree with the commenters who argue that section 30.9 should be reformed. We agree that the link between credits for new facilities and the requirement for joint planning can act as a disincentive to coordinated planning, which is contrary to the Commission's original objective in adopting the provision. A transmission provider has an incentive to deny coordinated planning if it believes that the cost of any facilities constructed as a result of that process will have to be borne in significant part by its bundled retail customer.

255. Therefore, we propose to sever the link between credits and planning, and treat the two issues separately within the *pro forma* OATT.[242] Eliminating the link is appropriate because the crediting of integrated facilities serves a purpose independent of the planning obligation. Traditionally, the Commission has allowed a transmission provider to allocate the costs of integrated facilities to all users of the integrated system or grid consistent with the view that the entire grid is interconnected and provides generalized benefits to all users.[243] But because integration is a fact-specific matter, the Commission in Order No. 888 decided that credits were appropriately addressed on a case-by-case basis. [244]

256. Regarding the eligibility for credits, as the Commission stressed in Order No. 888, while certain facilities may warrant some form of cost credit, the mere fact that transmission customers may own transmission facilities is not a guaranteed entitlement

[237] *E.g.*, Arkansas Cities, East Texas Cooperatives, Nevada Companies, NRECA, PNM–TNMP, Suez Energy NA, TAPS, TransAlta, TDU Systems, and Xcel.

[238] For support, EEI cites *Florida Municipal Power Agency* v. *Florida Power & Light Co.*, 74 FERC ¶ 61,006 at 61,009–10 (1996), *order on reh'g*, 96 FERC ¶ 61,130 (2001), *aff'd sub nom. Florida Municipal Power Agency* v. *FERC*, 315 F.3d. 362 (D.C. Cir. 2003).

[239] *E.g.*, Bonneville, EEI, and PNM–TNMP.

[240] EEI cites *Consumers Energy Co.*, 86 FERC ¶ 63,004 at 65,016 (1999), *order on initial decision*, 98 FERC ¶ 61,333 (2002) and *Northeast Texas Electric Cooperative, Inc.*, 111 FERC ¶ 61,189 at P 6 (2005).

[241] *E.g.*, MidAmerican, South Carolina E&G, TAPS, and Williams.

[242] See Part V.B for a discussion of our proposed planning obligations.

[243] *See, e.g., Pacific Gas and Electric Co.*, 106 FERC ¶ 61,144 at P 12, *reh'g denied*, 108 FERC ¶ 61,297 (2004); *Niagara Mohawk Power Corp.*, 42 FERC ¶ 61,143 at 61,531 (1988); *Otter Tail Power Co.*, 12 FERC ¶ 61,169 at 61,420 (1980).

[244] Order No. 888 at 31,742.

to such credit.[245] Rather, a network customer's transmission facilities must provide additional benefits to the transmission grid in terms of capability, delivery options, and reliability, and be relied upon for the coordinated operation of the grid. The integration standard, in brief, requires that to be eligible for credits under *pro forma* OATT section 30.9, the customer ''must demonstrate that its facilities not only are integrated with the transmission provider's system, but also provide additional benefits to the transmission grid in terms of capability and reliability and can be relied on by the transmission provider for the coordinated operation of the grid.'' [246] This policy is premised on the principle that ''just as the transmission provider cannot charge the customer for facilities not used to provide transmission service, the customer cannot get credits for facilities not used by the transmission provider to provide service.'' [247] The Commission continues to believe that, for existing facilities, the integration standard is the appropriate standard for determining whether a network customer's facilities should be eligible for credits. We clarify, however, that for new facilities, the integration standard must be applied comparably,[248] because application of the integration test in a manner that exclusively benefits the transmission provider is unduly discriminatory, and a violation of the FPA.[249] Specifically, we propose that the network customer shall receive credit for transmission facilities added subsequent to the effective date of the Final Rule in this proceeding provided that: (1) Such facilities are integrated into the operations of the transmission provider's facilities, and (2) if the transmission facilities were owned by the transmission provider, would be eligible for inclusion in the transmission provider's annual transmission revenue requirement as specified in Attachment H of the *pro forma* OATT.

257. Thus, the Commission proposes revising section 30.9 to eliminate the disincentive to coordinated planning and investment in the transmission grid (*i.e.*, by deleting language that permits transmission providers to refuse crediting for network-customer-owned facilities that are not part of its planning process) and provide for non-discriminatory crediting for integrated facilities comparable to those transmission provider facilities that are included in rates. We are proposing this change to ensure that section 30.9 does not impede coordinated planning and to otherwise ensure that our crediting policy is just, reasonable and not unduly discriminatory. Our action is not in any way intended to lessen our commitment to coordinated planning between a transmission provider and its customers. To the contrary, we propose elsewhere in the NOPR to require coordinated planning by all transmission providers. This requirement is not linked to the issue of crediting for customer-owned facilities, but rather is a general requirement intended to avoid opportunities for undue discrimination in transmission planning.

258. We decline to allow transmission providers as part of this proceeding to automatically add costs of credits associated with integrated transmission facilities to the transmission provider's cost of service. These costs typically are considered and evaluated as part of a regular cost of service review process. Nevertheless, a transmission provider that wishes to add an automatic adjustment clause to its rates may seek Commission approval for its methodology in a filing submitted under section 205 of the FPA.[250]

259. Finally, the Commission does not propose revising the *pro forma* OATT to expressly allow transmission credits for facilities owned by point-to-point customers. Unlike a network customer, a point-to-point customer only pays for a discrete transmission service over the contract term. The network customer takes a usage-based service which integrates its resources and loads and pays on the basis of its total load on an ongoing basis. The transmission provider includes the network customer's resources and loads in its long-term planning horizon and the two parties coordinate operations of their facilities through a network operating agreement. In this way, network service is comparable to the service that the transmission provider uses to serve its own retail native load, and credits for certain integrated network facilities are appropriate. The point-to-point customer, however, does not purchase integration service, nor does it sign a network operating agreement with the transmission provider. Thus, because of the inherent differences between point-to-point and network service, we do not propose adding a new OATT requirement that the transmission provider make credits generically available to point-to-point customers that own transmission facilities. Nevertheless, there may be some facilities owned by a point-to-point customer that meet all the criteria for credits. Although the Commission is not including a specific provision in the OATT that provides credits for these facilities, consistent with the Commission's statement in Order No. 888, the Commission will address such situations on a fact-specific, case-by-case basis.[251]

3. Capacity Reassignment

260. In Order No. 888, the Commission concluded that a public utility's tariff must explicitly permit the voluntary reassignment of all or part of a holder's firm point-to-point capacity rights to any eligible customer.[252] As for the rate for capacity reassignment, the Commission concluded that it could not permit reassignments at market-based rates because it was unable to determine that the market for reassigned capacity was sufficiently competitive so that assignors would not be able to exert market power. Instead, the Commission capped the rate at the highest of: (1) The original transmission rate charged to the purchaser (assignor), (2) the transmission provider's maximum stated firm transmission rate in effect at the time of the reassignment or (3) the assignor's own opportunity costs

[245] Order No. 888 at 31,742–43.

[246] *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,078 at P 17 (2004) (citing Order No. 888–A at 30,271), *reh'g denied*, 114 FERC ¶ 61,028 (2006).

[247] *Id.* at P 20 (citing Order No. 888–A at 30,271 & n.277); *accord East Texas Coop., Inc.* v. *Central & South West Services, Inc.*, 108 FERC ¶ 61,079 at P 28 (2004), *reh'g denied*, 114 FERC ¶ 61,027 (2006); *Southern California Edison Co.*, 108 FERC ¶ 61,085 at P 10 (2004); *Northern States Power Co.*, 87 FERC ¶ 61,121 at 61,488 (1999); *Florida Municipal Power Agency* v. *Florida Power & Light Co.*, 74 FERC ¶ 61,006 at 61,010 (1996), *reh'g denied*, 96 FERC ¶ 61,130 at 61,544–45 (2001), *aff'd sub nom. Florida Municipal Power Agency* v. *FERC*, 315 F.3d 362 (D.C. Cir. 2003).

[248] In Order No. 888, the Commission addressed the comparability requirement:

We caution all transmission providers that while our discussion here addresses the requirements necessary for a customer's transmission facilities to become eligible for a credit, the principles of comparability compel us to apply the same standard to the transmission provider's facilities for rate determination purposes.

Order No. 888 at 31,743 n.452.

[249] Credits may not be necessary if the transmission provider and a transmission customer jointly own the transmission facilities and operate those facilities under the terms of a joint ownership agreement. *See Northern States Power Co.*, 83 FERC ¶ 61,098 at 61,472 (explaining that the crediting provision in *pro forma* OATT section 30.9 was not intended to apply to jointly owned transmission facilities), *order on clarification*, 83 FERC ¶ 61,338, *order denying reh'g and clarification*, 84 FERC ¶ 61,122 (1998), *remanded on other grounds sub nom. Northern States Power Co.* v. *FERC*, 176 F.3d 1090 (8th Cir. 1999).

[250] *See, e.g.*, *id.* at 61,467.

[251] Order No. 888 at 31,742; Order No. 888–A at 30,271.

[252] Order No. 888 at 31,696; *pro forma* OATT section 23.1.

capped at the cost of expansion (price cap).[253]

261. The Commission explained in Order No. 888 that opportunity cost pricing had been permitted at ''the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two (*i.e.*, 'or' pricing is permitted; 'and' pricing is not).'' [254] In Order No. 888–A, the Commission explained that opportunity costs for capacity reassigned by a customer should be measured in a manner analogous to that used to measure the transmission provider's opportunity cost.[255] As a result, the Commission required that assignors proposing to recover opportunity costs file with the Commission a fully developed formula describing the derivation of opportunity costs. The Commission further required that all information necessary to calculate and verify opportunity costs must be made available to the eligible customer.[256]

262. In the NOI, the Commission asked whether the price cap remained reasonable, or whether it should be modified or eliminated to further encourage capacity reassignment.

Comments

263. Some commenters argue that the price cap should not be eliminated.[257] According to EEI, transmission pricing policies do not have much impact on reassignment of capacity rights, so changes to the approach would be largely irrelevant.

264. Southern contends that elimination of the price cap might result in inefficiencies by providing an incentive for entities to hoard transmission capacity. Moreover, Tacoma and Public Power Council reason that because transmission remains a monopoly business, cost-based rates remain appropriate.

265. Snohomish expresses concern that eliminating the price cap may encourage speculation in the purchase of transmission capacity, greatly driving up costs for transmission customers. Snohomish, nonetheless, states that auctions of secondary capacity may be appropriate, provided the capacity is purchased under a long-term contract for the purpose of serving load and the sale does not reduce transmission capacity for existing customers that have contracted for the capacity.

266. Other commenters argue that the price cap should be revised.[258] Exelon supports the maximum flexibility possible in use of the transmission system, including allowing transmission rights to be assigned and redirected—so long as the transfer capability is available and existing service will not be curtailed. Exelon recommends that the Commission modify the OATT to permit transmission customers to charge market-based rates for transmission capacity in the secondary market. This change, Exelon argues, would provide greater incentive for the owner of the transmission right to actively pursue reassigning the transmission service, thereby using the transfer capability more efficiently. Alcoa states that economic incentives are needed to enable a secondary transmission capacity market to develop and thrive.

267. EPSA and Constellation argue that the only desirable modification to this pricing policy would be to eliminate the requirement that transmission customers file with the Commission a method to impose opportunity cost pricing. EPSA states that to its knowledge, no transmission customer has yet been able to develop and file a predefined formula mechanism that would serve as an opportunity cost rate, probably because opportunity cost pricing reflects dynamic market conditions. MidAmerican claims that even when there is no disagreement over the assignor's determination of opportunity costs, considerable time may be required to prepare and obtain approval from the Commission of the resulting FPA section 205 filing. EPSA asserts that the market itself will cap the value of reassignment at the price the transmission provider would charge, *i.e.*, its expansion cost. Constellation states that prices of reassigned capacity will be disciplined by the opportunity costs of releasing the capacity. Both Constellation and EPSA state that the Commission should recognize that opportunity costs for released transmission capacity are dynamic and provide a market discipline on the price that any seller will charge and any purchaser will pay for reassigned capacity. In response to EPSA's proposal to eliminate the requirement that transmission customers file with the Commission a method to impose opportunity cost pricing, APPA argues that to ensure that the price a seller would charge for firm transmission capacity is just and reasonable, as the FPA requires, the Commission should require such a filing.

268. While Cinergy maintains that the current pricing approach for capacity assignments is appropriate, it supports consideration of new alternatives that would allow more effective capacity reassignment by the transmission customer. Cinergy asserts that one area that could be considered is to require the transmission provider to provide more clarity on how reassignment requests are analyzed for approval and the options available to the transmission customer to post existing service for reassignment.

269. Williams and Powerex argue that revising the price cap will not encourage greater capacity reassignment. Williams submits that other non-price limitations on capacity reassignment—such as the requirement that the assignee utilize the same source and sink as the original customer—are the real reasons there has not been more capacity reassignment. Stated differently, Williams contends that the price cap does not restrict capacity reassignment—source and sink requirements do.

Discussion

270. In Order No. 888, the Commission explained that it expected capacity reassignment to achieve three goals: ''(1) help [customers] manage the financial risks associated with their long-term transmission commitments, (2) reduce the market power of transmission providers by enabling customers to compete, and (3) foster efficient capacity allocation.'' [259] Because capacity reassignment does not appear to have developed into a competitive alternative to primary capacity, the Commission is proposing modifications to its existing pricing policy. We propose removing the price cap on capacity reassignment and allowing negotiated rates for transmission capacity reassigned by transmission customers. We do not propose to lift the price cap for capacity resold by transmission providers or their affiliates due to market power concerns.

271. The Commission notes that transmission customers have not used the opportunity cost pricing option for capacity reassignment. Comments suggest that this may be due in part to the complexity of establishing an opportunity cost formula, or the administrative hurdle of filing and supporting a proposal. Simply put, the goals of the capacity assignment program remain important to the

[253] Order No. 888 at 31,697.

[254] *Id.* at 31,740.

[255] Order No. 888–A at 30,224.

[256] *See id.;* Order No. 888 at 31,740.

[257] *E.g.,* Ameren, EEI, Southern, and Tacoma Power.

[258] *E.g.,* Alcoa, Constellation, EPSA, Exelon, and MidAmerican.

[259] Order No. 888 at 31,696.

Commission, but the price cap has not served as a useful means of achieving them. While we recognize that other factors may inhibit capacity reassignment, eliminating the price cap should provide more flexibility to market participants and encourage customers to sell their capacity to another customer who values the capacity more highly. It also will facilitate the release of capacity and encourage the maximum number of voluntary transactions to occur in a secondary market, which will benefit all market participants consistent with the Commission's goals for capacity reassignment.

272. Although in Order No. 888 the Commission decided not to allow reassignment at market-based rates because of concerns that capacity assignors might exert market power, due to several factors, we now believe that market forces will limit the ability of most assignors to exert market power. First, we expect that competition among releasing customers will restrict the potential exercise of market power. Second, the Commission will monitor the market by requiring quarterly reports and regular OASIS postings from transmission providers based on information submitted to them from reassigning customers regarding their reassignment activity (including the negotiated rate). The Commission's complaint procedures and the Enforcement Hotline also are available for participants raising market power concerns, which should supplement the Commission's existing market oversight efforts. Third, the continued regulation of rates for primary capacity will act as a check to ensure just and reasonable reassignment rates. For example, without congestion on the transmission system, the transmission provider's rate on file serves as the de facto price cap and, if congestion exists, the ''incremental rate,'' which reflects the transmission provider's cost of expansion, should act as a price ceiling for long-term transactions.

273. The Commission concludes that because the price cap appears to have reduced customers' transmission options, removal of the price cap is warranted without a market-by-market analysis. Our reform is intended to provide alternatives for customers that value the capacity more highly. The Commission finds that lifting the price cap strikes a reasonable balance between promoting more efficiency through trading and relying upon competition and price disclosure to prevent anticompetitive behavior. Though we recognize that the price of reassigned capacity may temporarily exceed the cost of expansion, that price signal is an important economic incentive to induce greater transmission investment.

274. Concerns have been raised that allowing negotiated rates may provide an incentive to ''hoard'' capacity, or to reserve transfer capability for no legitimate use other than to speculate on the price of the reassigned capacity. The ability of a transmission customer to hoard capacity is not without limits in that the transmission provider has the obligation to resell as non-firm point-to-point service any firm point-to-point transfer capability reserved by a customer but not scheduled within the time-frames established in *pro forma* OATT section 13.8. As discussed above, we believe that the incentive for the transmission customer to hoard would be limited by the transmission provider's cost of expansion for long-term transactions. Thus, we believe that the greater efficiency created by a more effective capacity trading market for customers who need capacity during peak periods outweighs such concerns and that hoarding concerns are overstated. However, we seek comment on whether circumstances exist where unaffiliated transmission customers could amass market power similar to that of the transmission provider.

275. We do not propose lifting the price cap for all assignors. A stated goal of capacity reassignment is to ''reduce the market power of transmission providers by enabling customers to compete.'' [260] Commission precedent has allowed transmission provider affiliates to reassign capacity under the price cap,[261] and we propose to continue this policy. To allow transmission providers and their affiliates to use negotiated rates allows the transmission provider to use its primary market power in the secondary market. A transmission provider not subject to a price cap would have the ability and incentive to exercise market power to favor its own generation sales when it operates and administers the reassignment process. Furthermore, lifting the cap for the transmission provider may eliminate the incentive to build or expand, as it may allow the transmission provider to take advantage of congested pathways to charge rates above the cost of expansion. Because these expected outcomes would reduce the ability of other customers to compete, and undermine the development of a viable secondary market, we conclude that it remains appropriate to require transmission providers and their affiliates to conform to the price cap for capacity reassignment.

276. The Commission seeks comment on the quarterly reports and OASIS postings we propose to require from transmission providers under this proposal. They will be based on information that we will require assignors to give to transmission providers. What information should we require in the quarterly reports and OASIS postings, *i.e.*, information about the capacity released, the original rate paid for that capacity, the price charged to the assignee for the capacity, and the term of the assignment? Is other information necessary for operational and reliability purposes? Are additional reports by assignors to the transmission provider necessary, and if so, what information should be reported by assignors? Should the Commission establish a new quarterly reporting process, *e.g.*, a new form, or utilize the existing electronic electric quarterly report procedures? How frequently should the OASIS postings be made?

4. ''Operational'' Penalties

a. Unauthorized Use Penalties

277. Section 13.7 of the *pro forma* OATT stipulates that a point-to-point service customer's use of the transmission system may not exceed the firm capacity it has reserved at each point of receipt and each point of delivery except as specified in section 22 of the *pro forma* OATT.[262] Section 13.7 of the *pro forma* OATT also directs the transmission provider to specify the rate treatment and all related terms and conditions for an unauthorized use operational penalty in the event that a point-to-point customer exceeds its firm reserved capacity at any point of receipt or point of delivery. Section 14.5 of the *pro forma* OATT contains similar provisions for an unauthorized use penalty in the event that a transmission customer exceeds its non-firm point-to-point service capacity reservation. The *pro forma* OATT does not otherwise address unauthorized use penalties.

278. In *Allegheny Power,* the Commission capped unauthorized use penalties at a level equal to twice the standard rate for the service at issue.[263] In addition, the Commission clarified that the standard rate to be used as the

[260] *Id.*

[261] *Commonwealth Edison Co.*, 78 FERC ¶ 61,312 at 62,336 (1997).

[262] Section 22 (Changes in Service Specifications) of the *pro forma* OATT prescribes the circumstances under which the transmission customer may modify the point of delivery and the point of receipt for an existing firm point-to-point service reservation.

[263] *Allegheny Power System, Inc.,* 80 FERC ¶ 61,143 at 61,545–46 (1997) (*Allegheny Power*).

basis of the unauthorized use penalty charge must be that of the service at issue, without regard to the duration of the violation; *i.e.*, if overuse occurs for one hour, but the service overused is weekly service, the penalty charge is to be capped at twice the standard weekly rate.[264] In *APS,* the Commission issued an audit report to Arizona Public Service Company (APS) that contains two findings that Commission audit staff characterized as unauthorized use of transmission service.[265] In the first finding, APS's wholesale merchant function did not request and pay for point-to-point service to support some of the off-system power sales it made at trading hubs where APS system resources were directly connected. In the second finding, APS incorrectly treated the Phoenix Valley 230kV system as a single node on its transmission system. As a result, off-system sales made by generators connected to the Phoenix Valley system should have been, but were not, supported by point-to-point service. Other than these cases, the Commission has not addressed the appropriate method of applying unauthorized use penalties pursuant to the provisions of sections 13.7 and 14.5 of the *pro forma* OATT.

Comments

279. MidAmerican states that unauthorized use penalties should only be imposed if the *pro forma* OATT clearly specifies that they are applicable to a proscribed conduct.

Discussion

280. We propose to clarify the circumstances under which we would expect transmission providers to assess unauthorized use penalties. This clarification will eliminate a potential source of discretion in the implementation of the *pro forma* OATT and will assist the Commission in its enforcement of the obligations imposed by it. Specifically, we propose to clarify that unauthorized use penalties apply to any circumstance when a transmission customer uses transmission service that it has not reserved.[266] An unauthorized use penalty would be assessed in circumstances when a transmission customer has a transmission service reservation, but uses transmission service in excess of its reserved capacity. An unauthorized use penalty also would be assessed if a transmission customer uses transmission service when it does not have a transmission service reservation, including the situations described in *APS.* We further clarify that an unauthorized use penalty would not be assessed in circumstances when a transmission customer inappropriately uses a network service reservation to support an off-system sale, as discussed in Part V.D.7. However, a transmission customer that inappropriately uses network service would be required to pay for the point-to-point service it should have reserved and could be subject to a civil penalty depending on the circumstances. We seek comment on whether the current policy that limits unauthorized use penalties to twice the standard rate for the service at issue has resulted in penalties that are not just and reasonable; and, if so, we seek comment regarding provisions that would yield unauthorized use penalties that are just and reasonable.

b. How Transmission Providers Should Pay Operational Penalties

Comments

281. In the NOI, the Commission observed that the existing *pro forma* OATT allows transmission providers to impose certain operational penalties against transmission customers for violations of the *pro forma* OATT, but does not address the adverse consequences to a transmission provider who violates its OATT.

282. Several commenters indicate that a transmission provider would not face the same financial consequence as other transmission customers when the transmission provider or an affiliated transmission customer pays an operational penalty. TAPS notes that applying customer-focused penalties to the transmission provider is meaningless if a transmission provider merely pays itself. EPSA suggests that the Commission include provisions in the new *pro forma* OATT to ensure that the penalty imposes a true financial consequence, *e.g.*, penalties imposed on a transmission provider should be distributed to those OATT customers that were taking service during the period in which the violation occurred. ELCON suggests that the *pro forma* OATT be revised to provide for tariff-based sanctions against a transmission provider that fails to comply with its OATT. Occidental argues that one of the fundamental problems with the current OATT is the lack of tariff-based penalties for violations. Occidental states that tariff-based penalties are needed to focus transmission providers on compliance and to permit customers and the Commission's enforcement staff to bring both specific tariff violations and general issues of non-compliance before the Commission.

Discussion

283. We propose to have transmission providers pay non-offending, unaffiliated transmission customers when the transmission provider or its affiliate incurs operational penalties. This proposal is consistent with our prior findings that operational penalties collected by the transmission provider should be credited back to non-offending transmission customers in order to provide an incentive to the transmission provider to develop non-penalty remedies that will elicit appropriate behavior by transmission customers.[267] For those transmission providers subject to operational penalties, we propose to require the transmission provider to make an annual compliance filing to notify the Commission of the amounts of all such operational penalties incurred during the year and to propose a method to identify non-offending, unaffiliated transmission customers to which the transmission provider would distribute penalty amounts. In addition, we propose to allow a transmission provider to avoid an annual compliance filing by making a one-time filing to propose a mechanism through which it would identify non-offending, unaffiliated transmission customers and a method by which it would distribute the operational penalties it or its affiliates have incurred to the identified transmission customers. We also propose to prohibit transmission providers from recovering for ratemaking purposes or through any service or facility under the Commission's jurisdiction any cost it incurs when it or an affiliate pays an operational penalty.

5. ''Higher of'' Pricing Policy

284. In Order No. 888, the Commission stated that system expansions should be priced at the higher of the embedded cost rate (including the expansion costs) or the incremental cost rate, consistent with the Transmission Pricing Policy

[264] *Id.* at 61,546 n.131.

[265] *Arizona Public Service Co.,* 109 FERC ¶ 61,271 at P 6 (2004) (*APS*).

[266] The revised *pro forma* OATT reflects this proposed reform in sections 13.7 and 30.4.

[267] *See, e.g., Carolina Power & Light Co.,* 103 FERC ¶ 61,209 (2003); *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091 at 31,315 (2000) (noting that ''to the extent that penalty revenues are generated, the required crediting of penalty revenues will eliminate any economic incentive for pipelines to rely on penalties rather than inducements''); *order on reh'g,* Order No. 637–A, 65 FR 35705 (Jun. 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000).

Statement.[268] The Commission has explained that when rolling in the costs of network upgrades incurred to meet a transmission service request would have the effect of raising the average embedded cost rate paid by existing customers, the transmission provider may elect to charge an incremental cost rate for the new service and thereby insulate existing customers from the costs of any necessary system upgrades. However, the transmission provider may not charge both an incremental cost rate and an embedded cost rate associated with existing network transmission facilities.[269]

285. Although we are not undertaking generic transmission pricing reform in this proceeding, we are concerned that our existing policies may not be being applied consistently and, as a result, customers may be quoted prices that are not consistent with the ''higher of'' policy. We understand that customers typically are quoted an incremental rate in the form of a total dollar amount of needed facility upgrades (*e.g.*, $5,000,000) rather than in the form of a monthly transmission rate that can be compared, on an ''apples-to-apples'' basis, to the embedded cost rate. Presenting an incremental rate as a lump sum payment request is inconsistent with our ratemaking policy and has the potential to discourage customers from proceeding with service requests.[270] As we have noted, under our ''higher of'' pricing policy for network upgrades, the transmission provider should compare the monthly revenue requirement from the upgrade to the monthly revenue requirement from the embedded transmission rate.[271] We also have said that the incremental rate should be established by amortizing the cost of the upgrades over the life of the contract.[272] Presenting the incremental charge in the form of a monthly rate allows a customer seeking a lower rate to choose to request a longer transaction term.

286. We encourage comments on whether changes to the *pro forma* OATT are necessary to ensure that incremental costs are presented as monthly rates for service.

D. Non-Rate Terms and Conditions

287. In this section, we propose a number of reforms to non-rate terms and conditions of service under the *pro forma* OATT. We propose these reforms to eliminate opportunities for undue discrimination, to ensure that the services offered under the *pro forma* OATT are just and reasonable, to increase the transparency of service being provided, and to provide clarity with respect to terms and conditions that have caused confusion in the industry.

1. Potential Modifications to Long-Term Firm Point-to-Point Service

288. In Order No. 888, the Commission required all public utilities to offer both firm and non-firm point-to-point service and firm network service on a non-discriminatory open access basis.[273] In the NOI, the Commission asked for comments on pricing policies that can create an incentive to maximize the use of the transmission system.[274] Also, the Commission asked whether the OATT should require transmission providers to offer new transmission services, such as conditional firm, partial firm, and seasonal firm service.[275] Further, the Commission asked in the NOI whether deviations from the ''higher of'' pricing policy would encourage greater incremental pricing of redispatch service.[276]

Comments

289. Some commenters support the inclusion of a required new service and contend that the existing rules for long-term firm point-to-point service pose barriers to new entry. Constellation states that new products are needed that facilitate the efficient use of the transmission system in a competitive market. AWEA and EPSA argue that a long-term request for service from a new generator can be denied because there are reliability violations in only a few hours of a year, even though firm service is nonetheless available for the large majority of hours of the year. They also argue the existing grid is underutilized and that these practices only exacerbate this problem. EPSA further states that some transmission provider base case models show that the transmission provider is operating its system to serve its bundled retail native load under contingencies that the transmission provider would not accommodate for an OATT customer.

290. PPL argues that the Commission should enforce the requirement in section 13.5 of the *pro forma* OATT that transmission providers must redispatch to relieve congestion that may only occur during a few hours a year. PPL further contends that transmission providers have the incentive to simply deny requests for transmission over a path that experiences occasional congestion, rather than properly undertake redispatch actions to minimize this congestion. Others state that they have not received an offer by a transmission provider to redispatch to accommodate a request for transmission service, but instead are given no choice but to pay for facilities studies that are costly and time consuming.[277] Entergy states in its reply comments that it only evaluates redispatch as part of a system impact study if requested by the transmission customer.

291. Several commenters suggest that pricing complexities and certainty of recovery must be resolved before requiring mandatory redispatch. These commenters state that the cost of redispatch is more than the fuel cost differential and includes hard to quantify costs such as start-up costs, higher capital costs due to shorter life and accelerated replacement, higher maintenance costs, and potential emergency power purchases to serve load in constrained areas.[278]

292. PacifiCorp suggests that the higher charge, whether embedded costs or redispatch costs, be determined on a monthly basis rather than making a one-time determination prior to commencement of service. PacifiCorp argues that the typical cost analysis fails to consider the complexity of determining redispatch. PacifiCorp contends that cost estimates become increasingly unreliable as the analysis

[268] *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act,* Policy Statement, 59 FR 55031 at 55037 (Nov. 3, 1994), FERC Statutes and Regulations ¶ 31,005 at 31,146 (1994), *order on reconsideration,* 71 FERC ¶ 61,195 (1995) (Transmission Pricing Policy Statement).

[269] *See* Northeast Utilities Service Company (Re: Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070 (1992), *reh'g denied,* Opinion No. 364–B, 59 FERC ¶ 61,042, order granting motion to vacate and dismissing request for rehearing, 59 FERC ¶ 61,089, *aff'd in part and remanded in part sub nom.* Northeast Utilities Service Company v. FERC, 993 F.2d 937 (1st Cir. 1993), order on remand, 66 FERC ¶ 61,332, *reh'g denied,* 68 FERC ¶ 61,041 (1994) *pet. denied; Pennsylvania Electric Co.,* 58 FERC ¶ 61,278, *reh'g denied,* 60 FERC ¶ 61,034 (clarifying pricing policy), *reh'g denied,* 60 FERC ¶ 61,244 (1992), *aff'd sub nom. Pennsylvania Electric Co.* v. *FERC,* 11 F.3d 207 (D.C. Cir. 1993).

[270] *Southwest Power Pool, Inc.,* 100 FERC ¶ 61,096 (2002) (designing a rate to include a balloon payment is not a substitute for a properly designed rate).

[271] *Southwest Power Pool, Inc.,* 112 FERC ¶ 61,319 at P 33 (2005).

[272] *Southwest Power Pool, Inc.,* 98 FERC ¶ 61,256 (''We agree with SPP that the amortization period for upgrade costs should match the contract period. * * * As the customer is only obligated to take service for the term of the contract, it is reasonable that the costs only be amortized over the term of the contract.''); *reh'g denied in pertinent part,* 100 FERC ¶ 61,096 (2002).

[273] Order No. 888 at 31,690.

[274] NOI at P 13.

[275] *Id.* at P 13.

[276] *Id.* at P 12.

[277] *E.g.,* AWEA, Arkansas Cities, EPSA, and Renewable Energy.

[278] *E.g.,* Ameren, EEI, Progress Energy, and Southern.

extends over time, and the complications of one-year transmission service agreements with rollover options make an accurate calculation nearly impossible.

293. AWEA provides a detailed proposal for conditional firm service, in which the transmission provider would identify certain months, weeks, or days when firm transmission service may be limited or unavailable and identify the number of potential hours during those conditional times, when the customer could have its reservations cut or reduced prior to any firm customer reductions. Under specified conditions, for a limited number of hours over a set number of ''conditional'' months, weeks, days or hours, the firm service may be reduced day-ahead by the transmission provider, with conditional firm service provided instead in those hours firm service is unavailable. The ''conditional'' periods would be established when the service is offered. Also, capacity commitments for conditional firm service would be accounted for in ATC calculations prior to new sales of short-term firm transmission service. Commenters support a requirement that transmission providers post on OASIS the paths for which conditional firm service is available, clearly listing the available capacity for each period, and hours during which firm service is available or curtailment is possible as a result of congestion.[279]

294. Those supporting conditional firm service argue that it should be offered to customers requesting long-term firm service when firm ATC is not available during all hours of the request, and allow the transmission customer to obtain service when it would otherwise be denied.[280] As for the rate design of the service, EPSA and PPL recommend that it include either a discount from the firm rate to reflect the reduction in use at the system peak or no discount from the firm rate, but customers taking conditional firm service would have a right of first refusal when firm service becomes available for the hours in which they have agreed to be curtailed.

295. Commenters arguing against a requirement to provide conditional firm service argue that it would degrade the quality of service received by existing long-term firm point-to-point and network customers.[281] Also, Bonneville argues that providing conditional firm service would require modification to the current curtailment priorities in the OATT and the design and purchase of systems to track the purchases and implement the more complex curtailment schemes. TAPS notes that PacifiCorp amended its OATT to make more explicit the potential for granting part of a request for firm service in terms of both the amounts of service and/or the periods of time for which there is sufficient ATC.[282] If the Commission develops new services, TAPS contends that the Commission should build on PacifiCorp's OATT amendments. Many commenters that object to requiring new transmission services recommend that the Commission encourage transmission providers to develop and adopt new services in response to customer needs.[283] Ameren explains that this process should result in additional services being provided that meet the needs of the customers, that are physically feasible considering the existing uses of the system, and that do not adversely affect the service provided to other users of the system and are not unduly discriminatory. Finally, several commenters express a general sentiment against requiring a service that may not be suited to all regions or systems.[284]

296. Commenters also expressed support for services aside from, or in addition to, conditional firm service. Exelon proposes that the Commission should require ''seasonal firm'' service, though other commenters ask if seasonal firm service would invite hoarding or ''cream skimming.'' MidAmerican contends that in most cases, the need for seasonal service can be accommodated by multiple consecutive purchases of monthly service. PPL supports a required ''partial firm'' service that is confirmed and available on a firm basis but provided in various amounts over an annual period. PPL states that the amount of partial firm service offered would be shaped to match the available capacity within each interval or the year. Powerex and WAPA argue long-term priority non-firm point-to-point service is the most workable new service.

297. MidAmerican states that various transmission providers interpret and apply the provisions of section 19.7 (Partial Interim Service) of the *pro forma* OATT in different ways. MidAmerican states that the Commission should clarify whether section 19.7 refers to a partial period of service (*i.e.*, granting firm service for the full MW amount of the initial request, but for only a portion of the requested time period), or a partial quantity of service (*i.e.*, granting firm service for the time period of the initial request, but for only a portion of the requested full MW amount). MidAmerican suggests that the revised OATT should provide that partial interim service be offered both for partial periods and for partial quantities.

298. Bonneville states that, currently, when a customer accepts an offer of partial service, Bonneville keeps the remaining portion of the customer's request in the queue if the customer executes a system impact study agreement. Bonneville contends that the Commission's OASIS Standards and Communication Protocols, however, appear to disallow this result, as does standard OASIS functionality. Bonneville asks that the Commission clarify whether the Commission intends that a customer accepting an offer of partial service should lose its position in the queue.

299. EPSA further argues that transmission providers should be required to accommodate a request for any service, whether or not articulated in the new OATT, to the extent they can do so, on a nondiscriminatory basis and without unreasonably affecting reliability. EPSA also states that the burden should be on the transmission provider to state in writing why it cannot accommodate any given request.

Discussion

Proposed Findings

300. The Commission preliminarily finds that the existing methods for evaluating requests for long-term firm point-to-point service may no longer be just, reasonable and not unduly discriminatory. We believe that transmission providers may evaluate transmission availability to serve long-term transmission service requests in a manner that is not comparable with the method they use to evaluate transmission needs for bundled retail native load and, therefore, that certain reforms are necessary to ensure comparability.

301. When a transmission provider considers new resources to serve its bundled retail native load, the

[279] *E.g.,* EPSA and PPL.

[280] *E.g.*, AWEA, Constellation, EPSA, MidAmerican, PPL, and Renewable Energy.

[281] *E.g.*, APPA Reply Comments, Powerex, and Salt River.

[282] *See* PacifiCorp Open Access Transmission Tariff, section 19.7, FERC Electric Tariff, Fifth Revised Volume No. 11, Substitute Original Sheet No. 100 (effective April 26, 2004); *see also* PacifiCorp Open Access Transmission Tariff, Schedule 7, Long-Term Firm Point-To-Point Transmission Service, section 2, FERC Electric Tariff, Fifth Revised Volume No. 11, First Revised Sheet No. 252 (effective April 1, 2006) (rates for partial delivery of long-term firm point-to-point transmission service).

[283] *E.g.*, Ameren, Bonneville, Cinergy, EEI, KCP&L, Nevada Companies, NRECA, Salt River, Sempra Global, Southern, TVA, and WAPA.

[284] *E.g.*, Ameren, Cinergy, Salt River, and Southern.

transmission provider will not eliminate an otherwise economic option because the resource may not be deliverable in a few hours of the year. Rather, the transmission provider will evaluate whether it can redispatch its resources as necessary to ensure that load is served on a reliable and economic basis. If redispatch is needed in only a few hours of the year, the transmission provider typically will not construct new facilities to accommodate new resources. Rather, the transmission provider will look for a resource at a different location to fulfill its needs on a least cost basis taking into account transmission and energy costs. This use of redispatch to accommodate a new resource means that the resulting service is provided even though the transmission provider's power flow studies show that ATC is not available in all hours of the year. In this situation, the new resource receives a firm service that is not currently available on many systems to OATT customers because the transmission provider uses redispatch on a long-term basis to accommodate a new resource for which ATC is not available in every hour; in some respects, this firm service is similar to conditional firm service because it uses firm transmission capacity to serve bundled retail native load even though the resource is not deliverable in every hour of the year.

302. The Commission believes that the current practices for evaluating long-term transmission service requests generally may not reflect the same practices used to evaluate transmission needs to serve bundled retail native load. Under current practices, the transmission provider evaluates whether service can be granted in every hour of the year that is modeled and, if not, it informs the customer that long-term firm transmission service cannot be provided out of existing transmission capacity. Section 19.3 of the *pro forma* OATT provides that a system impact study is required before the transmission provider must identify available redispatch options. Before redispatch options are offered, however, the customer must also agree to fund a facilities study to determine whether redispatch is less expensive than the transmission facilities upgrades.[285] Thus, it is only if the customer requests a system impact study and facilities study, and agrees to pay for the studies, that the request will be evaluated further and the option of redispatch will be offered to the customer. This study process is both time consuming and expensive. More importantly, it differs from the evaluation typically undertaken by the transmission provider in deciding whether transmission is available to serve bundled retail native load with a new resource.

303. In Order No. 888, the Commission's goal was to ''facilitate the development of competitively priced generation supply options, and to ensure that wholesale purchasers of electric energy can reach alternative power suppliers and vice versa.'' [286] The first part of this goal, development of competitive supplies, has been realized to some degree.[287] However, the lack of transmission access threatens the viability of customer alternatives to their traditional suppliers. Without long-term firm service, it is difficult for alternative suppliers to procure the financing they need for project development. Customers taking non-firm point-to-point service have a lower reservation priority and are subject to curtailment and interruption more frequently than network customers taking transmission service from resources other than designated network resources. Thus, the lack of long-term firm transmission access being provided on a nondiscriminatory basis is a significant problem in realizing the goals of Order No. 888.

304. The Commission's preliminary view is that current practices do not adequately reflect the manner in which transmission service is planned for bundled retail native load and may no longer be just, reasonable and not unduly discriminatory. Transmission customers, especially those customers seeking service to or from new generation resources, must be given greater flexibility of service to meet their needs comparable with the flexibility provided on behalf of bundled retail native load. New generation resources often face a grid that cannot accommodate requests for long-term firm transmission, at least not without the significant delay required by transmission construction, despite the fact that redispatch options may exist that would allow that resource to be accommodated. In sum, maintaining the status quo, as advocated by several commenters, may be insufficient to ensure comparable treatment of new generation resources for all transmission customers, eliminate barriers to entry for new generation sources seeking long-term transmission arrangements, and encourage the efficient and flexible use of the transmission system in a competitive market.

Proposed Solutions

305. The Commission believes there are two basic options for addressing this problem.[288] The first option focuses on generation redispatch to accommodate long-term firm point-to-point service, while the second option creates a modified form of firm point-to-point service that includes non-firm service in a defined number of hours of the year when firm point-to-point service is not available. The Commission's preliminary view is that the redispatch option is superior because it: (1) Mirrors the way that transmission providers plan for bundled retail native load, (2) would provide firm service to new entrants, rather than service that is subject to more frequent curtailment in certain hours of the year, and (3) may avoid certain implementation issues associated with designing a modified long-term point-to-point service. However, we seek comment on this preliminary view and on both of the options outlined below.[289]

Redispatch Service

306. The Commission believes that full utilization of generation redispatch is the preferred method of ensuring that long-term point-to-point service is not unduly discriminatory and does not serve as a deterrent to new entry. The preferred approach is described below.

307. Section 13.5 of the *pro forma* OATT requires the transmission

[285] *See pro forma* OATT section 27.

[286] Order No. 888 at 31,646.

[287] In 2004, electric generation from IPPs represented an increasing share of the wholesale markets with nearly 36 percent of total sales, a significant increase from 1996 when they accounted for only 12 percent of total sales. In 2004, IPPs accounted for 36 percent of generator nameplate capacity compared to 56.5 percent for utilities and 7.5 percent for combined heat and power. Office of Coal Nuclear Electric and Alternative Fuels, Energy Information Administration, Electric Power Annual 2004 at 9 (2005).

[288] We will continue to encourage transmission providers to propose other services requested by customers or such services that may meet their customers' and systems' needs as energy markets evolve. However, the Commission does not propose to require transmission providers to provide any service other than the services expressly set forth in the *pro forma* OATT. In response to EPSA, the decision to provide a new OATT service in the first instance remains with the transmission provider. Moreover, several of the proposals included in this NOPR such as lifting the price cap associated with capacity reassignment for firm point-to-point service and hourly firm point-to-point service should provide transmission customers with greater service flexibility.

[289] We also request comment on the applicability of these two options for transmission providers who operate RTOs or ISOs. Because RTOs provide redispatch service and the ability to access transmission with no prior reservation by paying congestion charges, they may not need to reform their existing procedures to satisfy our proposal with respect to redispatch. We also note that conditional firm service has the potential to disturb the link between long-term service and the allocation of Financial Transmission Rights (FTRs) or auctions of FTR rights.

provider to expand or upgrade its transmission system or, if it is more economical, to redispatch its resources to provide requested firm point-to-point service without: (1) Degrading or impairing the reliability of service to native load customers, network customers and other transmission customers taking firm point-to-point service; or (2) interfering with the transmission provider's ability to meet prior firm contractual commitments to others. The cost of any redispatch performed pursuant to section 13.5 is to be specified in the service agreement prior to initiating service and charged to the transmission customer consistent with Commission policy. For network service, section 33.2 of the *pro forma* OATT also requires all network customers to agree to redispatch their network resources, along with transmission provider's own resources, to relieve a constraint that may impair reliability. Section 33.3 of the *pro forma* OATT provides that the costs of reliability redispatch performed pursuant to section 33.2 are to be shared between network customers and the transmission provider on a load-ratio share basis.[290]

308. To encourage the provision of redispatch as an option to facilitate use of the existing transmission grid, we propose to revise the *pro forma* OATT to require the offer of redispatch prior to the performance of a facilities study. We note that the system impact study, as defined by the *pro forma* OATT, is the transmission provider's assessment of the adequacy of its grid to accommodate a request for firm point-to-point or network service and whether any additional costs may be incurred to provide the requested service. It is followed by a facilities study, which is defined as an engineering study to determine the transmission system modifications necessary to provide the requested service, including cost and scheduled completion date. Neither study references the steps necessary to evaluate the cost of redispatch that could be performed in lieu of expanding the grid. Therefore, we propose that the transmission provider must, as part of the system impact study process, include an estimate of the number of hours of redispatch that may be required to accommodate the request for transmission service, and a preliminary estimate of the cost of that redispatch. The customer would then be given the option of having the transmission provider perform the necessary studies to determine the projected redispatch costs or perform the facilities study, or both.

309. Consistent with the existing requirements of the OATT, the redispatch requirement would apply to the redispatch of the transmission provider's own generation resources and would not require the transmission provider to purchase new resources to provide this service.[291] However, we propose to require the transmission provider, when it cannot accommodate a long-term firm point-to-point transmission request through redispatch of its own resources, to identify the generators in other control areas that could relieve the constraint on the affected flowgates to allow the transmission customer to seek redispatch with transmission providers in adjacent control areas to remove such constraints. We also seek comment on whether to expand the existing OATT obligation to require the transmission provider to redispatch not just its own resources, but those of its network customers also, subject to the network customers receiving appropriate compensation when their resources are redispatched.

310. Another issue that arises is how the redispatch option should be priced. The *pro forma* OATT caps the cost of redispatch at the cost of constructing the network upgrades needed to facilitate the requested transmission service. Some commenters discuss what costs should be included in a redispatch rate, such as start-up costs, higher maintenance costs and fuel differentials, and state that inclusion of these charges would send clearer price signals and induce transmission investments.[292]

311. Establishing a formula rate for redispatch costs may be one way to ensure greater use of this option, both to facilitate long-term requests for service and to grant customers greater flexibility in choosing resources on a daily or hourly basis. A redispatch pricing proposal could include a MW quantity, the incremental cost of fuel (increasing the supply of fuel) at the point of delivery, and the decremental cost of fuel (decreasing the supply of fuel) at the point of receipt capped at the price of fuel. These costs could be calculated based on the difference between the cost of ramping up a generator at the point of delivery and ramping down a generator at the point of receipt.[293] We invite comments on whether including such a formula in the transmission provider's OATT would facilitate redispatch and whether it should account for other, hard-to-quantify costs such as those listed by EEI: Start-up costs, higher capital costs due to shorter life and accelerated replacement, higher maintenance costs, and potential emergency power purchases to serve load in constrained areas. One option might be to establish a standard per kWh fee for such costs, as was initially done for ancillary service costs.

312. There are few examples of functioning redispatch programs on which to base any kind of generic change to the *pro forma* OATT. However, the Commission has approved OATT provisions for SPP[294] (prior to its becoming an RTO) and Deseret.[295]

313. The redispatch provisions in SPP's OATT permitted a transmission customer facing a constrained path to decide whether to: (1) Go forward with its requested transmission service, (2) obtain relinquished capacity (solicit from holder of firm transmission rights the price at which they would relinquish their rights subject to the caps), (3) reduce transmission service to match the level of ATC without redispatch, (4) pay for redispatch, or (5) forego the transmission transaction.

314. Under Attachment H of SPP's OATT (Redispatch Procedures and Redispatch Costs for Short-Term-Firm Point-to-Point Transmission Service Subject to Redispatch Cost) the charges to be paid by the transmission customer for redispatch service could not exceed the charges the transmission customer would have paid under SPP's point-to-point tariffs. Stated differently, SPP capped the redispatch charges at a level

[290] Order No. 888–A at 30,267.

[291] However, we also request comment on whether it would be appropriate to require the transmission provider to contract to purchase generation from outside of its control area if it would facilitate a firm transaction. We note that at least one redispatch provisions currently in use contemplates the use of third-party generation for redispatch. *See* Deseret Generation and Transmission Cooperative, Inc. (Deseret) FERC Electric Tariff, First Revised Volume No. 2 (Deseret OATT), accepted for filing in *Deseret Generation and Transmission Cooperative, Inc.*, Docket No. ER01–2642–000 (Aug. 27, 2001) (unpublished letter order). Attachment J of Deseret's OATT states, in part: ''If redispatch services are provided under this Attachment J, the [t]ransmission [p]rovider will in good faith attempt to relieve the constraint by the least-cost means, whether by seeking a change in generation output from the [t]ransmission [p]rovider's [m]erchant [f]unction *or from any other feasible generator* or by other means including facilitating the payment of firm transmission customers to temporarily give up their rights to relieve the constraint.'' Deseret OATT, Attachment J, Part I.D, Original Sheet No. 340 (effective July 1, 2001).

[292] *E.g.*, Ameren, EEI, Progress Energy, and Southern.

[293] For example, redispatch costs = 75 MW × ($60 incremental cost at the point of delivery − $15 decremental cost at the point of receipt) = $3,375.

[294] *See Southwest Power Pool, Inc.*, 82 FERC ¶ 61,267, *modified*, 82 FERC ¶ 61,285, *order on reh'g*, 85 FERC ¶ 61,031 (1998); *Southwest Power Pool*, Inc., 84 FERC ¶ 61,055 (1998).

[295] *See supra* note 291.

that ensures that total charges did not exceed the total charges the customer would have paid under individual company tariffs. For generation resources, the redispatch included the higher of incremental or replacement fuel costs and incremental operation and maintenance costs of generation facilities necessary to relieve constraints on the transmission system.

315. The redispatch provisions in Deseret's OATT are designed to track cost causation with redispatch costs and contains features similar to the SPP OATT provisions such as providing customers with the opportunity to obtain relinquished capacity. Like SPP, the redispatch costs in Deseret's OATT are capped at the cost incurred by the transmission provider to provide the requested service. Under Attachment J of Deseret's OATT (Redispatch Protocol), generally the redispatch costs are calculated by multiplying the redispatch quantity, in MWh, that is required to satisfy the transmission customer's schedule in that hour by the redispatch price. Attachment J of Deseret's OATT also includes provisions for crediting and netting of redispatch costs.

316. We also are concerned that there is a great deal of complexity and fuel price risk in projecting years into the future the hours of redispatch that will be required to grant the transmission request and the cost of that redispatch in those hours. Moreover, because of the need for involvement of the transmission provider's generation arm to project costs associated with redispatch and the need to factor in unpredictable fuel costs, we are concerned about the degree of discretion involved in determining redispatch costs. Understandably, the transmission provider does not want to bear the price risk associated with projected fuel costs, nor does the customer. PacifiCorp, in its comments, describes a possible proposal that would calculate redispatch costs monthly and charge the higher of redispatch or the OATT rate each month. We request comment on whether PacifiCorp's proposal may be a way of addressing the complexity and risk associated with determining redispatch costs over a long period and allow greater access to otherwise unused transmission capacity on a firm basis.

317. We ask for comment on whether all or a portion of SPP's, Deseret's, or PacifiCorp's proposals should form the basis for a generic redispatch provision that could be included in the *pro forma* OATT, as a means of ensuring that redispatch service is available and priced on a just and reasonable basis.

318. Finally, we recognize that a transmission provider may need to coordinate with marketing affiliate or energy affiliate employees to arrange generation redispatch.[296] However, such communication and coordination raise potential problems for the transmission provider regarding compliance with the Commission's Standards of Conduct, which require separating transmission function employees from wholesale marketing and energy affiliate employees.[297] We seek comment on what communication and coordination protocols can be established to permit the provision of generation redispatch in a manner that is not unduly discriminatory or preferential, and consistent with the Standards of Conduct.

Conditional Firm Service

319. The Commission seeks comment on whether a modified form of long-term point-to-point service would be preferable to the redispatch service described above. This conditional firm service option would address the problem of reliability limitations during certain peak hours by allowing the transmission provider to provide non-firm service to the customer in those hours. We note that at least one transmission provider currently provides this service pursuant to amendments to the partial interim service provision of its OATT,[298] with only modest differences from the service described below.

320. As an initial matter, in response to requests for clarification of the partial interim service in section 19.7 of the *pro forma* OATT, we will summarize the Commission's precedent on this service. The Commission has clarified that partial interim service has a partial duration element, as well as a partial quantity element.[299] For example, in *Morgan Stanley*, the Commission found that had the customer requested long-term service for a two-year period, but only one year was available, the transmission provider would have been obligated to offer service for that one available year.[300] The Commission was clear, however, that partial interim service does not require the transmission provider to treat a request for annual service as if it necessarily included a request for all subsumed monthly or weekly durations of service during the requested year.[301] In other words, a transmission provider does not need to respond to a request for one year of service with an offer of monthly service. The Commission has also interpreted section 19.7 to apply to requests for transmission service that have not undergone or do not necessarily require a system impact study or facilities study.[302] Further, the Commission has required transmission providers to offer partial interim service even where third-parties must provide upgrades in order to provide for the full transmission service request.[303] Although partial interim service has a duration component, it differs from conditional firm service, which would require the transmission provider to treat the request for service as if it included a request for monthly, weekly, daily, and hourly firm service during the year.

321. If we decline to adopt the redispatch proposal above, any conditional firm service that we would order would be made available only to customers who request long-term firm point-to-point service. When the long-

[296] In this discussion, we use the terms ''transmission function,'' ''marketing affiliate'' and ''energy affiliate'' as those terms are used in the Standards of Conduct regulations. *See* 18 CFR 358.3 (2005).

[297] *See* Order No. 2004 at P 85–94.

[298] *See PacifiCorp*, 98 FERC ¶ 61,224 at 61,885 (accepting revisions to section 19.7), *order on reh'g*, 99 FERC ¶ 61,259 (2002).

[299] *See, e.g., Idaho Power Co.* v. *Bonneville Power Administration*, 96 FERC ¶ 61,031 at 61,080–81 (2001) (*Idaho Power* v. *Bonneville*) (interpreting section 19.7 to require Bonneville to offer 277 MW of monthly short-term firm transmission capacity interim service to the entity next in the queue with a request of 577 MW); *Morgan Stanley Capital Group* v. *Illinois Power Co.*, 93 FERC ¶ 61,081 at 61,220 (2000) (*Morgan Stanley*) (''Illinois Power should have offered as much transmission capacity as it could provide continuously for the duration of the request, *i.e.*, as many MW of transmission service as available for the entire one-year period Morgan Stanley requested.''); *accord Idaho Power Co.*, 90 FERC ¶ 61,009 at 61,018–19 (2000) (directing transmission provider to provide 18 months of partial interim service for a customer requesting eight years of service).

[300] *Morgan Stanley* at 61,220. In response to Bonneville, the Commission clarifies that a customer does not lose its queue position for its original request when it accepts a counteroffer for less service than originally requested.

[301] *Id.* at 61,220; *Tenaska Power Services Co.* v. *Southwest Power Pool, Inc.*, 93 FERC ¶ 61,082 at 61,222–23 (2000) (both concluding that transmission provider has no obligation to respond to a long-term request with an offer of short-term service).

[302] *See, e.g., Idaho Power* v. *Bonneville* at 61,080–81 (requiring an offer of partial interim service for short-term firm service where a system impact study is not applicable); *Morgan Stanley Capital Group* v. *Illinois Power Co.*, 83 FERC ¶ 61,204 at 61,912 (ordering partial interim service without requiring a system impact study or facility study), *clarification granted*, 83 FERC ¶ 61,299 (1998), *reh'g granted in part*, 93 FERC ¶ 61,081 (2000).

[303] *Bonneville Power Administration*, 110 FERC ¶ 61,001 at P 36–37 (directing Bonneville to offer to provide customer with whatever portion of the request it could provide on a firm basis after the customer's generation project was energized without upgrades to PacifiCorp's system and to amend the agreement after upgrades are completed to provide for the full amount), *reh'g denied*, 110 FERC ¶ 61,094 (2005).

term firm point-to-point service is not available, and the customer requests conditional firm service, the transmission provider would evaluate transmission availability for the portion of the long-term request that cannot be filled due to lack of ATC. The evaluation of conditional firm availability should occur prior to a system impact study or facilities study. In offering conditional firm service, the transmission provider must identify the number of hours during the year in which the conditional firm customer will have service identical to any other firm point-to-point service, and specify the maximum number of hours of the year during which firm transmission service may be unavailable. The conditional firm service agreement would identify the conditional curtailment hours, *i.e.*, the number of potential hours during those conditional times when the customer could have its reservations cut or reduced prior to any firm customer reductions. Conditional firm service would include an annual cap to the conditional curtailment hours and we seek comment on whether it should also include monthly caps for each conditional month. Capacity commitments for conditional firm service would be accounted for in the ATC calculations prior to new sales of short-term firm transmission service, thus not degrading the value of the conditional firm transmission product.

322. We propose that conditional firm service would be curtailed before firm uses until such time as curtailment of the conditional firm service has reached the annual or monthly caps, after which time the service would be treated as firm. We propose that conditional firm service, during conditional curtailment hours, be treated equivalent to secondary network service.[304] We decline to adopt the proposed quasi-firm curtailment priority because it would require creation of a new curtailment classification including a determination concerning the appropriate type of curtailment, *i.e.*, choosing between *pro rata* curtailment currently used for firm transactions or full transaction curtailment currently used for non-firm transactions. Institution of a new curtailment class would require changes to curtailment protocols and reliability coordinators' procedures, which is potentially burdensome and costly. Further, as discussed below, we believe that conditional firm point-to-point service, as proposed, is analogous to the secondary network service currently used by network customers and therefore both services should enjoy the same curtailment priority.

323. We propose that customers pay the long-term firm point-to-point rate for conditional firm service and have a right of first refusal when firm service becomes available for the hours in which they have agreed to be curtailed. This rate for conditional firm service is consistent with the Commission's pricing policies that promote maximization of long-term uses of the grid. Also, this rate makes this service more equivalent to secondary network service because network customers using secondary network service already have paid for the long-term use of the grid. Further, it avoids gaming incentives that a discounted rate could provide. For example, a discounted rate might provide incentives for customers to request a year of service where they know only three months of service is available. We seek to prevent this type of gaming by requiring the payment of a long-term firm rate. In this regard, we also expect that the long-term firm point-to-point rate will tend to limit the type and number of requests for conditional firm service. Customers will weigh the value of the service, including the probability of curtailment, against the cost of paying the full long-term firm rate, in deciding whether to queue for conditional firm service where customers earlier in the queue are offered, for example, 50, 100 or 150 conditional curtailment hours.

324. Further, we propose that customers with conditional firm service would qualify for rollover rights provided that they meet the other rollover right conditions proposed herein. The service agreement for conditional firm service would specify the number of conditional curtailment hours. The transmission provider would not be required to plan for service to the conditional firm customer during the conditional curtailment hours. We seek comment on the application of rollover rights to the conditional firm service.

325. The Commission is not convinced that it is necessary to make this service available to network customers. Network customers enjoy flexibility that point-to-point customers do not, given the ability of network customers to use secondary network service to access resources other than designated resources on an as-available basis under section 28.4 of the *pro forma* OATT. For example, if a network customer's request to designate a new network resource was denied due to lack of ATC, the network customer could seek secondary network service for the resource and receive service on an as-available basis. Such service would be curtailed only after all non-firm point-to-point uses sharing the same flowgate were curtailed. This is similar to the service that we now propose for point-to-point customers in the form of conditional firm service. We therefore tentatively conclude that conditional firm service is not needed by network customers, though we seek comment on that preliminary finding.[305]

326. We acknowledge that the obligation to provide conditional firm service may require the transmission provider to model its transmission system and the uses of its system with greater specificity. We recognize that all transmission providers do not use a single standard engineering approach to evaluate firm transmission service requests: some transmission providers have a single powerflow base case for each year studied; some use a single base case powerflow model to represent several future years; and others may have several seasonal base case powerflows for the study of future years. Transmission providers also use different methods to establish generator dispatch for input into the powerflow base case models: some transmission providers use heat-rates without fuel prices for determining generator output in future years' models; some use economic unit commitment order; and others use projected fuel prices to establish base case powerflow generation output. Some transmission providers use an economic dispatch model to determine unit dispatch prior to establishing powerflow base cases. Additionally, some transmission providers must take into account environmental considerations, such as the pricing of emissions allowances, in establishing generator output for powerflow base case models.

327. Regardless of the engineering approach used, in responding to a conditional firm request, the transmission provider would need to specify for the requesting customer the number of hours of firm service available in the year for each MW of firm service requested. This may require

[304] Secondary network service (section 28.4 of the *pro forma* OATT) refers to transmission service for network customers from resources other than designated network resources provided on an as-available basis. Section 14.7 of the *pro forma* OATT provides that secondary network service is curtailed or interrupted before firm network or point-to-point service but after non-firm point-to-point service.

[305] Network customers pay for long-term use of the system and should maintain priority use of the system for secondary network service over those paying for non-firm use. However, because conditional firm customers will pay for long-term use, they should also maintain, for the conditional curtailment hours, a curtailment priority over non-firm uses equal to the curtailment priority for secondary network service.

that the transmission provider produce and examine additional powerflow cases or make other process changes. In order to determine the number of hours that the requested firm transmission capacity is unavailable, the transmission provider may need to model varying load conditions, generation and transmission planned outages, and time-contingent or condition-contingent generation dispatches. Generally, the greater the number of conditions studied, the lower the risk to the transmission provider of an inaccurate estimate of conditional curtailment hours. We recognize that there are limits to the accuracy of any prediction of hours of curtailment, no matter how detailed the system study.

328. There are a number of ways for a transmission provider to determine the number of hours in a year when firm service is unavailable, *i.e.*, the conditional curtailment hours. One method involves scaling down the powerflow base case. Using this method, the transmission provider could scale down the load and generation in the base case until the entire conditional firm request is available on the studied flowgate. For example, a base case might need to be scaled down to 95 percent of the summer peak demand in order to accommodate the conditional firm request as firm point-to-point service. The transmission provider would then calculate the number of hours the seasonal load is forecast to be 95 percent or higher to come up with the number of seasonal hours of curtailment for the conditional firm customer.

329. Another method involves an inventory of generation and demand shift factors. Using this method, the transmission provider could determine conditional curtailment hours by adding up all the outstanding generation and load shift factors on the relevant flowgate. Once the transmission provider determines the load shift factor on the flowgate, it can calculate the reduction needed in regional demand to accommodate the conditional firm request by comparing the impact of the request on the power flows. The demand reduction would not necessarily correspond perfectly with the requested amount of service. For instance, a 200 MW reduction might be required to accommodate a 100 MW conditional firm request. Once the transmission provider determines a reduced load level that would accommodate the conditional firm request, the transmission provider would examine load forecasts to calculate the number of hours the load is expected to exceed this reduced load level. This alternative method of calculating conditional curtailment hours might be more burdensome than scaling down the powerflow base case because it requires additional data collection and analysis.

330. Both of these methods rely on average system conditions and do not take into account extreme weather years or unexpected outages. Thus, the methods would provide an optimistic view of bulk power facility availability. These methods can be used to determine the portion of time (hours) that transmission capability will most likely be available and give general information on when (seasons, months) firm service is available.

331. We seek comment on the most appropriate method of modeling the transmission system to determine the number of conditional curtailment hours. We also recognize that additional studies may cause additional costs. We seek comment on methods of ensuring recovery of these additional costs.

332. We also acknowledge that provision of conditional firm service may require some modification to current transaction tracking procedures in use by the industry and require development of additional mechanisms. Today, transmission providers track transactions with curtailment priorities so that when congestion occurs transactions are curtailed consistent with OATT requirements, *i.e.*, non-firm uses are cut before firm uses and short-term transactions are cut before longer-term transactions. In order to implement the conditional firm service, transmission providers would need to determine in advance of scheduling deadlines whether the service should be tracked as a long-term firm use or to reflect the use of the conditional curtailment hours.[306] If the service is treated as firm during a certain period, the transaction would not be cut before other firm uses. The transmission provider would have to perform a calculus, taking into account forecast load and transmission and generation availability, to determine the need to cut the conditional firm transaction in the next period prior to scheduling the transaction as conditional firm. While we do not view this as an insurmountable problem, we note that the decision to curtail a conditional firm transaction prior to other firm uses simply cannot be made in real time. We also note that the transmission provider would need to develop a mechanism to track the number of annual conditional curtailment hours in each service agreement and its annual or monthly use of those hours. Such a tracking mechanism would ensure that the transmission provider did not exceed the annual or monthly cap on conditional curtailment hours in any particular service agreement.

2. Hourly Firm Service

333. The *pro forma* OATT contains a one-day minimum term for firm point-to-point service. In Order No. 888, the Commission chose a one-day minimum over a one-hour minimum because of concerns expressed by commenters.[307] There, commenters argued that comparability would not be achieved if some point-to-point customers were permitted to take service for one hour and receive the same priority as native load and other long-term customers that have to pay the fixed cost of the transmission system every hour of the year. They also expressed concern that a one-hour minimum term for firm point-to-point service (hourly firm) would promote selective use of the transmission system, impair the ability of a utility to plan its system, and adversely affect longer term transactions. Finally, some expressed concern that a one-hour firm service may encourage speculative requests for service during the system peak day (a practice known as ''cream skimming'').

334. In the NOI, the Commission noted that several public utility transmission providers have individually filed for and received Commission authorization to modify their OATTs to provide hourly firm point-to-point service.[308] In the NOI, the Commission sought comment on whether the concerns expressed in Order No. 888 remain valid, and whether hourly firm service should now be required. The Commission also asked whether hourly firm requests should be batched to allow the transmission provider to evaluate them as if they were a single request, and whether scheduling timelines for firm and non-firm hourly transmission service should differ.

Comments

335. Some commenters support requiring transmission providers to

[306] We propose that during conditional curtailment hours, the transaction would be tagged with the network non-firm tag (currently used for secondary network service).

[307] Order No. 888 at 31,752.

[308] The NOI cited *Entergy Services, Inc.*, 85 FERC 61,163 (1998), *order on reh'g*, 91 FERC 61,153 (2000) and *El Paso Electric Co.*, Docket No. ER04–567–000 (Apr. 9, 2004) (unpublished letter order).

adopt hourly firm service.[309] Alberta Intervenors and TransAlta argue that hourly firm service encourages trade and market liquidity. Regarding the concerns cited in Order No. 888, EPSA argues that, as a practical matter, daily firm service already receives an equal priority to native load and other long-term customers, and none of the concerns expressed in Order No. 888 have materialized. ''Cream skimming'' should not be a problem, EPSA continues, because firm transmission reservations are not cost-free, and transmission customers are unlikely to commit financial resources for speculative purposes. Constellation argues that there should be no concern that comparability will be eroded because hourly firm service provides additional flexibility to the competitive markets. PPL argues that in non-ISO/RTO regions like the western United States, hourly firm service could help to maximize the use of existing transmission facilities, increase efficiencies in wholesale markets, and allow customers to purchase only the amount of firm transmission service that they need.

336. Some commenters offer qualified support for hourly firm service.[310] For example, South Carolina E&G states that before the Commission requires hourly firm service, it should obtain empirical market information on transmission providers' ability to provide such service. In its reply comments, Powerex explains that there is a potential for a detrimental effect if a transmission provider is not able to accurately determine its ATC, and before making hourly firm service mandatory, the Commission should ensure that the rights of long-term firm customers will not be negatively affected.

337. Among commenters who oppose requiring the adoption of hourly firm service,[311] many repeat arguments that appeared in Order No. 888. For example, several commenters express concern that hourly firm service will lead to ''cream skimming,'' result in unfairness to longer-term firm transmission customers who would have to be curtailed pro rata along with customers who have only made hourly firm commitments, or create inefficiencies by having a higher reservation priority than subsequently submitted load-based services such as secondary network service.[312] But other commenters who oppose requiring hourly firm service state that the concerns expressed in Order No. 888 may no longer be a major problem, and may be addressed by allowing hourly firm service to be pre-empted by longer term firm service requests.[313]

338. TVA argues that reservations for hourly firm service would nearly always end up being bumped by requests for longer service and as such would waste valuable time and increase administrative costs with no real benefit.

Processing

339. On the issue of whether a transmission customer should be permitted to batch requests for service, those in favor generally state that batching allows for greater efficiencies.[314] For example, Bonneville states that batching in the hourly market would decrease the response time for all requests in the hourly queue. Salt River states that a potential customer should be able to submit a batch of requests (*e.g.*, a block of hours) that is useful in shaping the service to its load-serving needs. Snohomish states that in the day-ahead schedule submittals, batching of hourly firm transmission requests for evaluation as a single request should be permitted, but for periods prior to day-ahead, batching of hourly requests should not be allowed due to the potential for ''cream skimming.''

340. Among those opposed to or expressing reservations regarding batching, Ameren and EEI argue that transmission providers already have the ability to process multiple requests from the same party, but they caution that batching requests for simultaneous modeling purposes (*e.g.*, transmission from points A to B and B to A simultaneously) would be difficult to implement. WAPA states that, in its experience, the majority of hourly firm transmission requests must be uniquely identified and evaluated for potential conflicts with longer-term firm transmission requests.

Scheduling

341. The *pro forma* OATT currently requires that schedules for firm and non-firm service be submitted on different timelines. Schedules for hourly non-firm point-to-point service must be submitted to the transmission provider no later than 2 p.m. the day before service is to commence.[315] For all firm services, schedules must be submitted to the transmission provider no later than 10 a.m. the day before service is to commence.[316]

342. Some commenters argue that firm and non-firm hourly services should be subject to the same scheduling timeline.[317] To do otherwise, Snohomish argues, would be administratively burdensome and without benefit to the transmission provider or transmission customer. Those arguing for different scheduling timelines generally argue that the scheduling time-frames for firm and non-firm transmission service should remain different, at least on a pre-schedule or day-ahead basis, because the transmission provider must know the full extent of firm utilization before non-firm offerings can be determined.[318]

Discussion

343. The Commission proposes to add point-to-point hourly firm service to the *pro forma* OATT because it will eliminate a barrier to the development of markets and thereby decrease opportunities for undue discrimination. The terms of service we propose will ensure that hourly firm customers are offered service in a manner consistent with comparability principles, and pay their fair share of system costs. We conclude that hoarding and speculation should not be a major concern because requests for hourly firm service are subject to preemption by longer-term requests for service. We also conclude that the provision of hourly firm should have no effect on investment in the grid because a transmission provider does not plan its system to meet hourly firm, or any other short-term firm, transmission requests. In addition, the expected effect of hourly firm on long-term transactions is no different than the effect of other short-term firm services. For example, though commenters are correct that hourly firm will be curtailed pro rata with longer term firm point-to-point service, this is already true of daily firm point-to-point service. As noted in the NOI, many transmission providers already offer this service and there appear to be no technical impediments to offering it, nor have customers on these systems

[309] *E.g.,* Alberta Intervenors, Alcoa, Calpine, Constellation, EPSA, HQ Energy, PPL, and TransAlta.

[310] *E.g.,* APPA, Northwestern, Powerex, Public Power Council, Salt River, and South Carolina E&G.

[311] *E.g.,* Ameren, APS, Duke, EEI, KCP&L, LG&E, LPPC, MidAmerican, NRECA, Progress Energy, Snohomish, Southern, TAPS, TVA, TDU Systems, and WAPA.

[312] *E.g.*, LG&E, Progress Energy, Southern, and TAPS.

[313] *E.g.*, EEI and WAPA.

[314] *E.g.*, Alberta Intervenors, Bonneville, Constellation, EPSA, and South Carolina E&G.

[315] *See pro forma* OATT section 14.6 (also allowing schedules to be submitted by a reasonable time that is generally accepted in the region).

[316] *See pro forma* OATT section 13.8 (also allowing schedules to be submitted by a reasonable time that is generally accepted in the region).

[317] *E.g.*, Ameren, Constellation, PNM–TNMP, Powerex, Salt River, Snohomish, and South Carolina E&G.

[318] *E.g.*, Ameren, Northwestern, and Southern.

expressed any concern about the effect of hourly firm on long-term firm services or curtailments. Therefore, we conclude that the concerns expressed in Order No. 888 regarding unduly discriminatory effects of hourly firm service have proven unfounded, and we propose that hourly firm service be a required offering in the *pro forma* OATT.

344. As for the pricing of hourly firm service, consistent with Commission precedent, we propose to use the ''*IES* Method'' and apply different pricing for hourly firm service based on whether the service is taken during peak or off-peak hours.[319] Pricing for hourly firm service during peak periods would be based on 4,160 hours annually of peak usage over 52, 5-day weeks of 16-hour days ($52 \times 5 \times 16 = 4{,}160$), rather than all 8760 hours of the year. In other words, the rate is derived from the hours during which the facilities are likely to be used, rather than the total hours in the year. It is premised on the assumption that a customer using the transmission system for the 16 peak hours of the day should pay the same contribution to fixed costs as a customer who has reserved capacity on a daily basis.[320] But because hourly service is unlikely to be taken only during peak hours, we propose to allow pricing for hourly firm service for off-peak hours based on 8,760 hours of usage.[321] This is appropriate because customers using short-term service during off-peak hours do not constrict the system during the peak period, and should pay less than what they pay during the peak period.[322] To ensure that hourly customers do not pay more than their fair share of fixed costs, consistent with the pricing principles set forth in Order No. 888, the total charge in any day for hourly service cannot exceed the stated daily rate multiplied by the maximum hourly capacity reservation during such day.[323] We conclude that using the *IES* Method to price hourly firm service at a higher rate during peak periods will ensure that hourly firm customers pay a fair share of the costs of the transmission system and, as a result, mitigate ''cream-skimming'' concerns.

345. As for allowing transmission customers to batch requests for service, we conclude that allowing such batching creates administrative efficiencies for the transmission customer and transmission provider alike. Therefore, we propose allowing transmission customers to batch requests and schedules for hourly firm service that will be provided within the same day.

346. The Commission also concludes that the current scheduling practices can accommodate the scheduling of hourly firm transmission service. To require that both firm and non-firm hourly services be scheduled at the same time would require that the existing procedures be revised, with no discernible benefit to the transmission customer or transmission provider. Even with the addition of this new service, it remains reasonable to require that the transmission provider have all firm schedules at the same time, and in advance of the deadline for non-firm schedules. Therefore, we propose that schedules for firm hourly service, like all other firm schedules, will be due by 10 a.m. the day before the service is to commence.

347. Finally, we propose that, consistent with other durations of service, the confirmation period for hourly firm service specified in section 13.2 of the *pro forma* OATT will allow longer-term requests for service to preempt shorter hourly firm requests for service until one hour before the commencement of hourly firm service.

3. Rollover Rights

348. Section 2.2 of the *pro forma* OATT allows existing firm transmission service customers—wholesale requirements and transmission-only customers with contracts of one year or more—the right to continue to take transmission service from the transmission provider when the customer's contract expires, rolls over or is renewed. The *pro forma* OATT provides that the transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the transmission provider or elects to purchase capacity from another supplier. This transmission reservation priority for existing firm transmission service customers, which is also referred to as a right of first refusal or a rollover right, is an ongoing right that may be exercised at the end of all firm contract terms of one year or longer. A transmission customer must give notice of whether it will exercise its right of first refusal 60 days before the expiration of its service agreement.

349. In Order No. 888, the Commission provided that, if a transmission customer subject to the rollover right selects a new power supplier that substantially changes the location or direction of its power flows, the customer's right to continue taking service from the transmission provider may be affected by transmission constraints associated with the change.[324] The Commission also provided that a transmission provider may reserve existing capacity for retail native load and network load growth reasonably forecasted within the transmission provider's current planning horizon, but that any capacity so reserved must be posted on the transmission provider's OASIS and made available to others until the capacity is needed for the anticipated network or retail native load use.[325] The Commission also has held that a transmission provider may restrict a right of first refusal based on pre-existing contracts that commence in the future if the transmission provider knows at the time of the execution of the original service agreement that ATC used to serve a customer will be available for only a particular time period, after which time it is already committed to another transmission customer under a previously confirmed transmission request.[326] Once a

[319] The Method is named for a proceeding in which peak and off-peak pricing was applied to hourly non-firm transmission service. *IES Utilities, Inc.,* 81 FERC ¶ 61,187 at 61,833–34 (1997), *reh'g denied,* 82 FERC ¶ 61,089, *aff'd on other grounds sub nom, Wisconsin Public Power Inc.,* v. *FERC,* 1999 U.S. App. LEXIS 3998 (Feb. 23, 1999) (unpublished opinion); *see New York State Electric & Gas Corp.,* 92 FERC ¶ 61,169 at 61,593–94(2000) (approving application of the *IES* Method for time-differentiated hourly non-firm rate design), *order on reh'g,* 100 FERC ¶ 61,021 (2002).

[320] Peak period pricing is referred to as the ''*Appalachian* Method'' or ''AEP Method,'' and takes its name from the proceeding in which it originated. *Appalachian Power Co.,* 30 FERC ¶ 61,296 (1987). The *Appalachian* Method is consistent with the premise that firm transmission service be priced based on the system's peak periods of usage. *See Entergy Services, Inc.* 85 FERC ¶ 61,163, at 61,645 (1998) (approving application of the method for firm service on an hourly basis during peak hours), *reh'g denied,* 91 FERC ¶ 61,153 (2000).

[321] *See IES Utilities, Inc.,* 81 FERC at 61,833–34 (approving use of an 8,760 hour year to calculate rates for non-firm service on an hourly basis during off-peak hours); *Entergy Services, Inc.,* 85 FERC at 61,645 (approving use of an 8,760 hour year to calculate rates for firm service on an hourly basis during off-peak hours).

[322] *Appalachian Power Co.,* 39 FERC at 61,965; *see American Electric Power Service Corp.,* 88 FERC ¶ 61,141 at 61,453–54 (1999).

[323] And, in turn, the total demand charge in any week pursuant to a reservation for hourly or daily service cannot exceed the weekly rate multiplied by the maximum hourly capacity reservation in any hour during such week. *See pro forma* OATT schedules 7 and 8; *see also Entergy Services, Inc.,* 85 FERC ¶61,163 at 61,645 (1998) (applying these principles to a proposal for firm service on an hourly basis), *reh'g denied,* 91 FERC ¶61,153 (2000).

[324] Order No. 888 at 31,665 n.176.

[325] *Id.* at 31,694.

[326] *E.g., Southwest Power Pool, Inc.,* 109 FERC ¶ 61,041 at P 6 (2004).

transmission provider evaluates the impact on its system of serving a long-term firm transmission customer and grants the transmission customer existing capacity, the transmission provider must plan and operate its system with the expectation that it will continue to provide service to the transmission customer should the transmission customer exercise the right of first refusal. If constraints arise after a transmission provider enters into a long-term agreement with the transmission customer (and that agreement does not contain an allowed restriction on the transmission customer's right of first refusal), the obligation is on the transmission provider to determine whether or not to build additional facilities to accommodate new transmission customers.[327] A transmission provider is obligated to curtail service pursuant to its OATT or expand its system when its system becomes constrained such that it cannot satisfy existing transmission customers, including the exercise of their rollover rights, because it should have planned and operated its system with the expectation that each long-term firm transmission customer will exercise its rollover rights.[328]

350. If a transmission provider's transmission system cannot accommodate all of the requests for transmission service at the end of the contract term, the existing long-term transmission customer must agree to match the rate offered by the potential customer, up to the transmission provider's maximum rate, and to accept a contract term at least as long as that offered by the potential customer. However, a competitor's offer does not have to be ''substantially similar in all respects'' to the existing transmission customer's.[329]

The NOI

351. In the NOI, the Commission sought comment on whether transmission providers have hindered transmission customers under pre-Order No. 888 agreements from rolling over their contracts that allow purchase of capacity and energy from another supplier. The Commission also asked whether the language in section 2.2 of the *pro forma* OATT needs to be reformed to ensure that rollover rights are provided when transmission customers are seeking access to alternative supply sources, or whether the issue was an enforcement matter. The Commission sought comment on whether the rollover right policy determinations made subsequent to Order No. 888 should be included in the *pro forma* OATT. The Commission inquired whether there were other problems with section 2.2, either as written or as implemented by transmission providers, that need to be addressed. The Commission also asked whether potential transmission customers are denied transmission access by the exercise of rollover rights. Finally, the Commission asked whether it should reconsider the concept of rollover rights and whether the one-year service with rollover rights is consistent with the need to create incentives for transmission investment or should a longer minimum term of service be adopted to qualify for rollover rights.[330]

Comments

352. Many transmission providers and APPA argue that, because a transmission provider may not know until 60 days prior to termination whether a contract would be renewed, rollover rights in contracts as short as one year inhibit the ability of transmission providers to plan their systems.[331] Transmission providers also argue that the right of first refusal results in the denial of transmission that leads to an inefficient use of transmission capacity.[332] They explain that the transmission provider must hold back capacity from the market for existing transmission customers that have a right of first refusal but that have not yet indicated whether they intend to exercise it. By the time the termination notice is given, other transmission customers that may have wanted to reserve the newly freed capacity have been turned away and have made other arrangements. They assert that the result is an inefficient use of capacity. In addition, these transmission providers argue that the 60-day notice provision does not allow them adequate time to re-market any capacity when it is freed-up by the terminating customer. Further, certain transmission providers argue that the right of first refusal unfairly gives transmission customers a valuable ''free call option'' on transmission capacity without any obligation to take the capacity at the end of the contract or to compensate the transmission provider for the value of the option.[333] To avoid these problems, many transmission providers suggest that the rollover right should apply to firm transmission contracts with minimum terms of between two and ten years.[334] In addition, these commenters suggest that, if the Commission lengthens the term of the firm contracts eligible for the right of first refusal, the 60-day renewal provision also should be extended.

353. Certain transmission customers argue that the Commission should retain the right of first refusal in its present form, or change it only after the Commission requires regional planning or other events occur.[335] Transmission customers stress the need for the rollover rule as a means to ensure long-term service. According to Constellation, transmission customers subject to rollover rights are not temporary customers but are long-term customers that happen to take their service under year-to-year agreements. Likewise, EPSA asserts that rollover rights are important in planning for the long-term needs of loads and generation located on the grid and that ''the ability to roll over a firm transportation contract (by matching the contract term and the rate of competing shippers) is the only way that market participants can ensure that their needs will be met.''

354. Numerous commenters address the impact of native load growth on the right of first refusal rule. As previously indicated, the Commission permits transmission providers to restrict a firm transmission customer's right of first refusal based on the transmission provider's reasonable projections of native load growth. Several commenters argue, however, that the Commission has not provided adequate guidance as to the information a transmission provider must submit to demonstrate native load growth.[336] Further, commenters argue that the Commission should allow transmission providers a means to update their native load data to address any load growth that was not anticipated at the time of the original contract. In addition, some commenters argue that the Commission's rejection of native load growth projections in prior cases, and the provision for pro rata curtailment of service in the event of capacity shortfalls due to the exercise of a right of first refusal, fail to respect the native load preference adopted in Order No. 888, as well as in section 217 of the FPA as added by section 1233 of EPAct

[327] *Id.* at P 9.

[328] *Id.*

[329] *Idaho Power Co.* v. *FERC,* 312 F.3d 454, 462 (D.C. Cir. 2002).

[330] NOI at P 18.

[331] *E.g.,* APPA, Bonneville, Duke, LPPC, Nevada Companies, Progress, and Salt River.

[332] *E.g.,* Ameren, Duke, EEI, North Carolina Commission, Santa Clara, and South Carolina E&G.

[333] *E.g.,* Ameren, Entergy, and Nevada Companies.

[334] *E.g.,* APPA, Bonneville, Cinergy, LDWP, MidAmerican, Nevada Companies, Progress, Santee Cooper, South Carolina E&G, and Southern.

[335] *E.g.,* AMP-Ohio, Calpine, Constellation, and EPSA.

[336] *E.g.,* Duke, EEI, Entergy, Nevada Companies, Progress Energy, Santee Cooper, and Salt River.

2005. They argue that new section 217 of the FPA reverses Commission precedent that limits the ability of transmission providers to recall capacity for native load once it is subject to a right of first refusal.

Discussion

355. The comments filed in response to the NOI demonstrate a need to retain, but revise, the right of first refusal provision in the *pro forma* OATT. The Commission proposes to revise the right of first refusal provision in the *pro forma* OATT to apply to wholesale requirements and transmission-only contracts that have a minimum term of five years, rather than the current minimum term of one year. In addition, the Commission proposes that a transmission customer under a rollover agreement must provide notice of whether or not it will exercise its right of first refusal no less than one year prior to the expiration date of the transmission service agreement. We agree with APPA that these changes strike an appropriate balance between providing customers meaningful rollover rights and encouraging long-term contracting, new investment and long-term planning. Finally, if the existing customer seeks to exercise its rollover right and there is insufficient transmission capacity on the system at the end of the contract term to accommodate all of the requests for transmission service, the existing customer would have to agree to accept a contract term at least equal to a competing request by any new customer or five years, whichever is longer, and to pay the current just and reasonable rate, as approved by the Commission, for such service.

356. The Commission's proposal is consistent with the transmission customers' comments that the right of first refusal should be designed to ensure long-term service. Extending the minimum term of the right of first refusal agreements to five years will encourage long-term use of the grid. In addition, the one-year prior notice requirement should allow adequate time for transmission providers to re-market unused capacity that may result from a transmission customer choosing not to roll over a service agreement. The one-year notice provision also should limit the instances when the transmission provider must turn away a transmission request only to find out that it could accommodate the request after the transmission customer elected not to roll over. These changes should result in a more efficient use of the transmission grid.

357. If we adopt the proposed minimum five year/one year right of first refusal provision in the *pro forma* OATT, we propose to allow this provision to become effective upon Commission acceptance of the transmission provider's coordinated and regional planning process set forth in Attachment K of its OATTs. Thus, all new transmission service agreements executed after the effective date of Attachment K will be subject to the five year/one year right of first refusal rule. The Commission proposes that transmission service agreements subject to a right of first refusal entered into prior to the effective date of revised section 2.2, unless terminated, will become subject to the five year/one year right of first refusal rule on the first rollover date after the effective date of revised section 2.2.

358. Our existing policy allows the transmission provider to limit a transmission customer's right of first refusal by reserving capacity to accommodate reasonably forecasted and verifiable native and network load growth at the time the initial service agreement is executed. Many transmission providers argue that this right should be extended to allow the transmission provider to limit the right of first refusal each time the right of first refusal is exercised, not only at the time the initial service agreement is executed. We believe that our proposal to extend the term of the right of first refusal from one to five years should address, in many respects, the concern of transmission providers that the existing right of first refusal is unfair to native load customers. Under this proposal, a right of first refusal will no longer be granted to users of the grid on an annual basis, but rather only to those making longer-term commitments to the grid, as do native load customers. In addition, while we expect a transmission provider to be continually updating its forecast for native load growth and applying this updated projection to new requests for service, applying this to contracts at rollover may require an additional change to the right of first refusal process. Specifically, the transmission provider would have to compete for the capacity rather than reclaim it through its rights to reserve capacity for native load growth. We seek comment on whether this change would be appropriate. Further, while we have addressed requests to limit the right of first refusal on the basis of native load growth on a case-by-case basis, we recognize that this approach has not yet resulted in a clear and transparent method for demonstrating forecasted native load growth. Accordingly, we seek comment on whether there is a sufficiently clear, consistent, and transparent method that could be implemented on a generic basis to address the need for a transmission provider to demonstrate its forecast of native load growth and its effect on capacity reserved by right of first refusal customers.

359. Many transmission providers argue that our current right of first refusal policy is inconsistent with the native load protections contained in section 217(b) of the FPA. We disagree, but note that the reforms being proposed here should moot this argument. We are proposing to extend the minimum term of the right of first refusal to a period (five years) that is more consistent with the planning horizons of transmission providers. In addition, limiting the right of first refusal to agreements with terms of five years or more will ensure that the right of first refusal is used by customers with long-term obligations to purchase capacity rather than as a means for customers with shorter-term transactions to use capacity for non-load-serving-entity transactions.[337] This is consistent with FPA section 217(b)(4), which states that the Commission shall exercise its authority ''in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities.'' Our proposal also is consistent with FPA section 217(b)(2) because it continues to allow the transmission provider to limit the right of first refusal to accommodate reasonably forecasted and verifiable native load growth.

360. Under the proposed rule, transmission providers still will be required to plan their systems with the expectation that a transmission

[337] This is consistent with the approach suggested by TAPS, which argues that the current one-year minimum contract term allows significant capacity on constrained interfaces to be tied up in relatively short-term deals simply designed to hold the firm reservation as a path for non-firm economy purchases and to block competitors' firm access (*e.g.*, inexpensive, one-year ''paper capacity'' deals). TAPS also argues that any restriction on the availability and flexibility of rollover rights be contingent on an expansion of the transmission grid so that transmission customers have reasonable access to competitive supplies. We agree that expansion of the grid is critical and accordingly have proposed to require coordinated transmission planning on both a local and regional level to ensure that transmission customers' needs are treated comparably to those of the transmission provider. This enhanced transmission planning, combined with other reforms proposed in this NOPR (*e.g.*, improvements to the calculation of ATC), should mitigate TAPS's concerns by improving the ability to access competitive supplies.

customer with a long-term transmission agreement subject to a right of first refusal will exercise its rollover right at the end of its term. We believe it is important to reiterate the obligation on transmission providers to maintain ATC for existing transmission customers with rollover rights and our expectation that transmission providers will include all customers with rollover rights in their long-term planning.[338] We understand that some existing reliability procedures or practices may encourage transmission providers to exclude certain transmission service contracts from their base-case models, even if those contracts contain a rollover right. This is inconsistent with Commission policy and undermines the purpose of the rollover right, which is to facilitate system planning and reliability.

4. Modification of Receipt or Delivery Points

361. Section 22 of the *pro forma* OATT provides that a transmission customer taking firm point-to-point service may modify its receipt and delivery points on either a non-firm or a firm basis. Section 22.1 (Modifications on a Non-Firm Basis) provides that, subject to certain conditions, a firm point-to-point customer may request transmission service on a non-firm basis over receipt and delivery points other than those specified in its service agreement (known as secondary receipt and delivery points) in amounts not to exceed its firm capacity reservation, without incurring an additional non-firm point-to-point service charge or executing a new service agreement. Section 22.2 (Modifications on a Firm Basis) provides that any request to modify receipt and delivery points on a firm basis shall be treated as a new request for service in accordance with section 17 of the *pro forma* OATT (Procedures for Arranging Firm Point-to-Point Transmission Service), except that the transmission customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the amount reserved in the existing service agreement. While such new request is pending, the transmission customer retains its priority for service at the existing firm receipt and delivery points specified in its service agreement.

362. In the NOI, the Commission asked whether transmission customers have experienced undue discrimination in attempting to redirect to new receipt and delivery points pursuant to section 22.2 and whether any reforms were needed. The Commission did not specifically ask about section 22.1, but some commenters nevertheless addressed this section. Most commenters, however, did not distinguish whether they were concerned with firm or non-firm redirects and instead addressed redirects generally.

Comments

363. APPA notes that many of its members have experienced difficulties in changing receipt points, especially when such requests involve new sources of supply. In many cases, APPA asserts that transmission providers require major upgrades before they will grant a redirect to new points. The Public Power Council points out that redirecting to new points depends on ATC, and, therefore, the ability to make changes would be improved by better public knowledge of ATC at those points in all timeframes and by more information about ATC calculation methodologies. EPSA asserts that difficulty in redirecting to new points inhibits the ability to reassign capacity. Williams complains about delays by transmission providers in answering requests for redirects and urges the Commission to enforce OATT procedures and to consider a ''fast-track'' process for reviewing requests to redirect.

364. Bonneville and EEI believe that any discrimination may be an unintentional result of a lack of clarity in the *pro forma* OATT, and are joined by MidAmerican, Progress Energy, and PNM–TNMP in calling for a number of clarifications. MidAmerican believes that these clarifications will provide flexibility to transmission customers and will enhance the ability to reassign transmission service to customers desiring different points of receipt or delivery.

365. Southern and Ameren assert that because customers often make redirect requests at the last minute, there is often not enough time for the market to respond to capacity made available on an abandoned path. Southern also highlights the administrative burdens and complexity (particularly for reliability) of processing short-term changes in service and suggests that the Commission consider measures to encourage transmission customers to provide greater certainty as to the expected paths along which they will schedule service and to do so in a more timely manner. Southern, along with Bonneville, also urges the Commission to clarify rollover rights when service is redirected to new points. In general, however, Southern believes that the Commission's current redirect policies are reasonable and practical.

366. A number of commenters focus on other related transmission issues, such as the flexibility afforded network service versus point-to-point service or other network-service-related issues;[339] the lack of flexibility with point-to-point service generally;[340] or issues associated with the interconnection of network load at new delivery points.[341]

Discussion

367. The Commission believes that it has already addressed many of the concerns raised by commenters with regard to reform of section 22 of the *pro forma* OATT in Docket No. RM05–5–000.[342] In Order No. 676, the Commission adopted the ''Standards for Business Practices and Communication Protocols for Public Utilities'' developed by the NAESB's Wholesale Electric Quadrant (WEQ).[343] Order No. 676 incorporates the aforementioned standards by reference into the Commission's regulations; requires public utilities to implement the standards by July 1, 2006; and requires public utilities to file revisions to their OATTs to include these standards.[344] The WEQ Standards recently adopted by the Commission include a number of standards addressing requirements for dealing with redirects on both a firm and non-firm basis.[345] In fact, all of the WEQ Standards dealing with redirects were adopted by the Commission in Order No. 676, except for WEQ Standard 001–9.7, which addresses the impact of a firm redirect on a long-term firm transmission customer's rollover rights under section 2.2 of the *pro forma* OATT. The Commission directed the WEQ to reconsider WEQ Standard 001–9.7 and to adopt a revised standard consistent with the Commission's

[338] *See, e.g., Southern Company Services, Inc.,* 104 FERC ¶ 61,140 at P 26–27 (2003).

[339] *E.g.,* Alberta Intervenors, Calpine, and TAPS.

[340] *E.g.,* Occidental.

[341] *E.g.,* NRECA and TDU Systems.

[342] *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs. ¶ 31,216 (2006).

[343] The WEQ was established by NAESB in response to a Commission order requesting the wholesale electric power industry to develop business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry. *See id.* at P 3–4.

[344] The standards will hereinafter be referred to as the WEQ Standards. The Commission proposes to add a reference to the WEQ standards in section 4 of the *pro forma* OATT, which identifies the Commission's regulations containing the terms and conditions relevant to the OASIS and standards of conduct.

[345] The requirements for dealing with redirects on a firm basis are found at WEQ Standard 001–9, *et seq.*, and the requirements for dealing with redirects on a non-firm basis are found at 001–10, *et seq.*

policies.[346] The Commission also offered guidance to assist the WEQ in developing a standard that is consistent with Commission policy.[347]

368. As noted above, we believe that a number of concerns raised by commenters are addressed by the WEQ Standards. For example, we believe that the request of commenters for clarification that redirect service may be requested for only a portion of the original quantity of service is addressed for firm and non-firm service by WEQ Standards 001–9.2 and 001–10.2, respectively, which provide that the transmission customer ''shall be allowed to request a Redirect on a [Firm/Non-Firm] basis for a portion or all of the Capacity Available to Redirect.'' Likewise, the request of commenters for clarification that it is not necessary for a customer to redirect its service for the entire remaining term of service is addressed for firm and non-firm service by WEQ Standards 001–9.3 and 001–10.3, respectively, which provide that the transmission customer ''shall be allowed to request a Redirect on a [Firm/Non-Firm] basis for a portion or all of the time period of the Parent Reservation.'' While we believe that many concerns expressed by commenters with regard to redirects in this proceeding have been addressed by Order No. 676, we request that each commenter reconsider its concerns in this area with the benefit of Order No. 676's adoption of the WEQ Standards, and inform us if additional concerns remain. The Commission notes that several of the most active commenters addressing redirects in this proceeding also were commenters in Docket No. RM05–5–000 and therefore should be familiar with whether a particular WEQ Standard addresses the issues raised in the comments submitted in this proceeding.[348]

369. The Commission anticipates that a number of other concerns, while perhaps not yet addressed (or addressed fully) by a WEQ Standard, are nevertheless the types of issues appropriate for the WEQ process. The Commission therefore proposes that each commenter that continues to believe additional reform is necessary in this area also evaluate whether its concerns would more appropriately be addressed by the WEQ as it considers its next version of its standards.[349] Specifically, as noted above, the WEQ is in the process of reevaluating WEQ Standard 001–9.7, dealing with redirects and rollovers, so that it is consistent with the Commission's guidance given in Order No. 676. The Commission requests comment on whether the WEQ process, along with the guidance provided by the Commission in Order No. 676, is sufficient to address the concerns of commenters that seek clarification on the interplay between redirects and rollovers.

370. The Commission understands, however, that there are also more fundamental concerns with regard to section 22 that were raised in the NOI. Many comments reflect concerns about the inability of transmission customers to effectively redirect their transmission service to new receipt and delivery points in order to accommodate a new transaction, the reassignment of capacity, or the designation of a new supply source. Generally, these commenters argue that their ability to redirect to new points is stymied by a lack of ATC at the new points or the need for major upgrades at the new points; or that the transmission provider takes too long to process its redirect request. Transmission providers, on the other hand, complain of the administrative burdens and complexity (particularly with regard to reliability) of processing transmission customers' short-term changes in service, and also assert that there is often not enough time for the market to respond to capacity made available on customers' original paths.

371. The ability to redirect to new points is a function of whether there is ATC at the new points. The Commission believes that its proposed reforms requiring coordinated transmission planning between transmission providers and their customers, as well as regional transmission planning open to all stakeholders, will lead to a more rationally planned transmission system that will result in fewer transmission constraints and more ATC available to accommodate requests to redirect to new points.[350] Additionally, the Commission's proposed reforms regarding the calculation of ATC and increased transparency over the process will engender increased confidence among transmission customers in their transmission providers' ATC postings.[351] In short, transmission customers will have more accurate and complete ATC information to utilize in evaluating their redirect options. Moreover, through increased transparency, transmission customers will have the information they need to question a transmission provider's denial of a request to redirect. Thus, we believe that our reforms in the area of transmission planning and ATC calculation should go a long way toward addressing transmission customer concerns in this area. Should commenters believe that our proposed reforms in this area will not address their concerns effectively, or that there is a better way of addressing them, we encourage them to submit a specific proposal, along with proposed revised *pro forma* OATT language.

372. We believe that redirects should be as customer-friendly as possible. Other *pro forma* OATT reforms proposed in this rulemaking should improve the ability to redirect transmission service to new points pursuant to section 22. For example, the modifications to firm point-to-point service discussed above will be applicable to a request to redirect on a firm basis, as such requests are treated as a new request for service under *pro forma* OATT section 22.2. In addition, reforms related to the acquisition of service discussed below (*e.g.*, with regard to making and processing requests for service, queuing, and reservation priority) should, among other things, help to address transmission customer concerns that transmission providers are too slow in processing redirect requests. These reforms also should help to address transmission provider concerns that customers do not respond completely and in a timely manner and that there is insufficient time to re-market capacity on the original paths.

5. Acquisition of Transmission Service

a. Processing of Service Requests

373. The *pro forma* OATT includes requirements that transmission providers process requests for transmission service in a timely fashion. Section 17.5 (Response to a Completed Application) and section 18.4 (Determination of Available Transmission Capability) of the *pro forma* OATT provide that following the receipt of a completed application for service, the transmission provider must respond to transmission customer requests for determinations of the availability of firm and non-firm

[346] Order No. 676 at P 52.

[347] *Id.* at P 53–61.

[348] For example, Bonneville, EEI, NRECA, and Southern each commented in Docket No. RM05–5–000.

[349] The Commission notes in this regard that the WEQ's procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the five industry segments: Transmission, generation, marketers/brokers, distribution/load-serving entities, and end-users. *See* Order No. 676 at P 5 & n.5.

[350] *Supra* Part V.B.

[351] *Supra* Part V.A.

transmission capacity on a timely basis. The transmission provider must make the determination as soon as reasonably practicable after receipt but no later than certain specified time periods (or such time periods generally accepted in the region). Section 19 (Additional Study Procedures for Firm Point-to-Point Transmission Service Requests) of the *pro forma* OATT provides deadlines that transmission providers must adhere to in issuing system impact study agreements and facilities studies agreements and that transmission customers must abide by in responding to these study agreements. Section 19 requires transmission providers to use due diligence to complete system impact studies and facilities studies within 60 days. Section 32 of the *pro forma* OATT (Additional Study Procedures for Network Integration Transmission Service Requests) contains similar due diligence deadlines for completing system impact studies and facilities studies associated with requests for network service.

374. In the NOI, the Commission sought comment on problems transmission customers and transmission providers have experienced regarding the timely processing of requests for transmission service. In particular, the Commission sought comment regarding whether transmission customers have experienced delays by transmission providers in responding to requests for transmission service in general and, in particular, what problems commenters have experienced as transmission providers process the queue for requests for transmission service that cannot be immediately granted due to a lack of ATC. We also asked about the type of remedies the Commission should impose on public utility transmission providers for missing deadlines set forth in their OATTs. Another issue we sought comment on was whether commenters have identified blocking issues, such as where a customer submits multiple requests intending to proceed with a single request specifically to keep others out of the queue; and if so, whether allowing transmission providers to charge a processing fee would reduce the incentive to submit multiple self-competing requests. Finally, we sought comment on whether the Commission should require transmission providers to study transmission requests as a group.

Comments

375. A number of merchant generators articulated general concerns regarding the time it takes transmission providers to process requests for transmission service.[352] EPSA notes that timeliness in responding to transmission requests is a consistent problem. Constellation states that the untimely processing of requests for transmission service is a persistent problem under the OATT, particularly with respect to long-term point-to-point service, network service, and modification of network resource designations. Arkansas Cities adds that, under the current OATT, utilities' lenient application of time periods needed for the system impact study process and facilities study process cause transmission customers to endure significant amounts of time to obtain confirmed firm delivery service at a reasonable cost.

376. A number of commenters suggest that transmission providers should inform the Commission when they miss the target deadlines for completing system impact studies and facilities studies and/or post performance statistics on their OASIS sites that detail the time it takes them to process system impact studies and facilities studies.[353] EPSA states that it strongly believes that the new OATT should require the transmission provider to notify the Commission when it is not able to meet deadlines. TDU Systems suggests that one way to address the difficulty of determining acceptable delays is to require transmission providers to post statistics on their OASIS sites providing information as to the length of time it might take to process requests for transmission service. Cinergy proposes that adopting specific reporting metrics that require transmission providers to report certain statistics regarding their performance could result in an improved quality of service.

377. A number of merchant generators propose that the Commission assess operational penalties on transmission providers that fail to meet the study deadlines detailed in the *pro forma* OATT.[354] LG&E recommends that the Commission consistently enforce the established deadlines through penalties or other remedies unless good cause for failure to comply can be shown, so as to promote nondiscriminatory adherence to established deadlines. Powerex suggests that the Commission: (a) Identify a threshold percentage rate of acceptable compliance with response timelines, (b) require transmission providers to monitor and post their own rates of compliance with Commission-required timelines on a path-specific basis, as well as the reasons for delays, (c) require transmission providers whose rate of compliance on a particular path falls below the Commission's threshold to file a compliance report with the Commission identifying the problem(s) and corrective measures that will be undertaken (including a timeline for implementation of the corrective measures), and (d) use a progressive penalty system that begins with reporting and auditing requirements for non-compliant transmission providers and then moves toward monetary penalties in cases where a transmission provider exhibits a pattern of uncorrected noncompliance, as well as in any case where actual bad faith, discrimination or preferential treatment has occurred.

378. A number of transmission providers state that transmission service request processing is slowed by excessive requests for transmission service from the same transmission customer with essentially the same service attributes (*e.g.*, point of receipt, point of delivery, start time, end time, firmness).[355] A number of other commenters also argue that some transmission customers submit multiple requests for transmission service with no intent to confirm most of the requests if and when the requests are accepted.[356] MidAmerican states that it is aware of cases where customers have submitted multiple requests for service associated with a new generator where the location of the new generator is not known but queue priority is being sought by the transmission customer. MidAmerican adds that the submission of such multiple requests for service affects the processing of other lower queued transmission requests. South Carolina E&G states that there are instances when a transmission customer submits multiple requests intending to proceed with a single request, seemingly with the purpose of keeping others out of the queue. AWEA states that transmission queues are frequently jammed with many projects holding each other up. AWEA asserts that there often are ''zombie'' projects blocking the queue, without a power purchase agreement or other indication that they are serious projects. Suez Energy NA responds that there are blocking issues when a transmission customer submits multiple requests for transmission

[352] *E.g.,* Constellation, EPSA, Powerex, and Williams.

[353] *E.g.,* Cinergy, Constellation, EPSA, MidAmerican, Powerex, and TDU Systems.

[354] *E.g.,* EPSA, Powerex, and Williams.

[355] *E.g.,* MidAmerican, Progress Energy, South Carolina E&G, and Southern.

[356] *E.g.,* Alberta Intervenors, AWEA, Public Power Council, and Suez Energy NA.

service but intends to proceed with a single request.

379. Several federal power agencies suggest that charging a fee on transmission service requests could provide the right incentive to transmission customers to limit requests for transmission service to only those requests they expect to confirm.[357] Several other commenters suggest a similar fee.[358] Bonneville supports the imposition of a processing fee for multiple requests to provide a disincentive to blocking behavior. Bonneville suggests that the fee should provide a disincentive for making multiple, ''self-competing'' requests. Bonneville suggests that, at a minimum, requests with the same point of receipt, point of delivery, source, sink, and time-frame should be considered ''self-competing.'' In addition, Bonneville contends that transmission providers should be allowed to define parameters to identify additional instances of ''self-competing'' requests on their systems. South Carolina E&G argues that there is merit to the concept of charging a processing fee that would increase with the duration of the requested service, to reduce the incentive to submit multiple self-competing requests.

380. The majority of commenters were in favor of allowing, but not requiring, transmission providers to study requests for transmission service as a group, also known as clustering requests for transmission service.[359] APPA and Bonneville suggest amending the *pro forma* OATT so that all requests received during a set time period are studied together. EEI argues that the Commission should not require the studying of transmission requests as a group, though transmission providers should continue to have the discretion to cluster transmission requests when it is efficient to do so. EPSA states that clustering should not be required, but may be considered as a customer option as part of a comprehensive planning process.

381. Bonneville suggests that the Commission adopt two NAESB proposed business standards designed to reduce the number of self-competing requests. In particular, Bonneville believes the Commission should adopt NAESB's proposed queue hoarding business practice and queue flooding business practice.

[357] *E.g.,* Bonneville and TVA.

[358] *E.g.,* Alberta Intervenors, Snohomish, and South Carolina E&G.

[359] *E.g.,* EEI, EPSA, Nevada Companies, PacifiCorp, PNM–TNMP, Powerex, and Southern.

Discussion

382. We agree with commenters who argue that requiring transmission providers to report the length of time they take to complete studies pursuant to sections 19 and 32 of the *pro forma* OATT would increase transparency and improve the ability of transmission customers and the Commission to detect undue discrimination. Therefore, we propose to require transmission providers to post on their OASIS sites metrics that track their performance in processing system impact studies and facilities studies associated with requests for transmission service. Transmission providers will be required to post the performance metrics, outlined below, for each calendar quarter. Transmission providers should begin tracking their performance upon the effective date of the final rule in this proceeding and keep the quarterly performance metrics posted on their OASIS sites for three calendar years. The transmission provider will be required to post the quarterly performance metrics within 15 days of the end of the quarter. The performance metrics outlined below should be calculated separately for affiliates' and non-affiliates' requests for short-term and long-term transmission service. A transmission provider also will be required to post performance metrics for studies that it conducts for RTOs.

383. We propose to require transmission providers to post the following set of performance metrics on a quarterly basis:

- Process Time from Initial Service Request to Offer of System Impact Study Agreement pursuant to Sections 17.5, 19.1 and 32.1 of the *pro forma* OATT
  - Number of new System Impact Study Agreements delivered to Transmission Customers
  - Number of new System Impact Study Agreements delivered to the Transmission Customer more than 30 days after the Transmission Customer submitted its request
  - Average time (days) from request submittal to change in request status
  - Average time (days) from request submittal to delivery of System Impact Study Agreement
  - Number of new System Impact Study Agreements executed
- System Impact Study Processing Time pursuant to Sections 19.3 and 32.3 of the *pro forma* OATT
  - Number of System Impact Studies completed
  - Number of System Impact Studies completed more than 60 days after receipt of executed System Impact Study Agreement
  - Average time (days) from receipt of executed System Impact Study Agreement to date when completed System Impact Study made available to the Transmission Customer
  - Average cost of System Impact Studies completed during the period
- Service Requests Withdrawn from System Impact Study Queue
  - Number of requests withdrawn from the System Impact Study queue
  - Number of System Impact Studies withdrawn more than 60 days after receipt of executed System Impact Study Agreement
  - Average time (days) from receipt of executed System Impact Study Agreement to date when request was withdrawn from the System Impact Study queue
- Process Time from Completed System Impact Study to Offer of Facilities Study pursuant to Sections 19.4 and 32.4 of the *pro forma* OATT
  - Number of new Facilities Study Agreements delivered to Transmission Customers
  - Number of new Facilities Study Agreements delivered to Transmission Customers more than 30 days after the completion of the System Impact Study
  - Average time (days) from completion of System Impact Study to delivery of Facilities Study Agreement
  - Number of new Facilities Study Agreements executed
- Facilities Study Processing Time pursuant to Sections 19.4 and 32.4
  - Number of Facilities Studies completed
  - Number of Facilities Studies completed more than 60 days after receipt of executed Facilities Study Agreement
  - Average time (days) from receipt of executed Facilities Study Agreement to date when completed Facilities Study made available to the Transmission Customer
  - Average cost of Facilities Studies completed during the period
  - Average cost of recommended upgrades for Facilities Studies completed during the period
- Service Requests Withdrawn from Facilities Study Queue
  - Number of requests withdrawn from the Facilities Study queue
  - Number of Facilities Studies withdrawn more than 60 days after receipt of executed Facilities Study Agreement
  - Average time (days) from receipt of executed Facilities Study Agreement to date when request was withdrawn from the Facilities Study queue

384. We also propose to impose operational penalties when transmission providers routinely fail to meet the 60-

day due diligence deadlines prescribed in sections 19.3, 19.4, 32.3 and 32.4 of the *pro forma* OATT. We propose to require a transmission provider to file a notice with the Commission in the event the transmission provider processes more than 20 percent of non-affiliates' studies outside of the 60-day due diligence deadlines in the *pro forma* OATT for two consecutive quarters. For the purposes of calculating this notification trigger, the transmission provider should aggregate all system impact studies and facilities studies that it completes during the quarter for non-affiliates.[360] The transmission provider may explain in its notification filing that it believes there are extenuating circumstances that prevented it from meeting the deadlines in the *pro forma* OATT. The transmission provider then will be subject to an operational penalty if the transmission provider continues to be out of compliance with the deadlines prescribed in the *pro forma* OATT for each of the two quarters following its notification filing. The transmission provider will be deemed to be out of compliance if it completes 10 percent or more of non-affiliates' system impact studies and facilities studies outside of the deadlines prescribed in the *pro forma* OATT. The operational penalty will be assessed on a quarterly basis, starting with the quarter following the notification filing and continuing until the transmission provider completes at least 90 percent of all studies within 60 days after the study agreement has been executed. For any system impact study or facilities study completed during that quarter and more than 60 days after the study agreement was executed, the penalty will equal $500 for each day the transmission provider takes to complete the study beyond 60 days. For any system impact study or facilities study that is still pending at the end of the quarter and that has been in the study queue for more than 60 days, the penalty will equal $500 for each day the study has been in the study queue beyond 60 days. Because of their independence, we do not believe that RTOs have an incentive to neglect their obligation to process applications for service in a timely fashion. As a result, we propose that RTOs will not be subject to this penalty regime.

385. In addition to the operational penalty described above, we propose to require transmission providers to post on their OASIS sites additional performance metrics after making a notification filing. Transmission providers will have to post these performance metrics until they process at least 90 percent of all system impact and facilities studies within 60 days after the study agreement has been executed. Starting the quarter following a notification filing, the transmission provider will be required to post: (1) The average, across completed system impact studies, of the employee-hours expended per completed system impact study; (2) the average, across completed facilities studies, of employee-hours expended per completed facilities study, (3) the number of employees devoted to processing system impact studies, and (4) the number of employees devoted to processing facilities studies. These additional performance metrics should be calculated separately for affiliates' and non-affiliates' requests for transmission service and for short-term and long-term transmission service.

386. In addition to the operational penalties described above, we may order other remedial actions, consistent with the Enforcement Policy Statement. Any other remedial action will be determined on a case-by-case basis. The transmission provider will pay the operational penalty described above, consistent with the proposed rule discussed in Part V.C.4.b. The transmission provider cannot recover for ratemaking purposes any operational penalty it pays for failing to process transmission service studies on a timely basis.

387. With respect to the problem of multiple, self-competing transmission service requests, we seek comment on a fee structure that could provide a disincentive for transmission customers to submit such duplicative requests without penalizing transmission customers that have legitimate requests for transmission service. We seek detailed recommendations, including any proposed tariff language, regarding the standards we would use to identify requests that would be subject to a fee. We also seek recommendations on the level of the fee that balances our policy goals to discourage requests for transmission service that the transmission customer does not intend to confirm while not discouraging legitimate requests for transmission service. Finally, we seek comment regarding the circumstances, if any, under which the processing fee would be refunded to or credited to the transmission customer.

388. In Order No. 2003, we encouraged transmission providers to study interconnection requests in clusters.[361] We likewise encourage transmission providers to study requests for transmission service in clusters, though we will not require transmission providers to cluster requests for transmission service for study purposes.[362] As with interconnection requests, studying requests for transmission service in clusters allows the transmission provider to consider all requested uses of the transmission system at one time. We seek comment regarding whether transmission providers should be required to study requests for transmission service in a group if the transmission provider fails to complete studies on a timely basis; and, if so, we seek comment on the circumstances that should trigger such a requirement and the appropriate method of implementing the requirement. We further seek comment regarding whether transmission providers should be required to study requests for transmission service in a group if all the transmission customers in the group agree to cluster their requests. We also seek comment regarding how to select the requests that belong to a cluster so that transmission customers cannot ''cherry-pick'' clusters to avoid transmission system upgrade costs.

389. In Order No. 676, we incorporated by reference a number of NAESB business practices, including the business standards on queue hoarding and queue flooding.[363] NAESB's queue hoarding business practice allows transmission providers to deny a transmission customer's identical requests for transmission service if the customer elects not to accept an initial offer of identical, or substantially identical, transmission service. NAESB's queue flooding business practice allows a transmission provider to invalidate the submission of additional identical requests for transmission service when the sum of all previously submitted identical requests for transmission service equals or exceeds the total transfer capability on the requested path for any time period during the duration of the requests. We would consider the decision by a transmission provider to

[360] For instance, if the transmission provider completes 4 non-affiliates' system impact studies during the quarter with 2 completed more than 60 days after the system impact study agreement was executed and completes 2 non-affiliates' facilities studies during the quarter with none completed more than 60 days after the facilities study agreement was executed, then the transmission provider will be deemed to have completed 2 out of 6 (33 percent) studies outside of the deadlines in the *pro forma* OATT.

[361] Order No. 2003 at P 155.

[362] We note that we previously have allowed transmission providers to study requests for transmission service in a group. *See, e.g., Southwest Power Pool, Inc.*, 110 FERC ¶ 61,028 at P 16 (2005).

[363] *See* Order No. 676 at P 19.

deny service under the queue hoarding business practice and the decision to invalidate requests under the queue flooding business practice to be an act of discretion under 18 CFR 37.6(g)(4) (2005). As a result, the transmission provider is to log the actions it takes under the queue flooding and queue hoarding business practices.

b. Queue Processing Business Practices

390. The set of uniform business practices adopted in Order No. 676 relating to transmission service price negotiation and on improving interaction between transmission customers and transmission providers over OASIS nodes. These business practices include standards for the time limit within which (1) transmission providers must respond to requests for transmission service, (2) transmission customers must confirm service, and (3) transmission providers must respond to a rebid from a transmission customer.[364] These business practices also include negotiation priority rules, including the terms under which a request can be pre-empted and under which a request has the right-of-first-refusal.[365]

391. In the NOI, the Commission sought comment regarding whether there are provisions of the *pro forma* OATT that need to be reformed to better define the obligations of public utility transmission providers in responding to requests for transmission service.

Comments

392. Several commenters asked that the Commission require transmission providers to post standard business practices that describe how the transmission provider will process requests for transmission service.[366] MidAmerican suggests that transmission providers should be required to post on their OASIS sites a business practice documenting how they process their queues, requests outside the queue, and expected completion times. Calpine believes that the processing of requests for transmission service, and the deadlines associated with that process, should be standardized for all transmission service providers. For example, Calpine notes that Entergy's OASIS business practices state that Entergy will respond to fixed, hourly non-firm transmission service requests ''within 30 minutes of receiving the request for the requests received earlier than 1 hour before the service is to commence.'' By comparison, Calpine continues, SPP's tariff explains that hourly, non-firm transmission service requests for the next hour may be submitted no later than 20 minutes prior to the start of service.

Discussion

393. Order No. 676 contains many of the business practices we expect transmission providers to follow when they process requests for transmission service, including the issue Calpine raises in its comments about discrepancies between Entergy's and SPP's processes for requests for hourly non-firm transmission service. Calpine's comment addresses the deadline for transmission customers to submit requests for non-firm hourly point-to-point service and the deadline for transmission providers to respond to requests for non-firm hourly point-to-point service. Standard 001–4.13 in Order No. 676 indicates that transmission providers should use their best efforts to respond to requests for non-firm hourly point-to-point service that are submitted less than an hour prior to start and transmission providers should respond within 30 minutes to requests that are submitted more than an hour before start. In addition, in this NOPR we have provided additional clarity regarding the calculation of ATC and requirements for processing rollover requests. We also provide general guidance regarding which business practices should be filed as part of a transmission provider's OATT and which should be posted on OASIS. Given this additional clarity and the business practices already mandated by Order No. 676, we seek comment on whether commenters believe additional standardization of request queue processing is necessary. If so, we seek comment on the specific issues commenters believe are not clearly prescribed in Order No. 676 or this NOPR and which require additional mandatory queue processing business practices.

c. Reservation Priority

394. Section 13.2 of the *pro forma* OATT requires transmission providers to process requests for long-term firm point-to-point service on a first-come, first-served basis. In the NOI, we asked whether the first-come, first-served approach to reservation priorities has resulted in a fair and equitable means of allocating transmission capacity when the transmission system is oversubscribed. If not, we asked whether an alternative approach should be implemented.

Comments

395. Most transmission providers and federal power agencies respond that the first-come, first-served approach to allocating transmission service is the best alternative available.[367] Several merchant generators and public power entities concur that no better alternative exists.[368] Several commenters suggest that the first-come, first-served approach may provide an advantage to transmission customers who have the financial resources to purchase software and employ staff to continually monitor OASIS sites.[369] Santa Clara states that entities that have superior software and are able to consistently procure capacity to the exclusion of other market participants may have an unfair advantage.

396. For the short-term market, Bonneville contends, the first-come, first-served approach has two defects: (1) It advantages larger and better-financed transmission customers, which can continually monitor OASIS sites and submit requests electronically the moment new ATC is posted; and (2) it results in arbitrary awards of transfer capability when one customer's submission precedes a second customer's submission by mere seconds. Bonneville suggests that the Commission modify the first-come, first-served rule for awarding short-term firm point-to-point service capacity so that all requests submitted within a given time-frame are considered simultaneously submitted.

397. Several commenters propose some version of priority preference for requests for transmission service that are pre-confirmed.[370] Bonneville states that transmission customers flood the queue with unconfirmed requests to force competitors with higher queue positions to extend the length of their requests to retain their queue positions.

398. Bonneville suggests that the Commission consider reducing the time transmission customers have to confirm requests for short-term transmission service after the transmission provider has accepted a request for short-term transmission service. Bonneville states that a shorter time-frame would clear the short-term firm transmission market more quickly and make it more difficult for transmission customers to tie up scarce transfer capability.

[364] *Id.*, Standards 001–4.6 and 001–4.13.

[365] *Id.*, Standards 001–4.14 and 001–4.16.

[366] *E.g.*, Calpine, MidAmerican, and TDU Systems.

[367] *E.g.*, Ameren, EEI, Nevada Companies, TVA, and WAPA.

[368] *E.g.*, NRECA, Powerex, Public Power Council, Sempra, and TDU Systems.

[369] *E.g.*, Bonneville and Santa Clara.

[370] *E.g.*, Bonneville, Entergy, and South Carolina E&G.

399. Powerex suggests that the Commission clarify its reservation priority standards so that when transmission providers make use of discounts in short-term service, price (not to exceed the ceiling price) should be the third-level tie breaking mechanism, with higher-priced requests of equal duration having greater priority and requests earlier in the open access same-time information system having right of first refusal to match subsequent requests. Powerex states that in the presence of discounting, the open access transmission tariff allows a higher value service (firm) to be sold at a lower price than a lower value service (non-firm) even in the same operating horizon, because price based displacement only applies to short-term non-firm transmission services.

Discussion

400. In response to comments that transmission customers that have the financial resources to purchase software and employ staff to continually monitor OASIS sites have an unfair advantage under a first-come, first-served approach, we seek comment regarding whether any such advantage would be mitigated if all requests submitted within a 5-minute window, with duration as a tie breaker, were deemed to have been submitted simultaneously. We also seek comment on whether transmission customers could game a 5 minute equivalent priority standard to request transmission service only after another transmission customer has made a request. To the extent we adopt a 5 minute equivalent priority standard, we propose to allocate capacity on a pro rata basis, though we seek comment on other methods for allocating limited transmission capacity among equivalent priority requests of equal duration.

401. We also propose to change the priority rules to give priority to pre-confirmed requests. As a result, a pre-confirmed short-term request for firm transmission service would preempt any non-pre-confirmed short-term requests, regardless of duration. Similarly, a pre-confirmed request for long-term firm transmission service would preempt a request for long-term transmission service that is not pre-confirmed. We seek comment on whether this change to the reservation priority rules will alleviate concerns commenters have expressed regarding the flooding or jamming of the transmission queue by transmission customers who submit multiple requests for transmission service.

402. We propose to add price as a tie-breaker in determining reservation queue priority when the transmission provider is willing to discount transmission service. Price would serve as a tie-breaker after pre-confirmation for those requests that are not yet confirmed. As a result, a pre-confirmed request for short-term firm point-to-point service would preempt another pre-confirmed request for short-term firm point-to-point service that has an earlier queue time, and an equal or shorter duration but a lower offer price. However, a request for short-term firm point-to-point service that is not pre-confirmed would not preempt a pre-confirmed request for short-term firm point-to-point service that has an earlier queue time, and an equal or shorter duration but a lower offer price.

6. Designation of Network Resources

a. Qualification as a Network Resource

403. Taken together, the following sections of the *pro forma* OATT describe the resources a network customer can appropriately designate as a network resource. Section 30.1 of the *pro forma* OATT describes network resources as all generation owned or purchased by the network customer designated to serve network load under the tariff. Section 30.1 also indicates that network resources may not include resources that are committed for sale to non-designated third-party load or otherwise cannot be called upon to meet the network customer's network load on a noninterruptible basis. Pursuant to section 30.7 of the *pro forma* OATT, the network customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a network resource. Alternatively, the network customer may establish that execution of a contract is contingent upon the availability of network service. Section 29.2 requires the network customer to provide the following information about a power purchase agreement that is to serve as a new designated network resource: source of supply, control area location, transmission arrangements and delivery point(s) to the transmission provider's transmission system.

404. The Commission has issued a number of orders that clarify which resources meet the criteria set out in sections 30.1 and 30.7 of the *pro forma* OATT. In *MSCG,* the Commission stated that network resources must be generating resources owned by the network customer or purchases of noninterruptible power under executed contracts that require the network customer to pay for the purchase.[371] In *WPPI,* the Commission found that a network customer can designate as a network resource a system purchase that is not backed by a specific generator.[372] The Commission found that Wisconsin Public Service Corporation (WPS) had appropriately designated a power purchase as a network resource, even though the power purchase agreement did not require WPS to take energy around the clock and allowed WPS to convert its energy purchase to a discounted product that could be interrupted.[373] In addition, the Commission stated that because the *pro forma* OATT requires a power purchase to be noninterruptible, third-party transmission arrangements to deliver the resource to the network have to be noninterruptible as well.[374] In *Illinois Power,* the Commission found that a firm purchase need not be backed by a capacity purchase to qualify as a network resource.[375]

405. In the NOI, the Commission sought comment regarding whether network resources consisting of firm contracts that do not specify generation sources until the energy is scheduled (so-called ''seller's choice contracts'') are a problem. The Commission also sought comment on the specific difficulties entities have experienced with designation of network resources and asked what reforms are needed to the designations provision in the *pro forma* OATT.

Comments

406. A number of commenters indicate that firm contracts that do not specify generation sources are acceptable network resources as long as the network customer specifies enough information for the transmission provider to identify how the contract power will enter its control area.[376] Bonneville suggests that the customer should be required to identify the point(s) of receipt on the transmission provider's system whenever it designates a network resource. EEI states that the designation of seller's choice contracts as network resources is only problematic if the seller's choice contract permits the seller to choose the

[371] *Morgan Stanley Capital Group* v. *Illinois Power Co.*, 83 FERC ¶ 61,204 at 61,911–12 (1998), *order on reh'g*, 93 FERC ¶ 61,081 (2000) (*MSCG*).

[372] *Wisconsin Public Power Inc.* v. *Wisconsin Public Service Corp.*, 84 FERC ¶ 61,120 at 61,650–51 (1998) (*WPPI*).

[373] *Id.*

[374] *Id.* at 61,660.

[375] *Illinois Power Co.*, 102 FERC ¶ 61,257 at P 14 (2003), *reh'g denied*, 108 FERC ¶ 61,175 (2004) (*Illinois Power*).

[376] *E.g.,* Bonneville, EEI, Nevada Companies, Public Power Council, and TVA.

flowgate path over which the energy will be delivered. EEI further explains that no issue is present if the seller is limited to a single path or flowgate. On the other hand, PNM–TNMP argues that allowing seller's choice contracts to be considered network resources significantly complicates transmission planning, as virtually none of the information required by section 29.2 of the OATT can be provided.

407. Several commenters cited specific difficulties with or suggested specific modifications to the network designation provisions of the tariff. APPA indicated that under the liquidated damages provisions in the EEI contract, it is the buyer's responsibility to go out into the market to purchase replacement supplies (cover), and the seller then pays the buyer the difference between the contract price and the cover price. APPA states that these provisions are not consistent with the concept of having to specify generation resources or contracts as network resources, since the actual source and supplier of generation may well change at a time when both wholesale power supplies and transmission capacity are at a premium. Ameren suggests that the Commission clarify that liquidated damages products cannot be designated network resources. Ameren states that a liquidated damages contract allows a supplier to walk away from a deal if it can obtain a price elsewhere high enough to offset the liquidated damages provisions. Ameren argues that liquidated damages contracts are financial instruments that produce no electricity. MidAmerican also contends that provisions for designating liquidated damages contracts as network resources should be eliminated. Southwestern urges the Commission to reform the OATT to make it clear that a firm purchased power contract with liquidated damages should be eligible to be considered a designated network resource.

Discussion

408. We propose to maintain our current policy regarding the power purchase agreements that network customers may designate as network resources. In particular, a network customer will continue to be able to designate resources from system purchases not linked to a specific generating unit, provided the purchase power agreement is not interruptible for economic reasons, does not allow the seller to fail to perform under the contract for economic reasons, and the executed contract requires the network customer to pay for the purchase. In addition, third party transmission arrangements to deliver the purchase to the network have to be noninterruptible as well.

409. In response to comments that seller's choice contracts are problematic because the network customer can provide limited, if any, information required by section 29.2 of the *pro forma* OATT, we reiterate that a request to designate a new network resource must include the information specified in section 29.2(v), including the source of supply, control area location, transmission arrangements, and delivery point(s) to the transmission provider's transmission system. When a network customer is designating a system purchase as a new network resource, the source information required in section 29.2(v) should identify that the resource is a system purchase and should identify the control area from which the power will originate. A power purchase agreement that is structured so that a network customer cannot specify all of the information required by section 29.2(v) cannot be designated as a network resource.

410. In response to suggestions that liquidated damages products should not be designated network resources because they are interruptible for economic reasons, we clarify that network customers may not designate as network resources those power purchase agreements that give the seller a contractual right to compensate the buyer instead of delivering power even if the seller is able to deliver power. For instance, a network customer may not designate as a network resource a purchase agreement that allows the seller to interrupt service for reasons other than reliability, but allows the buyer to force delivery at a higher price. In addition, a network customer may not designate as a network resource a purchase agreement that requires a seller to pay the buyer's cost of replacement power when the seller chooses not to deliver energy for economic reasons.

b. Documentation for Network Resources

411. Section 30.2 of the *pro forma* OATT stipulates that a network customer request the designation of a new network resource by a request for modification of service pursuant to an application under section 29 of the *pro forma* OATT, and section 29.2 stipulates that the network customer must provide specified information about its designated network resources. The Commission found in *WPPI* that transmission customers may need to document compliance with specific requirements for obtaining tariff service, possibly including contractual terms.[377] The Commission went on to state that it expected a transmission provider's merchant function to police its own compliance with tariff obligations.[378]

Comments

412. LG&E suggests that the *pro forma* OATT require the transmission provider to have a process to verify that each load-serving entity has a contractual right to the resources they are designating. LG&E argues this would help eliminate concerns over double booking of resources by two parties. EPSA states that transmission providers have attempted to require customers to demonstrate that they have obtained contracts covering an annual period, rather than allowing customers to provide reasonable advance notice for each contract during the service period. EPSA asks the Commission to prohibit this practice.

Discussion

413. We clarify that transmission providers are not responsible for verifying that the generating units and power purchase agreements network customers designate as network resources satisfy the requirements in sections 30.1 and 30.7 of the *pro forma* OATT. While transmission providers are responsible for verifying that the network customer has provided all the information section 29.2 requires the network customer to provide, the transmission provider is not responsible for obtaining contractual terms to verify requirements in sections 30.1 and 30.7 of the *pro forma* OATT. The transmission provider continues to have the responsibility to verify that third-party transmission arrangements to deliver the purchase to the transmission provider's system are firm.

414. We propose to require the transmission provider's merchant function as well as network customers to include a statement with each application to designate a new network resource that attests that: (1) The transmission customer owns or has committed to purchase the new designated network resource, and (2) the new designated network resource comports with the requirements for designated network resources. The network customer should include this attestation in the customer's comment section of the request when it confirms the request. Similarly, we propose that all entities that submit an application for network service be required to

[377] *WPPI* at 61,660.

[378] *Id.*

include a statement with the application for service that attests that, for each network resource identified in the application for service: (1) The transmission customer owns or has committed to purchase the designated network resource, and (2) the designated network resource comports with the requirements for designated network resources.

415. We propose that if the network customer does not include an attestation when it confirms its request, the transmission provider will notify the network customer within 15 days of confirmation that its request is deficient. Wherever possible, the transmission provider will attempt to remedy deficiencies in the request through informal communications with the network customer. If such efforts are unsuccessful, the transmission provider will terminate the network customer's request and change the status of the request on OASIS to ''retracted.'' This termination will be without prejudice to the network customer submitting a new request that includes the required attestation. The network customer will be assigned a new priority consistent with the date of the new request.

416. In the event that the transmission provider or any network customer designates a network resource that it does not own or has not committed to purchase or that does not comport with the requirements for designated network resources, we will deem the network customer to be in violation of the *pro forma* OATT and will consider assessing civil penalties on a case-by-case basis consistent with the Commission's Enforcement Policy Statement. We encourage the transmission provider and other market participants to use the Commission's Enforcement Hotline to report instances when they believe a network customer has designated as a network resource a resource that does not meet the criteria for network resources.

c. Undesignation of Network Resources

417. Section 28.2 of the *pro forma* OATT requires the transmission provider, on behalf of its native load customers, to designate resources and loads in the same manner as any network customer under Part III of the *pro forma* OATT (Network Integration Transmission Service). The information provided by the transmission provider must be consistent with the information it uses to calculate ATC. Section 30.3 of the *pro forma* OATT allows the network customer to terminate the designation of all or part of a generating resource as a network resource at any time, though the network customer should provide notification to the transmission provider as soon as reasonably practicable.

418. In Order No. 888–B, the Commission clarified that the *pro forma* OATT allows network customers to designate network resources over shorter time periods. The Commission indicated that a network customer that seeks to engage in firm sales from its current designated network resources may terminate the generating resource (or a portion of it) as a network resource pursuant to section 30.3 of the *pro forma* OATT and request, as set forth in section 29 of the *pro forma* OATT, that the same generation resource be designated as a network resource effective with the end of its power sale.[379]

419. In the NOI, the Commission sought comment on whether network customers should be allowed to ''undesignate'' portions of their designated network resources on a short-term basis in order to make firm sales from these resources.

Comments

420. Most commenters suggest that the Commission continue to allow network customers to undesignate a portion of their designated network resources on a short-term basis in order to make firm sales.[380] APPA argues that the ability of network customers to undesignate their network resources on a short-term basis is an important aspect of Order No. 888–B and should be preserved. APPA states that the flexibility afforded to network resource customers allows them to lay off excess power supplies that they do not need to serve their designated loads during off-peak demand periods. APPA and EEI contend that this increases the number of wholesale sellers in the market during non-peak periods, and this supports wholesale competition for power supply sales.

421. Several commenters suggest that network customers should have the same right as transmission providers to undesignate network resources to make off-system sales.[381] APPA states that the Commission should make explicit the requirement that the transmission provider must provide the same flexibility to its network customers as it does to its own merchant function in designating and terminating network resources.

422. NRECA asserts that public utility transmission providers must be required to undesignate resources or portions thereof in order to make firm sales out of generation fleets that they have designated as a network resource.

Discussion

423. We propose to continue to allow network customers to undesignate a portion of their network resources on a short-term basis to make off-system sales. We reiterate that a network customer may redesignate the resource by making a request to designate a new network resource. In response to comments that the transmission provider also should be required to undesignate network resources when the transmission provider makes firm off-system sales, we reiterate that the transmission provider must abide by both the requirement in section 28.2 of the *pro forma* OATT to designate its network resources in the same manner as network customers and the prohibition in section 30.1 of the *pro forma* OATT against making firm sales from its designated network resources. That is, the transmission provider and all network customers must designate their network resources and are prohibited from making firm sales from designated network resources. To the extent the transmission provider or a network customer wants to make a firm sale from a network resource, it must undesignate the resource pursuant to section 30.3 of the *pro forma* OATT. The network customer, including the transmission provider itself, can request to redesignate the resource by making a request to designate a new network resource pursuant to section 30.2 of the *pro forma* OATT.

424. We seek comment on the amount of time prior to operation that the transmission provider and other network customers should be required to terminate a network resource to ensure that the appropriate set of network resources are included in the ATC calculation.

7. Clarifications Related to Network Service

Secondary Network Service

425. Section 28.4 of the *pro forma* OATT allows a network customer to deliver economy energy purchases to its network load from non-designated network resources on an as-available basis without additional charge. In Order No. 888, the Commission described economy energy purchases as energy that displaces firm network resources.[382]

426. The use of secondary network service to deliver purchased power

[379] Order No. 888–B at 62,093

[380] *E.g.,* APPA, EEI, Entergy, Nevada Companies, Public Power Council, Southern, and TVA.

[381] *E.g.,* APPA, NRECA, and Public Power Council.

[382] Order No. 888 at 21,751.

when a network customer is making off-system sales was raised in several Commission investigations and audits. In *Idaho Power*, the Commission accepted a settlement with Idaho Power related to Idaho Power's incorrect use of the native load priority to access its transmission system.[383] In *Idaho Power*, the utility's wholesale merchant function purchased power outside of Idaho Power's control area to facilitate an off-system sale and used secondary network service to bring the purchases into Idaho Power's control area.[384] In accepting the settlement, the Commission stated that ''[i]t is axiomatic that the native load priority cannot be used to complete sales that are not necessary to serve native load.'' [385] In *MidAmerican*, the Commission issued an audit report that contained a finding that MidAmerican's wholesale merchant function used network service instead of point-to-point service to deliver short-term energy purchases to its control area that were not used to serve MidAmerican's native load.[386]

Comments

427. South Carolina E&G asks the Commission to clarify whether specific methods used to bring sellers and buyers together in the wholesale market are appropriate under the *pro forma* OATT in its current form. South Carolina E&G notes that as a utility's native load forecasts evolve into real-time conditions, the utility may need to sell off excess energy. South Carolina E&G notes further that, as inexpensive sources of power become available off-system, the utility may engage in economy purchases of power for native load. South Carolina E&G asserts that such practices clearly benefit the market and safeguard native load customers' interests by ensuring that economy purchases minimize the price of consumers' power and/or giving the utility a market outlet for excess energy, thus avoiding the uneconomic backing down of lower cost generating units while retaining higher cost prescheduled purchases. South Carolina E&G urges the Commission to support the continuation of such practices.

Discussion

428. We propose to clarify that a network customer may not use secondary network service to bring energy onto its system to support an off-system sale if the purchased power does not displace the customer's own higher cost generation. We propose to modify the section 28.4 of the *pro forma* OATT to clarify that a network customer may use secondary network service to deliver economy energy and we propose to add a definition for ''economy energy'' to the *pro forma* OATT. We propose to define ''economy energy'' as energy purchased by a network customer that displaces the customer's own higher cost generation for the purpose of serving the customer's designated network loads.

429. While we reiterate that secondary network service may be used only to serve a network customer's designated network load, we do not intend to discourage market participants from identifying opportunities to profitably purchase for resale. We simply intend to ensure that all market participants compete on a comparable basis and use point-to-point service to complete all segments of a purchase for resale off-system.

430. We also do not intend to discourage network customers from purchasing off-system energy to lower the cost of serving network loads. A network customer may use secondary network service in hours when it is also making off-system sales. However, the network customer may do so only to deliver purchases that qualify as economy energy purchases. In response to South Carolina E&G's observation that a utility's native load forecasts evolve in real-time to the point that the utility may need to sell off excess energy that was purchased off-system, we note that our definition would allow a network customer to use network service to deliver off-system purchases when the network customer purchases the energy with the intent to serve native load.

431. In enforcing this policy, we will apply the definition of ''economy energy'' at the time the network customer commits to purchase energy. For instance, we will not take issue if a network customer uses secondary network service to deliver an hour-ahead purchase that costs less than the network customer's generation cost in the hour of operation. Similarly, we will not question the use of secondary network service by a network customer to deliver a day-ahead off-system purchase that costs less than the network customer's forecast generation cost, even if real-time system conditions evolve so that the realized generation cost is less than the cost of the purchased energy. We also would not take issue with a network customer that uses network service to deliver off-system block energy because the purchased energy is more economic than using its network resources, but makes off-system sales during some hours when the block energy purchase is scheduled. In other words, in enforcing this policy, we will apply the definition of ''economy energy'' as it applies to the entire period covered by the block purchase and not to a single hour within the block.

''[O]n an As-Available Basis''

432. Section 28.4 of the *pro forma* OATT allows a network customer to use secondary network service to deliver economy energy purchases to its network load from non-designated resources ''on an as-available basis.'' However, the current *pro forma* OATT does not specify how a network customer must arrange for secondary network service.

Discussion

433. We propose to modify section 28.4 of the *pro forma* OATT by clarifying that a network customer need not file an application for network service to receive secondary network service, but that all other requirements of Part III of the *pro forma* OATT (except for transmission rates) apply to secondary network service. In other words, a network customer must request secondary network service on OASIS in a manner consistent with *pro forma* OATT sections 18.1 and 18.2 (Procedures for Arranging Non-Firm Point-To-Point Transmission Service).

Redirect of Network Service

434. The current *pro forma* OATT does not include any provision to change the point of receipt for an off-system designated network resource, in a manner similar to redirect of point-to-point service. However, we are aware that several transmission providers have posted business practices that allow network customers either to substitute an off-system non-designated network resource for a designated network resource or to redirect the point of receipt associated with an existing network resource.

Discussion

435. We propose to clarify that network customers may not redirect network service in a manner comparable to the way customers redirect point-to-point service. Unlike point-to-point service that is based upon a contract-path model consisting of a designated point of receipt and point of delivery, network service involves no identified contract path and is therefore not a directable service. Rather, network

[383] *Idaho Power Co.*, 103 FERC ¶ 61,182 at P 2 (2003) (*Idaho Power*).

[384] *Id.* at P 4.

[385] *Id.*

[386] *MidAmerican Energy Co.*, 112 FERC ¶ 61,346 at P 6 (2005).

service provides for the integration of designated network resources and loads using the entire transmission grid in a manner comparable to the transmission provider's use of the transmission grid to serve its native load customers. When a network customer wants to substitute one designated network resource for another, it should terminate the designation of the existing network resource and designate a new network resource. The network customer can then request to redesignate its original network resource by making a request to designate a new network resource. Alternatively, a network customer could use secondary network service when it wants to substitute a non-designated network resource for a designated network resource on an as-available basis.

8. Transmission Curtailments

436. Section 1.7 of the *pro forma* OATT defines curtailment as ''a reduction in firm or non-firm transmission service in response to a transmission capacity shortage as a result of system reliability conditions.'' Curtailment provisions for point-to-point service are set forth in sections 13.7 and 14.7 for firm and non-firm transmission services respectively and the curtailment provisions for network service are contained in section 33. Complaints regarding improper curtailment of service by transmission providers have been made in a variety of proceedings and the Commission has found cases of improper curtailment in the past.[387]

437. In the NOI, the Commission asked whether there is evidence of improper curtailment practices by public utility transmission providers or customers that warrants reforms to the *pro forma* OATT. If there is, we requested that commenters provide specific examples of such practices. We also asked whether transmission providers engaging in improper curtailments should be subject to monetary penalties or other remedies for market manipulation.

Comments

438. EEI argues that there do not appear to be many instances of improper curtailments and many utilities state that they are not aware of any improper curtailments by public utility transmission providers. For example, Southern states that curtailments are performed on a non-discriminatory basis, in accordance with applicable OATT provisions. Ameren, KCP&L, and PNM–TNMP state that they are not aware of any improper practices that would warrant reforms to the *pro forma* OATT. APPA does not advocate changes to the *pro forma* OATT regarding curtailment, stating that its members express more concerns about the denial of service prior to and at the time of scheduling than they do regarding curtailment of service once it has commenced. However, APPA also notes that most of its members use firm service that is unlikely to be interrupted once it is scheduled. Public Power Council, Snohomish, MEAG and Salt River concur with APPA that OATT reforms are not needed for curtailments.

439. Transmission customers, particularly IPPs, generally have a different view, arguing that the reasons for curtailment are difficult to discern, and that information is often insufficient to determine whether curtailments have been performed correctly. Northwest IPPs state curtailments frequently appear arbitrary. Powerex argues that incomplete postings on many transmission systems and the lack of transparency in curtailment data could mask improper curtailment. Calpine states that it is usually difficult to determine whether a curtailment of service is truly justified by system reliability factors because the operational facts underlying the utility's curtailment decision are unknown. It argues that the criteria for utility curtailment decisions are not standardized, making it difficult to determine the propriety of curtailment decisions, particularly when curtailment is internal to a single area and not performed through the NERC TLR process. Calpine recommends that the terms and conditions for curtailments be standardized by the new reliability organizations created by EPAct 2005, that such terms and conditions be made a formal part of the *pro forma* OATT and the OATTs of public, private and federal utilities, and that these be posted on the transmission provider's OASIS. Calpine further recommends that regional NERC organizations be requested to audit the curtailment practices of all utilities that are not members of an RTO/ISO. Constellation asserts that TLRs are a ''blunt and inefficient mechanism'' for curtailment and calls for a requirement that transmission providers provide redispatch options.

440. In reply to claims that vertically integrated utilities provide inadequate information on curtailments, Southern states that existing OASIS requirements already require utilities to post a considerable amount of information on curtailments, and that the information currently posted is adequate to meet customers' needs. Nevertheless, Southern also states that while those rules have been effective in achieving their intended purpose, incremental additions to the information that is available through OASIS could assure customers that they have all of the information they need to make prudent decisions about transmission service and that they are being treated in a fair, equitable, and non-discriminatory way.

441. Commenters appear divided on the issue of whether there should be penalties for improper curtailments. The most common view, expressed by EEI and others, is that penalties for improper curtailments should be assessed only if the Commission finds that the transmission provider imposed the curtailment with the intent to treat a customer in an unduly discriminatory or preferential manner. Other commenters expressed a wide range of views. Alcoa states that improper curtailments should be the subject of monetary penalties. Santa Clara contends that transmission providers should be fully liable for any damages caused by improper curtailments. On the other hand, Southern argues that curtailment is a reliability issue and it would be unwise to subject transmission providers to after-the-fact assessments of their curtailment decisions. KCP&L notes that the responsibility for calling a TLR rests with the reliability coordinator, who makes decisions based on the NERC standard, so that penalties for improper curtailment activity should be a subject for the ERO.

Discussion

442. The Commission reminds both transmission providers and customers that our regulations require posting of transmission curtailment information on OASIS. The OASIS regulations state:

> When any transaction is curtailed or interrupted, the Transmission Provider must post notice of the curtailment or interruption on the OASIS, and the Transmission Provider must state on the OASIS the reason why the transaction could not be continued or completed.
>
> (ii) Information to support any such curtailment or interruption, including the operating status of the facilities involved in the constraint or interruption, must be maintained and made available upon request, to the curtailed or interrupted customer, the Commission's Staff, and any other person who requests it, for three years.[388]

[387] *See, e.g., Consolidated Edison Co. of N.Y.* v. *Public Serv. Elec. & Gen. Co.*, 108 FERC ¶ 61,120 (2004).

[388] We note that we are proposing to change this information retention period to five years, consistent with our other proposed changes to the OASIS information retention provisions.

(iii) Any offer to adjust the operation of the Transmission Provider's system to restore a curtailed or interrupted transaction must be posted and made available to all curtailed and interrupted Transmission Customers at the same time.[389]

443. Those commenting that they have inadequate information about curtailments do not clearly state whether the source of this deficiency lies in: (1) The inadequacy of our standards, (2) inadequate compliance with these standards, (3) difficulties in dealing with the way the information is provided, or (4) some other area. We are, however, mindful that objective review of curtailments can require a considerable amount of information, some of which may not be provided under the present OASIS regulations, or may be provided in an inefficient manner. For example, we recognize that it is difficult for a customer to determine what network resources were available to the transmission provider that could have been redispatched consistent with *pro forma* OATT sections 30.5 and 33.2 to relieve the transmission constraint that led to a transmission curtailment. Another example may be discerning which discrete transaction(s) could be curtailed on a non-discriminatory basis to effectively relieve the constraint consistent with *pro forma* OATT section 13.6. We seek comment on whether additional requirements would improve the transparency of transmission curtailment information and the ability of customers to make use of that information.

444. With respect to the imposition of penalties, the Commission recognizes that the transmission curtailment decision is a reliability decision that should be based on applicable reliability standards. Moreover, we note that the need for transmission curtailment depends on many factors outside the control of an individual transmission provider, including loop flows throughout an interconnection. Accordingly, we will not propose generic penalties for improper transmission curtailments in this rulemaking. However, the absence of generic penalties should not be construed to mean that we will tolerate intentional behavior that subjects customers to unduly discriminatory or preferential actions. We remain vigilant in monitoring for intentionally discriminatory provision of transmission service, and stand ready to use our enforcement powers and penalty authority when needed.

[389] 18 CFR 37.6(d)(3) (2005).

9. Standardization of Rules and Practices

445. In Order No. 888, the Commission required each public utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce to file, pursuant section 205 of the FPA, a *pro forma* OATT under which it would provide open access transmission services. However, certain rules, standards and practices governing the provision of such transmission service (*e.g.*, public utility business practices) are not reflected in the *pro forma* OATT. Only when a public utility adopts a rule, standard or practice that significantly affects its rates and services has the Commission required it to make a filing pursuant to FPA section 205 to amend its OATT.[390] The Commission has applied this policy using a ''rule of reason'' test.[391]

446. The rule of reason test has arisen primarily with respect to protocols or operating procedures used by RTOs and ISOs. For example, the Commission has held that while the business practices manuals of the Midwest ISO implicate the Commission's jurisdiction because they generally involve ''the installation, operation, or use of facilities for the transmission or delivery of power * * * in interstate commerce,'' they do not require a FPA section 205 filing because ''they mostly involve general operating procedures.''[392] In other cases, the facts have required the filing of the rule, standard or practice. For example, CAISO proposed to post certain, technical, operational and business standards related to dynamic scheduling on its Web site and include only the rates under its OATT. There, the Commission found that the details contained in the standards are practices that may affect the terms and conditions of service significantly, and therefore, under the Commission's ''rule of reason,'' must be filed under FPA section 205.[393]

447. In the NOI, the Commission asked: (1) Whether all rules, standards and practices should be required to be included in public utilities' OATTs? (2) If not all, which of such rules, standards and practices should be included in public utilities' OATTs? and (3) Should rules, standards and practices not required to be included in public utilities' OATTs be required to be posted on OASIS to increase transparency?

Included in Open Access Transmission Tariffs

448. Some commenters argue that the rules, standards and practices governing the provision of transmission service should be included in public utilities' OATTs.[394] Occidental states that the inclusion of rules, standards and practices governing the provision of transmission service in public utilities' OATTs will add much needed clarity as to how transmission service is provided. EPSA states that while it may not be necessary, or desirable, to require all business practices to be incorporated into the OATT, there have been instances where transmission providers have adopted business practices that are inconsistent with their OATT requirements or that should have been filed as OATT amendments. Some commenters also support the inclusion of the NAESB standards in the OATT.[395]

449. In contrast, some commenters oppose including rules, standards and practices in the OATT.[396] EEI argues that rules, standards and practices should not be included as part of an OATT unless they significantly affect rates and service under the OATT. EEI states that this is consistent with the Commission's current practice for the inclusion of manuals in an OATT. Indicated New York Transmission Owners state that the inclusion of rules, standards and practices in the OATT is

[390] *E.g., Cleveland* v. *FERC,* 773 F.2d 1368, 1376 (D.C. Cir. 1985).

[391] *See, e.g., Public Serv. Comm'n of N.Y.* v. *FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987) (holding that the Commission properly excused utilities from filing policies or practices that dealt only with matters of ''practical insignificance'' to serving customers); *Midwest Independent Transmission System Operator, Inc.*, 98 FERC ¶ 61,137 at 61,401 (''It appears that the proposed Operating Protocols could significantly affect certain rates and service and as such are required to be filed pursuant to Section 205.''), *order granting clarification,* 100 FERC ¶ 61,262 (2002).

[392] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 656, 658, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *order on reh'g*, 112 FERC ¶ 61,086 (2005); *see also PJM Interconnection, L.L.C.*, 81 FERC ¶ 61,257 at 62,267 (1997) (finding no reason to require filing of the PJM Manuals but requiring that such manuals be available for public inspection on a permanent basis), *order on reh'g*, 92 FERC ¶ 61,282 (2000).

[393] *California Independent System Operator Corp.*, 107 FERC ¶ 61,329 at P 21–22 (2004); *see also Southwest Power Pool, Inc.*, 112 FERC ¶ 61,303 at P 25 (2005) (requiring that the SPP OATT provide sufficient information for market participants to fully understand SPP's implementation of an imbalance market), *reh'g dismissed*, 113 FERC ¶ 61,115 (2005); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,124 at P 61 (requiring PJM to place all procedures, standards and requirements for proposing that a transmission owner construct a specific upgrade, and all procedures for charging customers, in its tariff, not in its manuals), *order on reh'g*, *PJM Interconnection, L.L.C.*, 105 FERC ¶ 61,123 (2003).

[394] *E.g.,* Occidental, TAPS, and Williams.

[395] *E.g.*, Salt River and Snohomish.

[396] *E.g.*, BPA, EEI, MidAmerican, and Southern.

unnecessary and would administratively encumber any future revisions to the practices and rules by requiring conforming tariff filings.

Posted on OASIS

450. Several commenters believe it would be appropriate to post rules, standards and practices on public utilities' OASIS sites.[397] For example, EEI states that it would be appropriate to post all rules, standards and practices that are not part of the OATT on a transmission provider's OASIS. APPA asserts that, in particular, transmission providers should post the methodologies they use to develop ATC and ATC calculations should be periodically verified by an independent third party.[398]

451. Other commenters contend that rules, standards and practices should be posted on public utilities' OASIS sites only when they are not required to be filed.[399] TAPS argues that any rules, standards and practices not required to be filed must be publicly posted on the transmission provider's OASIS to provide needed transparency, because including essential terms in business practices that are not posted makes it very difficult for customers to understand if they are being treated fairly by the transmission provider. TDU Systems asserts that requiring posting on transmission providers' OASIS sites of any standards and practices not included in their OATTs would facilitate transactions across several transmission provider systems, especially where transmission providers are not participating in RTOs or ISOs.[400] Williams goes one step further and recommends that the Commission require that transmission providers both file with the Commission and post on their OASIS sites, all policies, practices and interpretations used or relied upon to evaluate a request for transmission service.

Discussion

452. There appears to be broad consensus among the commenters that rules, standards and practices not required to be included in a transmission provider's *pro forma* OATT should be posted on the transmission provider's OASIS. We agree and propose to require transmission providers to post on OASIS all of their rules, standards and practices that relate to transmission services. We believe this proposal will provide greater transparency and mitigate the potential for undue discrimination against customers taking transmission service under the transmission provider's OATT.[401] However, we seek comment on how to determine what ''relates'' to transmission service to facilitate a consistent interpretation and to minimize discretion on what rules, practices and standards should be posted on OASIS.[402]

453. Commenters presented wide ranging positions on the issue of what rules, standards and practices to include in the OATT. We do not propose to modify our existing policy on this issue at this time.[403] We agree with EPSA's concern that requiring transmission providers to include all of their rules, standards and practices in their OATTs could decrease a transmission provider's flexibility to change businesses practices and respond to the requests of customers. Additionally, we believe that requiring transmission providers to file all of their rules, standards and practices in their OATTs would be impractical and potentially administratively burdensome.[404]

454. We propose to require, however, that creditworthiness and security requirements be included in a transmission provider's OATT. The creditworthiness provision in section 11 of the *pro forma* OATT authorizes transmission providers to require ''reasonable credit review procedures'' in accordance with ''standard commercial practices,'' to determine the ability of transmission customers to meet service obligations. Furthermore, to protect transmission providers from the risk of non-payment, the provision authorizes the transmission provider to require as security a letter of credit or other forms of security consistent with the Uniform Commercial Code. In the Creditworthiness Policy Statement, the Commission explained that non-RTO or -ISO transmission providers generally have not incorporated creditworthiness or security requirements into their OATTs.[405] The Commission stressed that transparency of credit procedures and security requirements can enhance market certainty and liquidity by allowing customers to determine for themselves the information they need to demonstrate creditworthiness and the amount and type of security they need to receive transmission service. In interpreting the ''reasonable credit review procedures'' requirement in section 11 of the *pro forma* OATT, the Commission stated that it expected transmission providers to post on their OASIS sites the process and methodologies used to evaluate a potential customer's creditworthiness and calculate the necessary security.[406] But it also stated that it would ''consider standardizing credit procedures through a generic rulemaking if necessary to prevent undue discrimination.''[407]

455. Our preliminary conclusion is that a transmission provider's OATT should contain sufficient information about its credit process and requirements to enable customers to understand the information required to demonstrate creditworthiness and to determine for themselves the general amount and type of security they may need to provide in order to receive service. We therefore propose to amend section 11 of the *pro forma* OATT on creditworthiness to require each transmission provider to include its creditworthiness and security requirements in a new Attachment L to its OATT.

[397] *E.g.*, APPA, BPA, EEI, EPSA, MidAmerican, and Southern.

[398] *See supra* Part V.A addressing posting requirements for ATC calculation.

[399] E.g., Progress Energy and TAPS.

[400] Suez Energy NA emphasizes that the posting of rules, standards, and practices on OASIS merely ensures that they are transparent, it does not ensure that they are non-discriminatory.

[401] We clarify that posting rules, practices and standards on the transmission provider's OASIS—in lieu of filing such practices with the Commission as part of the transmission provider's *pro forma* OATT—neither insulates a transmission provider from complaints nor confers a just and reasonable presumption. We encourage customers to call the Commission's Enforcement Hotline with complaints about the application of such rules, standards and practices should they experience problems with their transmission providers. To the extent customers are not satisfied with responses from utilities, they should contact the Commission's Enforcement Hotline via telephone (202) 502–8390, toll-free 1–888–889–8030, fax (202) 208–0057, or at *www.ferc.gov/cust-protect/enforce-hot.asp.*

[402] We note that certain rules and practices are already required to be posted on OASIS. *See, e.g., Order No. 889; Open Access Same-Time Information Systems,* Order No. 605, 64 FR 34117 (Jun. 25, 1999), *FERC Stats. and Regs.* ¶ 31,075 (1999); Order No. 676.

[403] *See supra* notes 391–393 and accompanying text.

[404] Of course, we will require the filing of certain rules, standards and practices when circumstances require. In Order No. 676, the Commission, among other things, incorporated certain business standards developed by NAESB by reference into the Commission's regulations and required public utilities to file revisions to their OATTs to include these standards. Order No. 676 at P 20.

[405] *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 9 (2004) (Creditworthiness Policy Statement).

[406] *Id.* at P 12. The Commission explained that all transmission providers (including RTOs and ISO) were expected to ''(1) make their credit-related practices more transparent and comprehensive; (2) post on their [OASIS sites] the procedures that they use to do their credit analyses; and (3) provide a customer with a written analysis setting forth how that entity applied its credit standards to that customer, if that customer is required to provide security.'' *Id.*

[407] *Id.* at P 15.

456. In the Creditworthiness Policy Statement, the Commission explained that, to assess an applicant's credit risk, transmission providers should use both qualitative factors, such as the local regulatory environment or the applicant's history and financial policies, and quantitative factors, such as information included on the applicant's financial statements.[408] We propose to require the new Attachment L to include such quantitative and qualitative criteria to determine the level of secured and unsecured credit. We also propose to require the new Attachment L to include the following elements: (1) A summary of the procedure for determining the level of secured and unsecured credit; (2) a list of the acceptable types of collateral/security; (3) a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (4) a procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements; (5) a reasonable opportunity to contest determinations of credit levels or collateral requirements; and (6) a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination. We propose to allow these basic elements to be supplemented with a credit guide or manual to be posted on OASIS.

457. Though we are proposing to require transmission providers to incorporate the creditworthiness and security methodologies into their OATTs, we recognize that there is a balance here between the burden on the transmission provider of adding these methodologies to its OATT and the need for Commission review and approval if methodologies frequently change. We seek comment on whether the proposal is unduly burdensome.

10. OATT Definitions

458. In the NOI, the Commission requested comment on whether new or amended *pro forma* OATT definitions were necessary. The Commission also noted that new section 215(a)(4) of the FPA, which was adopted as part of EPAct 2005, defines the term ''reliable operation.''[409] We therefore asked whether this definition should be incorporated in the *pro forma* OATT.

459. Though MidAmerican urges the Commission to incorporate the definition of ''reliable operation'' into the *pro forma* OATT, other commenters argue that the definition of reliable operation should not be included in the *pro forma* OATT.[410] Southern argues that the definition of reliable operation included in section 215 of the FPA would impose a higher standard on transmission providers than is currently required by well-established NERC standards. Southern and EEI assert that the system is not planned to be able to guarantee that operations will not be impaired under any conditions. Southern argues that transmission providers should not be held to a higher standard of having to ensure that the system can continue to be operated even if a ''sudden disturbance, including a cybersecurity incident or unanticipated failure of system elements'' occurs.

460. Along with Southern, EEI contends that the ERO should establish standards related to reliable operation. EEI states that section 215 of the FPA simply gives the Commission jurisdiction over reliability standards, which are defined as standards for the reliable operation of the transmission system; it does not require transmission providers to meet a ''reliable operation'' standard. This is an important distinction, EEI continues, because while a transmission provider may adopt reasonable reliability standards, that does not guarantee that it will in all instances meet a ''reliable operation'' requirement, which would require the transmission provider to in all instances prevent instability, uncontrolled separation or cascading failures despite sudden disturbances, cybersecurity incidents, or unanticipated failures of system elements. EEI and Southern contend that because the ERO will implement the directives of Congress contained in section 215, the ERO will be best suited to establish the reliability standards that incorporate principles of reliable operation.

461. TAPS suggests that what is more important than adding a ''reliable operation'' definition is making explicit in the tariff what the Commission stated in its Policy Statement on Matters Related to Bulk Power System Reliability (Reliability Policy Statement)[411]—that transmission provider obligations under the *pro forma* OATT are subject to an overriding ''Good Utility Practice'' requirement that includes compliance with NERC reliability standards or more stringent regional reliability council standards.

Discussion

462. We propose to require transmission-owning public utilities to modify the definition of Good Utility Practice in their respective OATTs to reference the reliable operation definition adopted in section 215 of the FPA. We propose to take this action for two reasons. First, the Commission indicated in the Reliability Policy Statement that it expects public utilities operating transmission facilities under the *pro forma* OATT to conform to prevailing reliability standards. The Commission finds that referencing the reliable operation definition in section 215 of the FPA satisfies our requirement that transmission providers provide safe and reliable transmission service to customers taking service under the *pro forma* OATT. Second, we are mindful of the obligation placed on ''all users, owners and operators of the bulk power system'' under section 215(b) of the FPA to ''comply with reliability standards'' that will take effect under this section. Those reliability standards must ''provide for reliable operation of the bulk-power system.''[412] When the ERO is certified by the Commission and we approve its reliability standards, those standards will be based on the same definition of reliable operation we propose to incorporate into the *pro forma* OATT. We agree with EEI and Southern that the ERO is best suited to develop reliability standards for the Commission's approval, but our proposal to incorporate the definition of reliable operation does not establish a reliability standard; rather, we believe it reflects Congress's benchmark for acceptable utility practice. It therefore belongs in our definition of Good Utility Practice in the *pro forma* OATT.

463. In addition to amending the definition of Good Utility Practice, we propose to add a definition for ''non-firm sales'' to clarify section 30.4 of the *pro forma* OATT. A number of transmission providers have modified section 30.4 of the OATT to state that ''The Network Customer shall not operate its designated Network Resources located in the Network

[408] *Id.* at P 13 & nn.13–14. An evaluation using both sets of factors would allow an applicant without a credit rating or a strong balance sheet, but with solid credit, to meet the creditworthiness criteria. *Id.* at P 14.

[409] EPAct 2005 sec. 1211(a) (to be codified at FPA section 215(a), 16 U.S.C. 824o). Section 215(a)(4) defines ''reliable operation'' as ''operating the elements of the bulk power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.''

[410] *E.g.*, EEI, Powerex, Snohomish, Southern, Suez Energy NA, and TAPS.

[411] *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC ¶ 61,052 at P 23, *clarified*, 108 FERC ¶ 61,288 (2004); *Supplement to Policy Statement on Matters Related to Bulk Power System Reliability*, 110 FERC ¶ 61,096 (2005).

[412] Section 215(a)(3) of the FPA.

Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus non-firm sales delivered pursuant to Part II of the Tariff, plus losses'' (emphasis added). We propose to define ''non-firm sales'' as ''an energy sale for which delivery or receipt of the energy may be interrupted for any reason or for no reason, without liability on the part of either the buyer or seller.'' This is the definition of non-firm sales used in a number of industry-standard master power sales agreements, including the EEI Master Purchase and Sale Agreement. We propose to clarify that, for the purposes of applying section 30.4 of the *pro forma* OATT, energy sales that can only be interrupted to maintain system reliability will be considered firm sales.

464. We also propose to add two new definitions that are required to implement our proposed reforms. For example, we propose a definition of ''affiliate'' in section 1.1 of the revised *pro forma* OATT incident to our proposed change to the pricing of reassigned capacity. We also propose a new definition of ''pre-confirmed application'' in section 1.40 of the revised *pro forma* OATT incident to our proposal to give priority to requests that are pre-confirmed.

E. Enforcement

1. General Policy

a. Compliance Review Regime

Comments

465. A number of commenters indicate that a strong program to audit compliance with the *pro forma* OATT is crucial to preventing undue discrimination in the provision of transmission service. APPA argues that the Commission should establish a regime of systematic tariff compliance reviews because the OATT is at bottom a behavioral remedy rather than a structural one, so active Commission oversight is necessary. In addition, APPA notes that OATT transmission customers (especially network customers that are dependent upon the transmission systems of their neighboring public utility OATT transmission providers) are often reluctant to open the ''can of worms'' that filing a section 206 complaint against their transmission providers entails. Powerex urges the Commission to establish systematic tariff compliance audits as a monitoring tool because remedies and penalties alone are structurally ill-suited to address the myriad of idiosyncratic deviations from the Commission's policies and standards that currently exist. TAPS asserts that, while customer complaints are an indication that something is awry, the lack of transparency makes it very hard for customers to detect discrimination and tariff violations on the part of the transmission provider. TAPS suggests that customers often conclude that a complaint process is not cost effective because even if they ultimately prevail, they will have lost out on the purchase opportunity that prompted the complaint.

Discussion

466. The Commission intends to maintain a strong audit program to determine whether transmission providers and transmission customers are in compliance with the new *pro forma* OATT. This audit program will include operational audits similar to the OATT compliance components of audits conducted by Commission staff in the past.

467. These audits will determine compliance with specific provisions of the OATT. Staff's findings and recommendations will be detailed in public audit reports issued in accordance with the Commission's authority. If an audit is contested, it will be disposed of consistent with the Commission's final rule on disposition of contested operational audits. The Commission staff's compliance audits historically have included the collection of information regarding the audit target's overall operations. In this vein, the Commission staff's OATT compliance audits may also collect information regarding implementation of a transmission provider's OATT, with the intent that Commission staff may share the information it gathers with the Commission subject to all applicable ex parte rules.

b. Use of Independent Third Party Audits

Comments

468. A number of commenters indicate that the Commission should not rely on third party audits as the primary means of ensuring compliance with the OATT. APPA states that if an OATT Transmission Provider retains and pays an ''independent reviewer'' to prepare compliance audit reports, someone will inevitably question the reviewer's independence. Therefore, APPA argues that it might be better for the Commission itself to prepare the reports, or to retain a consultant to do so. Southern suggests that the Commission's existing mechanisms, coupled with new rules that will ensure that all regulated entities subject to investigations or audits are afforded their full due process rights, should be adequate to ensure compliance with OATT provisions.

469. A number of commenters also indicate that the Commission should require third party audits for frequent abusers. EEI suggests that a transmission provider that is found to have a systematic or continuing violation of the OATT could be required to hire an independent reviewer to monitor its future compliance for a period of time after the violation occurred. TVA suggests that, if a particular transmission provider repeatedly misapplies its OATT, the Commission should at that point consider requiring that transmission provider to hire an independent monitor for a defined period of time as a remedy for those actual infractions. NRECA argues that those transmission providers who are consistently in violation or who do not cure audit findings in a timely manner should see both an increase in frequency and further scrutiny from the audit process.

Discussion

470. We propose to have Commission staff conduct audits of compliance with the new OATT. Commission staff is in a unique position to conduct OATT compliance audits and recommend remedial action consistent with previous audits. In addition, entities audited by Commission staff now have clear and assured due process rights as the result of Order No. 675.

471. We may require third party audits as part of an individual compliance plan we order an audited party to undertake when we issue the Commission staff's audit report. The Commission staff monitors compliance with all of its audit recommendations as part of its regular practice. We may, in selected cases, decide to enhance this regular monitoring by requiring an audited party to hire an independent reviewer to continue compliance audits after the Commission staff's audit has ended. We could take such action in response to a number of circumstances, including, but not limited to, identification of systematic OATT violations, violations that require on-going monitoring, or a pattern of repeated OATT violations. Under these circumstances, the audited party should bear the burden of on-going compliance monitoring. If we decide to order independent OATT compliance audits as part of an individual audited party's compliance plan, we will specify the scope and duration of the audits.

2. Civil Penalties

a. Background

472. The NOI observed that the existing OATT allows transmission providers to impose certain operational penalties on customers for tariff violations, but does not address the adverse consequences to a transmission provider who violates its OATT. It also summarized the broad variety of remedies and sanctions available for enforcement of its rules and regulations, including the enhanced civil penalty authority provided by EPAct 2005.[413]

473. In the NOI, the Commission asked for comments on whether we should address the issue of remedies or penalties against transmission providers as part of OATT reform. It also asked if transmission providers should be subject to revocation of their market-based rate authority for certain OATT violations, and if certain violatins should be considered market manipulation under the Market Behavior Rules[414] and section 1283 of EPAct 2005.[415]

474. Subsequent to the NOI, on October 20, 2005 the Commission issued its Enforcement Policy Statement, which discusses the factors the Commission will take into account in determining remedies and sanctions for violations, including civil penalties.[416] Also, in EPAct 2005, Congress provided the Commission with specific anti-manipulation authority.[417] On January 19, 2006, to implement this new authority, the Commission issued Order No. 670 (Anti-manipulation Rule),[418] adopting a new Part 1c of its regulations, under which it is ''unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, (1) to use or employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.''[419] The Anti-manipulation Rule made it unnecessary to retain Market Behavior Rules 2 or 6. Accordingly, on February 16, 2006, the Commission rescinded Market Behavior Rules 2 and 6 and codified the substance of Market Behavior Rules 1, 3, 4, and 5 in the Commission's regulations.[420]

b. Whether Civil Penalties Should Be Specified in the OATT

Comments

475. Commenters often did not distinguish between operational penalties and civil penalties in their comments about the need for additional penalties in the OATT. EEI and MidAmerican made the distinction, asserting that civil penalties should not be specified in the OATT. They and others contend that: enforcement actions, including civil penalties, should be reviewed on a case-by-case basis;[421] civil penalties should be based upon the seriousness of the violation;[422] penalties should require proof of intent or willfulness;[423] penalties should only apply for repeated violations;[424] and, penalty procedures should provide for due process.[425]

Discussion

476. The Commission intends to enforce OATT provisions in a firm but fair manner. For example, the Commission elsewhere is proposing that transmission providers as well as transmission customers be subject to specified operational penalties for violations of certain OATT provisions. However, aside from these operational penalties, the Commission does not intend to provide a schedule of enforcement remedies and sanctions in the OATT. Instead, the Commission prefers to examine violations and determine the appropriate response for a violation on a case-by-case basis. The Commission has a broad array of equitable remedies and sanctions for violations.[426] Our enhanced civil penalties, as provided by EPAct 2005, are among the available sanctions for violations of the Commission's statutes, rules, regulations and orders, including instances of undue discrimination and market manipulation.

477. Although we will look at violations on a case-by-case basis and not identify in this proposed rule specific penalties for different violations, the Enforcement Policy Statement provides guidance and regulatory certainty regarding enforcement and places entities subject to our jurisdiction on notice of the consequences of violations.[427] As we noted, ''[I]t is important that we retain the discretion and flexibility to address each case on its merits, and to fashion remedies appropriate to the facts presented, including any mitigating factors.''[428]

478. As the facts of a specific matter warrant, we will seek disgorgement of unjust profits that are the result of a violation. Violators should not retain the gains acquired as the result of the violation. OATT violators will be expected to disgorge unjust profits whenever they can be determined or reasonably estimated.[429] In addition, as warranted by the facts, civil penalties may also be assessed. Those penalties (up to $1 million per day per violation), however, can be mitigated by the factors set forth in the Enforcement Policy Statement, such as self-reporting, compliance programs, and cooperation

[413] EPAct 2005 expanded the Commission's civil penalty authority under the FPA to encompass violations of all provisions of FPA Part II (EPAct 2005 section 1284(e)(1) (to be codified at section 316A of the FPA, 16 U.S.C. 825o–1)), and established the maximum civil penalty the Commission can assess under FPA Part II as $1 million per day per violation (EPAct 2005 section 1284(e)(2) (to be codified at section 316A of the FPA, 16 U.S.C. 825o–1)).

[414] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

[415] NOI at P 15.

[416] *Enforcement of Statutes, Order, Rules and Regulations*, Policy Statement on Enforcement, 113 FERC ¶ 61,068 at P 17–20 (2005) (Enforcement Policy Statement).

[417] EPAct 2005 sec. 1283 (to be codified at section 222 of the FPA, 16 U.S.C. 824v). Congress prohibited the use or employment of ''any manipulative or deceptive device or contrivance'' in connection with the purchase or sale of electric energy or transmission services subject to the jurisdiction of the Commission. Congress directed the Commission to give these terms the same meaning as under the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) (2000).

[418] *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202, *reh'g denied*, 114 FERC ¶ 61,300 (2006).

[419] *Id.*, 71 FR 4244, 4258 (Jan. 26, 2006) (to be codified at 18 CFR 1c.2(a)).

[420] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2005). The primary purpose of the Market Behavior Rules was to prohibit market manipulation by public utility sellers acting under market-based rate authority.

[421] *E.g.*, Entergy, Santa Clara, Steel Manufacturers Association, WAPA, and Williams.

[422] Steel Manufacturers Association.

[423] *E.g.*, EEI, KCP&L, Progress Energy, Public Power Council, Southern, and Xcel.

[424] *E.g.*, Alberta Intervenors, Public Power Council, Snohomish, Suez Energy NA, and TDU Systems.

[425] *E.g.*, Bonneville, EEI, Southern, and Nevada Companies.

[426] Enforcement Policy Statement at P 4. The ''enhanced civil penalty authority will operate in tandem with our existing authority to require disgorgement of unjust profits obtained through misconduct and/or to condition, suspend, or revoke certificate authority or other authorizations, such as market-based rate authority for sellers of electric energy.'' *Id.* at P 12.

[427] *Id.* at P 1.

[428] *Id.* at P 13. Several commenters supported the application of the Enforcement Policy Statement to OATT violations. *E.g.*, APPA, EEI, Midwest SATs, National Grid, and TAPS.

[429] Enforcement Policy Statement at P 19 and P 23.

with staff from the Commission's Office of Enforcement.[430]

c. Whether Transmission Providers Should Be Subject to Revocation of Their Market-Based Rates for OATT Violations.

Comments

479. In the NOI, the Commission also asked if transmission providers should be subject to revocation of their market-based rate authority for certain OATT violations.[431] Some commenters agree that revocation of market-based rates could be an appropriate remedy.[432] EPSA asserts that revocation of market-based rate authority should be among the penalties the Commission could impose for serious violations of the OATT, such as when more transmission capacity is set aside than is actually needed to serve native load, or undue preferences are extended to native load or affiliate transactions. TAPS states that where lack of ATC forecloses network customer access to alternatives, a transmission provider should not be able to make sales of electric power at market-based rates and should be required to offer embedded-cost-based sales. APPA asserts that whether a transmission provider's violation of the OATT merits possible revocation of its market-based rate authority depends on the nature and severity of the violation. APPA argues that if the violation concerns practices that favor the transmission provider's own wholesale merchant function at the expense of its third-party competitors, and if that violation is willful or repeated, then revocation or conditioning of the market-based rate authority of the transmission provider's merchant function may be warranted.[433]

480. Other commenters argue that revocation of market-based rate authority should be reserved for market behavior violations, not OATT violations.[434] EEI and MidAmerican argue that the Commission has separated public utilities' transmission functions from their marketing functions and, thus, penalties for violation of the OATT should be kept separate from penalties imposed for market behavior violations. PacifiCorp contends that the Commission's new penalty authority is sufficient to ensure compliance with the OATT and that there no longer is a need to consider revocation of market-based rate authority. Progress Energy states that the Commission should not penalize the utility's merchant function for violations of the OATT caused by the utility's transmission function. Ameren and Southern would add a ''willful'' or ''intent'' requirement to revoking market-based rates for an OATT violation.

Discussion

481. As discussed in the Enforcement Policy Statement, the better approach is to look at all of the facts and circumstances of each violation before deciding on any remedy or sanction.[435] There may be OATT violations in circumstances that, after applying the factors in the Enforcement Policy Statement, merit revocation or limitation of market-based rate authority. However, before the Commission will consider revoking an entity's market-based rate authority for a violation of the OATT, there must be a nexus between the specific facts relating to the OATT violation and the entity's market-based rate authority. The Commission proposes that if it determines, as a result of a significant OATT violation, that the market-based rate authority of a transmission provider will be revoked within a particular market, each affiliate of the transmission provider that possesses market-based rate authority will have it revoked in that market on the effective date of revocation of the transmission provider's market-based rate authority.

d. Whether Certain OATT Violations Should Be Considered Market Manipulation Under the Market Behavior Rules and Section 1283 of EPAct 2005.

Comments

482. In the NOI, the Commission asked if specific OATT violations should be considered market manipulation under the Market Behavior Rules and section 1283 of EPAct 2005.[436] The Commission then suggested that one such type of violation might be when a transmission provider sets aside more transmission capacity than is needed to serve native load, but uses the capacity for third-party sales.[437]

483. None of the commenters want specific violations identified in the OATT to be deemed per se market manipulation. Some commenters prefer to have the Commission approach these matters on case-by-case basis.[438]

484. Some commenters, like Constellation, identify OATT violations that may constitute market manipulation. Ameren, EEI, and Occidental argue that intentionally setting aside more transmission capacity than is needed to serve native load could constitute market manipulation. LG&E states that the key factor is ''intent.'' LG&E provides an example in which ATC becomes available as a result of less-than-expected native load requirements, and not because the transmission owner intentionally overstated native load requirements, and the transmission owner's affiliate followed proper reservation and scheduling protocol in a manner applicable to all potential transmission customers. Under these circumstances, LG&E contends, the Commission's imposition of a civil penalty would be inappropriate given the absence of intent to impart false or misleading information into the marketplace or hoard transmission.

485. Occidental suggests that curtailments of firm transmission service designed to permit wholesale power sales by the merchant function of the transmission provider or an affiliate should also be considered market manipulation. Suez Energy NA argues that incidents of affiliate abuse by a transmission provider may be considered market manipulation pursuant to section 1283 of EPAct 2005. TAPS states that certain withholding of transmission capacity can rise to the level of a violation of the Commission's market behavior rules and its new anti-manipulation authority if the withholding reduces the supply of both transmission and generation in a market, which artificially raises prices.

Discussion

486. As explained above, we now are examining market manipulation in the context of Part 1c of our regulations. We do not propose to identify in the OATT specific conduct as per se market manipulation. As noted in Order No. 670, market manipulation is a fact-intensive determination.[439] We do not want to restrict our fact-finding to specific types of violations. Although certain fraudulent or deceptive practices concerning the OATT could qualify as market manipulation under Order No. 670, the Commission declines to address such circumstances generically

[430] *Id.* at P 6 and P 21–27.

[431] NOI at P 15.

[432] *E.g.*, Arkansas Cities, NRECA, Occidental, Snohomish, and Williams.

[433] APPA at 32.

[434] *E.g.*, EEI, MidAmerican, PacifiCorp, PNM–TNMP, and Progress Energy.

[435] Enforcement Policy Statement at P 18. Among the factors examined are ''willfulness'' and ''intent'' of the violator. *Id.* at P 20.

[436] NOI at P 15. Section 1283 of EPAct 2005 establishes section 222 of the FPA (to be codified at 16 U.S.C. 824v).

[437] NOI at P 15.

[438] *E.g.,* APPA, Entergy, Nevada Companies, Public Power Council, and Southern.

[439] Anti-manipulation Rule at P 72.

in this rulemaking and instead will consider them on a case-by-case basis, if and when they arise, under the standards set forth in Order No. 670.

VI. Information Collection Statement

487. 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.[440] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[441]

488. Comments are solicited on the need for this information, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Burden Estimate: The public reporting and records retention burdens for the proposed reporting requirements and the records retention requirement are as follows.[442]

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
Part 35 (FERC–516):				
Conforming tariff changes	176	1	25	4,400
Revision of Imbalance Charges	176	1	5	880
ATC revisions	176	1	40	7,040
Planning (Attachment K)	176	1	100	17,600
Congestion studies	176	1	250	44,000
Attestation of network resource commitment	176	1	1	176
Quarterly Reports for capacity reassignment	176	1	60	10,560
Operational Penalty annual filing	176	1	10	1,760
Creditworthiness—include criteria in the tariff	176	1	40	7,040
Sub Total Part 35				93,456
Part 37 (FERC–717):				
ATC-related standards.				
NERC/NAESB Team to develop	1	1	1,920	1,920
Review and comment by utility	176	1	20	3,520
Implementation by each utility	176	1	40	7,040
Mandatory data exchanges	176	1	80	14,080
Explanation of change of ATC values	176	1	100	17,600
Reevaluate CBM and post quarterly	176	1	20	3,520
Post OASIS metrics; requests accepted/denied	176	1	80	14,080
Posting of metrics for System Impact Studies	176	1	100	17,600
Post all rules to OASIS	176	1	5	880
Sub Total (Part 37)				80,240
Total (Part 35 + Part 37)				173,696
Recordkeeping	176	1	30	5,280

Total Annual Hours for Collection:
Reporting + recordkeeping hours = 173,696 + 5,280 = 178,976 hours.
Cost to Comply:
Reporting = $19,801,344
173,696 hours @ $114 an hour (average cost of attorney ($200 per hour), consultant ($150), technical ($80), and administrative support ($25))
Recordkeeping = $1,392,160
Labor (file/record clerk @ $17 an hour) 5,280 hours @ $17/hour = $89,760
Storage 176 respondents @ 8,000 sq. ft. × $925 (off-site storage) = $1,302,400
Total costs = $21,193,504
Labor $ ($19,801,344 + $89,760) + Recordkeeping Storage Costs ($1,302,400)

OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting notification of this proposed rule to OMB. If the proposed requirements are adopted they will be mandatory requirements.

Title: FERC–516, Electric Rate Schedules and Tariff Filings; FERC–717 Standards for Business Practices and Communication Protocols for Public Utilities.

Action: Proposed Collections.

OMB Control Nos. 1902–0096 and 1902–0173.

Respondents: Business or other for profit.

Frequency of responses: On occasion.

Necessity of the Information:

489. The Federal Energy Regulatory Commission is proposing amendments to its regulations adopted in Order Nos. 888 and 889, and to the *pro forma* open access transmission tariff, to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The purpose of this rulemaking is to strengthen the *pro forma* OATT to ensure that it achieves its original purpose—remedying undue discrimination—not to create new market structures. We propose to achieve this goal by increasing the clarity and transparency of the rules applicable to the planning and use of the transmission system and by addressing ambiguities and the lack of sufficient detail in several important areas of the *pro forma* OATT. The lack of specificity in the *pro forma* OATT creates opportunities for undue discrimination as well as making the undue discrimination that does occur more difficult to detect. To accomplish this we are proposing five objectives: (1) To improve transparency and

[440] 44 U.S.C. 3507(d) (2000).

[441] 5 CFR 1320.11 (2005).

[442] These burden estimates apply only to this NOPR and do not reflect upon all of FERC–516 or FERC–717.

consistency in several critical areas, by providing for greater consistency in the calculation of ATC, (2) to reform the transmission planning requirements of the *pro forma* OATT to eliminate potential undue discrimination and support the construction of adequate transmission facilities to meet the needs of all load-serving entities, (3) to remedy certain portions of the *pro forma* OATT that may have permitted utilities to discriminate against new merchant generation, including intermittent generation, (4) to provide for greater transparency in the provision of transmission service to allow transmission customers better access to information to make their resource procurement and investment decisions, as well as to increase the Commission's ability to detect any remaining incidents of undue discrimination, and (5) to reform and provide greater clarity in areas that have generated recurring disputes over the past 10 years, such as rollover rights, ''redirects,'' and generation redispatch. The reforms proposed in this NOPR are intended to address deficiencies in the *pro forma* OATT that have become apparent since the implementation of Order No. 888 in 1996 and to facilitate improved planning and operation of transmission facilities.

490. 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*.]

491. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–4650, fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov*. Please reference the docket number of this rulemaking in your submission.

VII. Environmental Analysis

492. 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.[443] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.[444]

VIII. Regulatory Flexibility Act Analysis

493. The Regulatory Flexibility Act of 1980 (RFA)[445] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This rule applies to public utilities that own, control or operate interstate transmission facilities, not to electric utilities per se. The total number of public utilities that, absent waiver, would have to modify their current OATTs by filing the revised *pro forma* OATT is 176.[446] Of these only six public utilities, or less than two percent, dispose of four million MWh or less per year.[447] The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.[448] Moreover, the criteria for waiver that would be applied under this rulemaking for small entities is unchanged from that used to evaluate requests for waiver under Order Nos. 888 and 889. Thus, small entities who have received waiver of the requirements to have on file an open access tariff or to operate an OASIS would be unaffected by the requirements of this proposed rulemaking.

IX. Comment Procedures

494. 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 August 7, 2006. Reply comments are due September 5, 2006. Comments must refer to Docket Nos. RM05–25–000 and RM05–17–000, and must include the commenters' name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

495. To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position, not to exceed ten pages. Commenters are requested to identify each section of the NOPR that their discussion addresses and to use conforming headings. Additional issues the commenters wish to raise should be clearly identified in a separate section entitled ''Other Issues,'' which should be organized by the relevant *pro forma* OATT section (if applicable). Furthermore, we also request that commenters with specific tariff language suggestions submit a redline/strikeout version showing their proposed changes to the language that appears in the *pro forma* OATT attached to this NOPR.[449] The commenters should double space their comments. To assist commenters in their review, the Commission has posted a copy of the proposed revised *pro forma* OATT with changes from the current version of the *pro forma* OATT shown in redline/strikeout on the following location on our Web site at *http://www.ferc.gov/industries/electric/indus-act/oatt-reform.asp*.

496. Comments and reply comments may be filed electronically via the

[443] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[444] 18 CFR 380.4(a)(15) (2005).

[445] 5 U.S.C. 601–612 (2000).

[446] The sources for this figure are FERC Form No. 1 and FERC Form No. 1–F data.

[447] *Id.*

[448] The Regulatory Flexibility Act defines a ''small entity'' as ''one which is independently owned and operated and which is not dominant in its field of operation.'' *See* 5 U.S.C. 601(3) and 601(6)(2000); 15 U.S.C. 632(a)(1)(2000). In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327, 340–343 (D.C. Cir. 1985), the court accepted the Commission's conclusion that, since virtually all of the public utilities that it regulates do not fall within the meaning of the term ''small entities'' as defined in the Regulatory Flexibility Act, the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP). The CWIP rules applied to all public utilities. The revised *pro forma* OATT will apply only to those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule.

[449] The *pro forma* OATT includes two amendments that have been made since the tariff was finalized in Order No. 888–B. First, the tariff was amended to include protocols for curtailment of multi-system transactions and parallel flows. *See North American Reliability Council,* 85 FERC ¶ 61,353 (1998), *reh'g denied,* 87 FERC ¶ 61,161 (1999) and recently updated in *North American Electric Reliability Council,* 110 FERC ¶ 61,388 (2005). The second amendment incorporates standardized generator interconnection procedures. *See* Order No. 2003. The standardized generator interconnection procedures are not included in the *pro forma* OATT attached to this NOPR because we do not propose changes to them.

eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. This will enhance document retrieval for both the Commission and the public. Attachments that exist only in paper form may be scanned. Commenters filing electronically should not make a paper filing. Service of rulemaking comments is not required. Commenters that 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.

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

X. Document Availability

498. 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.

499. 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 ''RM05–25'' or ''RM05–17'' in the docket number field.

500. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects

18 CFR Part 35

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

18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 35 and 37, Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

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

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 71–7352.

2. Amend § 35.28 as follows:

a. paragraph (c) is revised.

b. paragraphs (d)(i) and d(ii) are redesignated as d(1) and d(2).

c. newly redesignated paragraph d(1) is revised.

d. paragraph (e)(1) (introductory text) is revised.

e. paragraph (e)(1)(ii) is revised.

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(c) *Non-discriminatory open access transmission tariffs.*

(1) Every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission a tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the open access *pro forma* tariff contained in Order No. 888, FERC Stats. & Regs. ¶ 31,036, as revised by the open access *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, or such other open access tariff as may be approved by the Commission consistent with Order No. ____, FERC Stats. & Regs. ¶ ____.

(i) Subject to the exceptions in paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(iv) and (c)(1)(v) of this section, the *pro forma* tariff contained in Order No. 888, FERC Stats. & Regs. ¶31,036, as revised by the open access *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, and accompanying rates, must be filed no later than 60 days prior to the date on which a public utility would engage in a sale of electric energy at wholesale in interstate commerce or in the transmission of electric energy in interstate commerce.

(ii) If a public utility owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce as of ____, it must file the revisions to the *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____ pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA, no later than __.

(iii) If a public utility owns, controls, or operates transmission facilities used for the transmission of electric energy in interstate commerce as of ____, such facilities are jointly owned with a non-public utility, and the joint ownership contract prohibits transmission service over the facilities to third parties, the public utility with respect to access over the public utility's share of the jointly owned facilities must file no later than ____ the revisions to the *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA.

(iv) Any public utility whose transmission facilities are under the independent control of a Commission-approved ISO or RTO may satisfy its obligation under paragraph (c)(1) of this section, with respect to such facilities, through the open access transmission tariff filed by the ISO or RTO.

(v) If a public utility obtains a waiver of the tariff requirement pursuant to paragraph (d) of this section, it does not need to file the *pro forma* tariff required by this section.

(vi) Any public utility that seeks a deviation from the *pro forma* tariff contained in Order No. 888, FERC Stats. & Regs. ¶31,036, as revised in Order No. ____, FERC Stats. & Regs. ¶ ____, must demonstrate that the deviation is consistent with the principles of Order No., __ FERC Stats. & Regs. ¶ ____.

(vii) Each public utility's open access transmission tariff must include the standards incorporated by reference in part 38 of this chapter.

(2) Subject to the exceptions in paragraphs (c)(2)(i) and (c)(3)(iii) of this section, every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, and that uses those facilities to engage in wholesale sales and/or purchases of electric energy, or unbundled retail sales of electric energy, must take transmission service for such sales and/or purchases under the open access tariff filed pursuant to this section.

(i) For sales of electric energy pursuant to a requirements service agreement executed on or before July 9, 1996, this requirement will not apply unless separately ordered by the Commission. For sales of electric energy pursuant to a bilateral economy energy coordination agreement executed on or before July 9, 1996, this requirement is effective on December 31, 1996. For sales of electric energy pursuant to a bilateral non-economy energy coordination agreement executed on or before July 9, 1996, this requirement will not apply unless separately ordered by the Commission.

(ii) [Reserved.]

(3) Every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, and that is a member of a power pool, public utility holding company, or other multi-lateral trading arrangement or agreement that contains transmission rates, terms or conditions, must have on file a joint pool-wide or system-wide open access transmission *pro forma* tariff, which tariff must be the open access *pro forma* tariff contained in Order No. 888, FERC Stats. & Regs. ¶ 31,036, as revised by the open access *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, or such other open access tariff as may be approved by the Commission consistent with Order No. ____, FERC Stats. & Regs. ¶ ____.

(i) For any power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions and that is executed after July 9, 1996, this requirement is effective on the date that transactions begin under the arrangement or agreement.

(ii) For any power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions and that is executed on or before July 9, 1996, a public utility member of such power pool, public utility holding company or other multi-lateral arrangement or agreement that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce must file the revisions to its joint pool-wide or system-wide contained in Order No. ____, FERC Stats. & Regs. ¶ ____, pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA, no later than ____.

(iii) A public utility member of a power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions and that is executed on or before July 9, 1996 must take transmission service under a joint pool-wide or system-wide *pro forma* tariff filed pursuant to this section for wholesale trades among the pool or system members.

(4) Consistent with paragraph (c)(1) of this section, every Commission-approved ISO or RTO must have on file with the Commission a tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the open access *pro forma* tariff contained in Order No. 888, FERC Stats. & Regs. ¶ 31,036, as revised by the open access *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, or such other open access tariff as may be approved by the Commission consistent with Order No. ____, FERC Stats. & Regs. ¶ ____.

(i) Subject to paragraph (c)(4)(ii) of this section, a Commission-approved ISO or RTO must file the revisions to the *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA, no later than ____.

(ii) If a Commission-approved ISO or RTO can demonstrate that its existing open access tariff is consistent with or superior to the revisions to the *pro forma* tariff contained in Order No. ____, FERC Stats. & Regs. ¶ ____, or any portions thereof, the Commission-approved ISO or RTO may instead set forth such demonstration in its filing pursuant to section 206 no later than ____.

(d) *Waivers.* * * *

(1) No later than ____, or

* * * * *

(e) *Non-public utility procedures for tariff reciprocity compliance.* (1) A non-public utility may submit a transmission tariff and a request for declaratory order that its voluntary transmission tariff meets the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036 and Order No. ____, FERC Stats. & Regs. ¶ ____.

(i) * * *

(ii) If the submittal is found to be an acceptable transmission tariff, an applicant in a Federal Power Act (FPA) section 211 or 211A proceeding against the non-public utility shall have the burden of proof to show why service under the open access tariff is not sufficient and why a section 211 or 211A order should be granted.

* * * * *

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

3. The authority citation for part 37 continues to read as follows:

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

4. Amend § 37.6 as follows:

a. paragraph (a)(1) is revised.

b. paragraph (b)(introductory text) is revised.

c. paragraphs (b)(1)(v) through (b)(1)(viii) are added.

d. paragraphs (b)(2)(i) and b(2)(ii) are revised.

e. paragraph (b)(3) is revised.

f. paragraph (c)(2) is revised.

g. paragraphs (e)(1) and (e)(2)(ii) are revised.

h. paragraph (e)(3)(ii) is revised.

i. paragraphs (h) and (i) are added.

§ 37.6 Information to be posted on the OASIS.

(a) * * *

(1) Make requests for transmission services offered by Transmission Providers, Resellers and other providers of ancillary services, request the designation of a network resource, and request the termination of the designation of a network resource;

* * * * *

(b) *Posting transfer capability.* The available transfer capability on the Transmission Provider's system (ATC) and the total transfer capability (TTC) of that system shall be calculated and posted for each Posted Path as set out in this section.

(1) * * *

(v) *Available transfer capability* or *ATC* means the transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses, or such definition as contained in Commission-approved Reliability Standards.

(vi) *Total transfer capability* or *TTC* means the amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way of all transmission lines (or paths) between those areas under specified system conditions, or such definition as contained in Commission-approved Reliability Standards.

(vii) *Capacity Benefit Margin* or *CBM* means the amount of TTC preserved by the Transmission Provider for load-serving entities, whose loads are located on that Transmission Provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved Reliability Standards.

(viii) *Transmission Reliability Margin* or *TRM* means the amount of TTC necessary to provide reasonable

assurance that the interconnected transmission network will be secure, or such definition as contained in Commission-approved Reliability Standards.

(2) * * *

(i) Information used to calculate any posting of ATC and TTC must be dated and time-stamped and all calculations shall be performed according to consistently applied methodologies referenced in the Transmission Provider's transmission tariff and shall be based on Commission-approved Reliability Standards as well as current industry practices, standards and criteria

(ii) On request, the Responsible Party must make all data used to calculate ATC, TTC, CBM, and TRM for any constrained posted paths publicly available (including the limiting element(s) and the cause of the limit (*e.g.*, thermal, voltage, stability)) in electronic form within one week of the posting. The information is required to be provided only in the electronic format in which it was created, along with any necessary decoding instructions, at a cost limited to the cost of reproducing the material. This information is to be retained for six months after the applicable posting period.

* * * * *

(3) *Posting.* The ATC, TTC, CBM, and TRM for all Posted Paths must be posted in megawatts by specific direction and in the manner prescribed in this subsection.

(i) *Constrained posted paths*—(A) *For Firm ATC and TTC. (1)* The posting shall show ATC, TTC, CBM, and TRM for a 30-day period. For this period postings shall be: By the hour, for the current hour and the 168 hours next following; and thereafter, by the day. If the Transmission Provider charges separately for on-peak and off-peak periods in its tariff, ATC, TTC, CBM, and TRM will be posted daily for each period.

(*2*) Postings shall also be made by the month, showing for the current month and the 12 months next following.

(*3*) If planning and specific requested transmission studies have been done, seasonal capability shall be posted for the year following the current year and for each year following to the end of the planning horizon but not to exceed 10 years.

(B) *For Non-Firm ATC and TTC.* The posting shall show ATC, TTC, CBM and TRM for a 30-day period by the hour and days prescribed under paragraph (b)(3)(i)(A)(*1*) of this section and, if so requested, by the month and year as prescribed under paragraph (b)(3)(i)(A) (*2*) and (*3*) of this section. The posting of non-firm ATC and TTC shall show CBM as zero.

(C) *Updating Posted Information for Constrained Paths. (1)* The capability posted under paragraphs (b)(3)(i) (A) and (B) of this section must be updated when transactions are reserved or service ends or whenever the TTC estimate for the Path changes by more than 10 percent.

(*2*) All updating of hourly information shall be made on the hour.

(*3*) When the monthly and yearly capability posted under paragraphs (b)(3)(i)(A) and (B) are updated, the Transmission Provider shall post a brief, but specific, narrative explanation of the reason for the update. This narrative should include, if relevant, scheduling of planned outages and occurrence of forced transmission outages, de-ratings of transmission facilities, scheduling of planned generation outages and occurrence of forced generation outages, changes in load forecast, changes in new facilities' in-service dates, or other events or assumption changes that caused the update.

(ii) *Unconstrained posted paths.* (A) Postings of firm and nonfirm ATC, TTC, CBM, and TRM shall be posted separately by the day, showing for the current day and the next six days following and thereafter, by the month for the 12 months next following. If the Transmission Provider charges separately for on-peak and off-peak periods in its tariff, ATC, TTC, CBM, and TRM will be posted separately for the current day and the next six days following for each period. These postings are to be updated whenever the ATC changes by more than 20 percent of the Path's TTC.

(B) If planning and specific requested transmission studies have been done, seasonal capability shall be posted for the year following the current year and for each year following until the end of the planning horizon but not to exceed 10 years.

(iii) *Calculation of CBM.*

(A) The Transmission Provider must reevaluate its CBM needs at least quarterly.

(B) The Transmission Provider must post its practices for reevaluating its CBM needs.

(c) *Posting Transmission Service Products and Prices.*

(1) * * *

(2) Transmission Providers must provide a downloadable file of their complete tariffs in the same electronic format as the tariff that is filed with the Commission. Transmission Providers also must post all of their rules, standards and practices that relate to transmission services.

* * * * *

(e) *Posting specific transmission and ancillary service requests and responses*—(1) *General rules.* (i) All requests for transmission and ancillary service offered by Transmission Providers under the *pro forma* tariff, including requests for discounts, and all requests to designate or terminate a network resource, must be made on the OASIS and posted prior to the Transmission Provider responding to the request, except as discussed in paragraphs (e)(1) (ii) and (iii) of this section. The Transmission Provider must post all requests for transmission service, for ancillary service, and for the designation or termination of a network resource comparably. Requests for transmission service, ancillary service, and to designate and terminate a network resource, as well as the responses to such requests, must be conducted in accordance with the Transmission Provider's tariff, the Federal Power Act, and Commission regulations.

(ii) The requirement in paragraph (e)(1)(i) of this section, to post requests for transmission and ancillary service offered by Transmission Providers under the *pro forma* tariff, including requests for discounts, prior to the Transmission Provider responding to the request, does not apply to requests for next-hour service made during Phase I.

(iii) In the event that a discount is being requested for ancillary services that are not in support of basic transmission service provided by the Transmission Provider, such request need not be posted on the OASIS.

(iv) In processing a request for transmission or ancillary service, the Responsible Party shall post the same information as required in paragraphs (c)(4) and (d)(3) of this section, and the following information: the date and time when the request is made, its place in any queue, the status of that request, and the result (accepted, denied, withdrawn). In processing a request to designate or terminate the designation of a network resource, the Responsible Party shall post the date and time when the request is made.

(v) For any request to designate or terminate a network resource, the Transmission Provider (at the time when the request is received), must post on the OASIS (and make available for download) information describing the request (including: name of requestor, identification of the resource, effective time for the designation or termination,

identification of whether the transaction involves the Transmission Provider's wholesale merchant function or any affiliate; and any other relevant terms and conditions) and shall keep such information posted on the OASIS for at least 30 days. A record of the transaction must be retained and kept available as part of the audit log required in § 37.7.

(vi) The Transmission Provider shall post a list of its current designated network resources and all network customers' current designated network resources on OASIS. The list of network resources should include the name of the resource, its geographic and electrical location, its total installed capacity, and the amount of capacity to be designated as a network resource.

(2) * * *

(ii) Information to support the reason for the denial, including the operating status of relevant facilities, must be maintained for five years and provided, upon request, to the potential Transmission Customer.

* * * * *

(3) *Posting when a transaction is curtailed or interrupted.* (ii) Information to support any such curtailment or interruption, including the operating status of the facilities involved in the constraint or interruption, must be maintained and made available upon request, to the curtailed or interrupted customer, the Commission's Staff, and any other person who requests it, for five years.

* * * * *

(h) *Posting information summarizing the time to complete transmission service request studies.* (1) For each calendar quarter, the Responsible Party must post the set of measures detailed in paragraph (h)(1)(i) through paragraph (h)(1)(vi) of this section related to the Responsible Party's processing of transmission service request system impact studies and facilities studies. The Responsible Party must calculate and post the measures in paragraph (h)(1)(i) through paragraph (h)(1)(vi) of this section separately for requests for short-term firm point-to-point transmission service, long-term firm point-to-point transmission service, and requests to designate a new network resource and must be calculated and posted separately for transmission service requests from Affiliates and transmission service requests from Transmission Customers who are not Affiliates. The Responsible Party is required to include in the calculations of the measures in paragraph (h)(1)(i) through paragraph (h)(1)(vi) of this section all studies the Responsible Party conducts of transmission service requests on another Transmission Provider's OASIS.

(i) *Process Time from Initial Service Request to Offer of System Impact Study Agreement.*

(A) Number of new system impact study agreements delivered during the reporting quarter to entities that request transmission service,

(B) Number of new system impact study agreements delivered during the reporting quarter to entities that request transmission service more than thirty (30) days after the Responsible Party received the request for transmission service,

(C) Mean time (in days), for all requests acted on by the Responsible Party during the reporting quarter, from the date when the Responsible Party received the request for transmission service to when the Responsible Party changed the transmission service request status to indicate that the Responsible Party could offer transmission service or needed to perform a system impact study,

(D) Mean time (in days), for all system impact study agreements delivered by the Responsible Party during the reporting quarter, from the date when the Responsible Party received the request for transmission service to the date when the Responsible Party delivered a system impact study agreement, and

(E) Number of new system impact study agreements executed during the reporting quarter.

(ii) *System Impact Study Processing Time.* (A) Number of system impact studies completed by the Responsible Party during the reporting quarter,

(B) Number of system impact studies completed by the Responsible Party during the reporting quarter more than 60 days after the Responsible Party received an executed system impact study agreement,

(C) Mean time (in days), for all system impact studies completed by the Responsible Party during the reporting quarter, from the date when the Responsible Party received the executed system impact study agreement to the date when the Responsible Party provided the system impact study to the entity who executed the system impact study agreement, and

(D) Mean cost of system impact studies completed by the Responsible Party during the reporting quarter.

(iii) *Transmission Service Requests Withdrawn from the System Impact Study Queue.* (A) Number of transmission service requests withdrawn from the Responsible Party's system impact study queue during the reporting quarter,

(B) Number of transmission service requests withdrawn from the Responsible Party's system impact study queue during the reporting quarter more than 60 days after the Responsible Party received the executed system impact study agreement, and

(C) Mean time (in days), for all transmission service requests withdrawn from the Responsible Party's system impact study queue during the reporting quarter, from the date the Responsible Party received the executed system impact study agreement to date when request was withdrawn from the Responsible Party's system impact study queue.

(iv) *Process Time from Completed System Impact Study to Offer of Facilities Study.* (A) Number of new facilities study agreements delivered during the reporting quarter to entities that request transmission service,

(B) Number of new facilities study agreements delivered during the reporting quarter to entities that request transmission service more than thirty (30) days after the Responsible Party completed the system impact study,

(C) Mean time (in days), for all facilities study agreements delivered by the Responsible Party during the reporting quarter, from the date when the Responsible Party completed the system impact study to the date when the Responsible Party delivered a facilities study agreement, and

(D) Number of new facilities study agreements executed during the reporting quarter.

(v) *Facilities Study Processing Time.* (A) Number of facilities studies completed by the Responsible Party during the reporting quarter,

(B) Number of facilities studies completed by the Responsible Party during the reporting quarter more than 60 days after the Responsible Party received an executed facilities study agreement,

(C) Mean time (in days), for all facilities studies completed by the Responsible Party during the reporting quarter, from the date when the Responsible Party received the executed facilities study agreement to the date when the Responsible Party provided the facilities study to the entity who executed the facilities study agreement,

(D) Mean cost of facilities studies completed by the Responsible Party during the reporting quarter, and

(E) Mean cost of upgrades recommended in facilities studies completed during the reporting quarter.

(vi) *Service Requests Withdrawn from Facilities Study Queue.*

(A) Number of transmission service requests withdrawn from the Responsible Party's facilities study queue during the reporting quarter,

(B) Number of transmission service requests withdrawn from the Responsible Party's facilities study queue during the reporting quarter more than 60 days after the Responsible Party received the executed facilities study agreement, and

(C) Mean time (in days), for all transmission service requests withdrawn from the Responsible Party's facilities study queue during the reporting quarter, from the date the Responsible Party received the executed facilities study agreement to date when request was withdrawn from the Responsible Party's facilities study queue

(2) The Responsible Party is required to post the measures in paragraph (h)(1)(i) through paragraph (h)(1)(vi) of this section for each calendar quarter within 15 days of the end of the calendar quarter. The Responsible Party will keep the quarterly measures posted on OASIS for three calendar years.

(3) The Responsible Party will be required to post on OASIS the measures in paragraph (h)(3)(i) through paragraph (h)(3)(iv) of this section in the event the Responsible Party, for two consecutive calendar quarters, completes more than twenty (20) percent of the studies associated with requests for transmission service from entities that are not Affiliates of the Responsible Party more than sixty (60) days after the Responsible Party delivers the appropriate study agreement. The Responsible Party will have to post the measures in paragraph (h)(3)(i) through paragraph (h)(3)(iv) of this section until it processes at least ninety (90) percent of all studies within 60 days after it has received the appropriate executed study agreement. For the purposes of calculating the percent of studies completed more than sixty (60) days after the Responsible Party delivers the appropriate study agreement, the Responsible Party should aggregate all system impact studies and facilities studies that it completes during the reporting quarter. The Responsible Party must calculate and post the measures in paragraph (h)(3)(i) through paragraph (h)(3)(iv) of this section separately for requests for short-term firm point-to-point transmission service, long-term firm point-to-point transmission service, and requests to designate a new network resource and must be calculated and posted separately for transmission service requests from Affiliates and transmission service requests from Transmission Customers who are not Affiliates.

(i) Mean, across all system impact studies the Responsible Party completes during the reporting quarter, of the employee-hours expended per system impact study the Responsible Party completes during reporting period;

(ii) Mean, across all facilities studies the Responsible Party completes during the reporting quarter, of the employee-hours expended per facilities study the Responsible Party completes during reporting period;

(iii) The number of employees the Responsible Party has assigned to process system impact studies;

(iv) The number of employees the Responsible Party has assigned to process facilities studies.

(4) The Responsible Party is required to post the measures in paragraph (h)(3)(a) through paragraph (h)(3)(d) of this section for each calendar quarter within 15 days of the end of the calendar quarter. The Responsible Party will keep the quarterly measures posted on OASIS for five calendar years.

(i) *Posting data related to grants and denials of service.* The Responsible Party is required to post data each month listing, by path or flowgate, the number of transmission service requests that have been accepted and the number of transmission service requests that have been denied during the prior month. This posting must distinguish between the length of the service request (*e.g.*, short-term or long-term requests) and between the type of service requested (*e.g.*, firm point-to-point, non-firm point-to-point or network service). The posted data must show:

(1) The number of non-Affiliate requests for transmission service that have been rejected,

(2) The total number of non-Affiliate requests for transmission service that have been made,

(3) The number of Affiliate requests for transmission service that have been rejected, and

(4) The total number of Affiliate requests for transmission service that have been made.

5. In § 37.7, paragraph (b) is revised to read as follows:

§ 37.7 Auditing Transmission Service Information.

* * * * *

(b) Audit data must remain available for download on the OASIS for 90 days, except ATC/TTC postings that must remain available for download on the OASIS for 20 days. The audit data are to be retained and made available upon request for download for five years from the date when they are first posted in the same electronic form as used when they originally were posted on the OASIS.

Note: The following appendices will not be published in the *Code of Federal Regulations.*

Appendix A: Commenter Acronyms

INITIAL COMMENTERS IN DOCKET NO. RM05–25–000

Abbreviation	RM05–25–000 Initial comments
AEP	American Electric Power System (AEP Texas North Company; AEP Texas Central Company; Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Public Service Company of Oklahoma; Southwestern Electric Power Company and Wheeling Power Company).
Alabama MEA	Alabama Municipal Electric Authority.
Alberta Intervenors	Alberta Intervenors (TransCanada Energy Ltd.; ENMAX Energy Marketing, Inc.; EPCOR Merchant and Capital, LP; and TransAlta Corporation).
Alberta System Operator	Alberta Electric System Operator.
Alcoa	Alcoa Inc. and Alcoa Power Generating Inc.
Alliance of State Leaders	Alliance of State Leaders Protecting Electricity Consumers.

[450] A "*" indicates that the commenter filed a notice of intervention only.

INITIAL COMMENTERS IN DOCKET NO. RM05–25–000—Continued

Abbreviation	RM05–25–000 Initial comments
Ameren	Ameren Services Company (Central Illinois Light Company d/b/a AmerenCILCO; Central Illinois Public Service Company d/b/a AmerenCIPS; Illinois Power Company d/b/a AmerenIP; Union Electric Company d/b/a AmerenUE; Ameren Energy Marketing Company; Ameren Energy Generating Company; and AmerenEnergy Resources Generating Company).
American Forest and Paper* [450]	American Forest and Paper Association.
American Transmission	American Transmission Company LLC.
AMP-Ohio	American Municipal Power-Ohio, Inc.
APPA	American Public Power Association.
APS	Arizona Public Service Company.
Arkansas Cities	Arkansas Cities and Cooperative (Conway Corporation; West Memphis Utilities Commission; City of Osceola, Arkansas; City of Prescott, Arkansas; Hope Water & Light Commission; and Farmers Electric Cooperative Cooperation).
Arkansas Commission	Arkansas Public Service Commission.
AWEA	American Wind Energy Association.
BC Transmission	British Columbia Transmission Corporation.
Bonneville	Bonneville Power Administration.
Bureau of Reclamation	U.S. Bureau of Reclamation.
CAISO	California Independent System Operator Corporation.
California Commission	Public Utilities Commission of the State of California.
Calpine	Calpine Corporation.
Canadian Electricity Association	Canadian Electricity Association.
Chelan	Public Utility District No. 1 of Chelan County and Public Utility District No. 2 of Grant County.
Cinergy	Cinergy Services, Inc. (Cincinatti Gas & Electric Company; PSI Energy, Inc.; and Union Light, Heat and Power Company).
Constellation	Constellation Energy Group, Inc.
Cottonwood	Cottonwood Energy Company LP and Union Power Partners, LP.
Detroit Edison	Detroit Edison Company.
Douglas	Public Utility District No. 1 of Douglas County.
Duke	Duke Energy Corporation.
East Texas Cooperatives	East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn Generation and Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.
Edison Mission	Edison Mission Energy, Edison Mission Marketing & Trading, Inc. and Midwest Generation EME, LLC.
EEI	Edison Electric Institute.
ELCON	Electricity Consumers Resource Council, American Iron and Steel Institute and American Chemistry Council.
Entergy	Entergy Services, Inc.
EPSA	Electric Power Supply Association.
Exelon	Exelon Corporation.
Fayetteville	Public Works Commission of the City of Fayetteville, North Carolina.
FirstEnergy	FirstEnergy Service Company (FirstEnergy Solutions; American Transmission Systems, Inc.; Jersey Central Power and Light Company; Metropolitan Edison Company; and Pennsylvania Electric Company).
Florida Industrial Cogeneration Association	Florida Industrial Cogeneration Association.
FMPA	Florida Municipal Power Agency.
FP&L	Florida Power & Light Company.
Hogan	William H. Hogan.
HQ Energy	HQ Energy Services (U.S.), Inc.
IECG*	Industrial Energy Consumer Group.
Indicated New York Transmission Owners	Indicated New York Transmission Owners (Central Hudson Gas & Electric Corp.; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corp.; Orange and Rockland Utilities, Inc.; LIPA; New York Power Authority; and Rochester Gas and Electric Corp.).
International Transmission	International Transmission Company.
ISO New England	ISO New England, Inc. and New England Power Pool.
ISO/RTO	ISO/RTO Council.
KCP&L	Kansas City Power & Light Company.
Kentucky Commission	Kentucky Public Service Commission.
Lafayette	Lafayette Utilities System of the City and Parish of Lafayette, Louisiana; Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi; and Public Service Commission of the City of Yazoo City, Mississippi.
LDWP	City of Los Angeles Department of Water and Power.
LG&E	LG&E Energy LLC (Louisville Gas and Electric Company and Kentucky Utilities Company).
LPPC	Large Public Power Council.

INITIAL COMMENTERS IN DOCKET NO. RM05–25–000—Continued

Abbreviation	RM05–25–000 Initial comments
MEAG	MEAG Power.
Memphis Light	Memphis Light, Gas & Water Division.
Metropolitan Water District	Metropolitan Water District of Southern California.
MidAmerican	MidAmerican Energy Company.
Midwest Municipals	Midwest Municipal Transmission Group.
Midwest SATs	Midwest Stand-Alone Transmission Companies (American Transmission Company LLC; International Transmission Company; and Michigan Electric Transmission Company, LLC).
MISO	Midwest Independent Transmission System Operator, Inc.
MISO States	Organization of MISO States.
Montana Alberta Tie	Montana Alberta Tie Ltd.
NARUC	National Association of Regulatory Utility Commissioners.
National Grid	National Grid USA.
NCPA	Northern California Power Agency.
Nevada Commission	Public Utilities Commission of Nevada.
Nevada Companies	Nevada Power Company and Sierra Pacific Power Company.
New York Commission	New York State Public Service Commission.
North Carolina Commission	North Carolina Utilities Commission; Public Staff of the North Carolina Utilities Commission; and the Attorney General of the State of North Carolina.
Northeast Utilities	Northeast Utilities Service Company (Connecticut Light and Power Company; Western Massachusetts Electric Company; Public Service Company of New Hampshire; Holyoke Water Power Company; and Holyoke Power and Electric Company).
Northwest IPPs	Northwest Independent Power Producers Coalition (BP Energy; Calpine Corporation; EPCOR; National Energy Supply Company; Northwest Energy Development; Sempra Generation; Suez Energy North America, Inc.; and TransAlta Energy Marketing, (U.S.) Inc.).
Northwest Unregulated TUs	Northwest Unregulated Transmitting Utilities (Clark Public Utilities; Public Utility District No. 1 of Cowlitz County; Eugene Water and Electric Board; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Snohomish County; and Tacoma Power).
NorthWestern	NorthWestern Corporation.
NPPD	Nebraska Public Power District.
NRECA	National Rural Electric Cooperative Association.
Occidental	Occidental Chemical Corporation.
Ohio Commission	Public Utilities Commission of Ohio.
Oklahoma Commission	Oklahoma Corporation Commission.
Old Dominion	Old Dominion Electric Cooperative.
PacifiCorp	PacifiCorp.
PJM	PJM Interconnection, L.L.C.
PNM–TNMP	Public Service Company of New Mexico and Texas-New Mexico Power Company.
Portland General	Portland General Electric Company.
Powerex	Powerex Corp.
PPL	PPL Companies (PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Montana, LLC; PPL Holtwood, LLC; Lower Mount Bethel Energy, LLC; PPL Maine, LLC; PPL Great Works, LLC; PPL Colstrip I, LLC; PPL Colstrip II, LLC; PPL Martins Creek, LLC; PPL Brunner Island, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL Wallingford Energy, LLC; PPL Southwest Generation Holdings, LLC; PPL University Park, LLC, PPL Shoreham Energy, LLC; and PPL Edgewood Energy, LLC).
Progress Energy	Progress Energy, Inc. (Carolina Power & Light Company d/b/a Progress Energy Carolinas and Florida Power Corporation, d/b/a Progress Energy Florida).
Public Power Council	Public Power Council.
Renewable Energy	Renewable Energy and Public Interest Organizations (American Wind Energy Association; Citizens for Pennsylvania's Future (PennFuture); Minnesotans for an Energy Efficient Economy; Natural Resources Defense Council; Ohio Consumers' Council; Pace Energy Project; Project for Sustainable FERC Energy Policy; Renewable Northwest Project; The Stella Group, Ltd.; The Wind Coalition; and West Wind Wires).
Rural Utilities Service	U.S. Department of Agriculture Rural Utilities Service.
Sacramento	Sacramento Municipal Utility District.
Salt River	Salt River Project Agricultural Improvement and Power District.
San Diego G&E	San Diego Gas & Electric Company.
Santa Clara	City of Santa Clara, California d/b/a Silicon Valley Power.
Santee Cooper	South Carolina Public Service Authority.
Sempra Global	Sempra Global.
SEPA	Southeastern Power Administration.

INITIAL COMMENTERS IN DOCKET NO. RM05–25–000—Continued

Abbreviation	RM05–25–000 Initial comments
Snohomish	Public Utility District No. 1 of Snohomish County, Washington.
South Carolina E&G	South Carolina Electric & Gas Company.
Southern	Southern Company Services, Inc.
Southern Montana Coop	Southern Montana Electric Generation and Transmission Cooperative, Inc.
Southwest TDU Group	Southwest Transmission Dependent Utility Group (Aguila Irrigation District; Ak-Chin Energy Services; Buckeye Water Conservation and Drainage District; Central Arizona Water Conservation District; Electrical District No. 3; Electrical District No. 4; Electrical District No. 5; Electrical District No. 6; Electrical District No. 7; Electrical District No. 8; Harquahala Valley Power District; Maricopa County Municipal Water District No. 1; McMullen Valley Water Conservation and Drainage District; City of Needles; Roosevelt Irrigation District; City of Safford; Tonopah Irrigation District; Wellton-Mohawk Irrigation and Drainage District).
Southwestern Coop	Southwestern Electric Cooperative, Inc.
SPP	Southwest Power Pool, Inc.
Steel Manufacturers Association	Steel Manufacturers Association.
Suez Energy NA	Suez Energy North America.
Tacoma	Tacoma Power.
TANC	Transmission Agency of Northern California.
TAPS	Transmission Access Policy Study Group.
TDU Systems	Transmission Dependent Utilities Systems.
Tennessee Valley PPA	Tennessee Valley Public Power Association.
TransAlta	TransAlta Energy Marketing (U.S.) Inc.
Trans-Elect	Trans-Elect, Inc.
TVA	Tennessee Valley Authority.
WAPA	Western Area Power Administration.
Williams	Williams Power Company, Inc.
Wisconsin Commission	Public Service Commission of Wisconsin.
Wisconsin Electric	Wisconsin Electric Power Company.
Wyoming Infrastructure*	Wyoming Infrastructure Authority.
Xcel	Xcel Energy Services, Inc.

REPLY COMMENTERS IN DOCKET NO. RM05–25–000

Abbreviation	RM05–25–000 reply comments
Alberta Intervenors	Alberta Intervenors (TransCanada Energy Ltd.; ENMAX Energy Marketing, Inc.; EPCOR Merchant and Capital, LP; and TransAlta Corporation).
Anaheim	Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California.
APPA	American Public Power Association.
BC Transmission	British Columbia Transmission Corporation.
Bonneville	Bonneville Power Administration.
California Municipal Utilities Association	California Municipal Utilities Association.
Cogeneration Association of California	Cogeneration Association of California and Energy Producers and Users Coalition.
EEI	Edison Electric Institute.
ElectriCities	ElectriCities of North Carolina, Inc.
Entergy	Entergy Services, Inc.
EPSA	Electric Power Supply Association.
Fallon	City of Fallon, Nevada.
Fertilizer Institute	Fertilizer Institute.
FMPA	Florida Municipal Power Agency.
FP&L	Florida Power & Light Company.
Great Northern	Great Northern Power Development, L.P.
Joint Commenters	Joint Commenters (Duke Energy. Corporation, Progress Energy Corporation, South Carolina Public Service Authority and Southern Company Services, Inc.).
Lafayette+ thnsp;451	Lafayette Utilities System of the City and Parish of Lafayette, Louisiana; Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi; and Public Service Commission of the City of Yazoo City, Mississippi.
LDWP	City of Los Angeles Department of Water and Power.
LPPC	Large Public Power Council.
Mark Lively+	Mark B. Lively.
MEAG	MEAG Power.
Memphis Light	Memphis Light, Gas & Water Division.

REPLY COMMENTERS IN DOCKET NO. RM05–25–000—Continued

Abbreviation	RM05–25–000 reply comments
Midwest Municipals	Midwest Municipal Transmission Group .
Midwest SATs	Midwest Stand-Alone Transmission Companies (American Transmission Company LLC; International Transmission Company; and Michigan Electric Transmission Company, LLC).
NARUC	National Association of Regulatory Utility Commissioners.
National Grid	National Grid USA.
NCPA	Northern California Power Agency.
Newmont Mining	Newmont USA Limited, d/b/a Newmont Mining Corporation.
Northwest IPPs	Northwest Independent Power Producers Coalition (BP Energy; Calpine Corporation; EPCOR; National Energy Systems Company; Northwest Energy Development; Sempra Generation; Suez Energy North America, Inc.; and TransAlta Energy Marketing, (U.S.) Inc.).
NRECA	National Rural Electric Cooperative Association.
Occidental	Occidental Chemical Corporation.
PacifiCorp	PacifiCorp.
Powerex	Powerex Corp.
Progress Energy	Progress Energy, Inc. (Carolina Power & Light Company d/b/a Progress Energy Carolinas and Florida Power Corporation, d/b/a Progress Energy Florida).
Puget	Puget Sound Energy, Inc.
Sacramento	Sacramento Municipal Utility District.
Salt River	Salt River Project Agricultural Improvement and Power District.
San Antonio	San Antonio City Public Service Board.
Seattle	City of Seattle—City Light Department.
South Carolina Regulatory Staff	South Carolina Office of Regulatory Staff.
Southern	Southern Company Services, Inc.
TANC	Transmission Agency of Northern California.
TAPS	Transmission Access Policy Study Group.
TDU Systems	Transmission Dependent Utilities Systems.
Truckee Donner	Truckee Donner Public Utility District.
TVA	Tennessee Valley Authority.
TVA Noticing Distributors+	TVA Noticing Distributors (Paducah Power Systems, Glasgow Electric Plant Board, Princeton Electric Plant Board and Hopkinsville Electric System).
Williams	Williams Power Company, Inc.

COMMENTERS IN RM05–17–000

Abbreviation	RM05–17–000 Comments
Allegheny	Allegheny Power.
APPA	American Public Power Association.
Bonneville	Bonneville Power Administration.
CEOB	California Electricity Oversight Board.
EEI	Edison Electric Institute.
EPSA	Electric Power Supply Association.
Exelon	Exelon Corporation.
FTC	Federal Trade Commission.
Generator Coalition	Generator Coalition (Cottonwood Energy Company LP; KGen Power Management Inc.; Suez Energy North America, Inc.; and Union Power Partners, LP).
International Transmission	International Transmission Company.
ISO/RTO	ISO/RTO Council.
LDWP	City of Los Angeles Department of Water and Power.
MidAmerican	MidAmerican Energy Company.
MISO	Midwest Independent Transmission System Operator, Inc.
NERC	North American Electric Reliability Council.
NY Commission	New York State Public Service Commission.
PG&E	Pacific Gas and Electric Company.
PGP	Public Generating Pool.
Powerex	Powerex Corp.
Southern	Southern Company Services, Inc.
Southern California Edison	Southern California Edison Company.*
TANC	Transmission Agency of Northern California.
TAPS	Transmission Access Policy Study Group.
WestConnect	WestConnect Public Utilities.

Pro Forma Open Access Transmission Tariff

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I. Common Service Provisions

1 Definitions

1.1 Affiliate

With respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.2 Ancillary Services

Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

1.3 Annual Transmission Costs

The total annual cost of the Transmission System for purposes of Network Integration Transmission Service shall be the amount specified in Attachment H until amended by the Transmission Provider or modified by the Commission.

1.4 Application

A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

1.5 Commission

The Federal Energy Regulatory Commission.

1.6 Completed Application

An Application that satisfies all of the information and other requirements of the Tariff, including any required deposit.

1.7 Control Area

An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

1. Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

2. Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

3. Maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and

4. Provide sufficient generating capacity to maintain operating reserves

in accordance with Good Utility Practice.

1.8 Curtailment

A reduction in firm or non-firm transmission service in response to a transfer capability shortage as a result of system reliability conditions.

1.9 Delivering Party

The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

1.10 Designated Agent

Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

1.11 Direct Assignment Facilities

Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

1.12 Economy Energy

Energy purchased by a Network Integration Transmission customer that displaces that customer's own higher cost designated Network Resource(s) for the purpose of serving that customer's designated Network Load(s).

1.13 Eligible Customer

i. Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider.

ii. Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Customer under the Tariff.

1.14 Facilities Study

An engineering study conducted by the Transmission Provider to determine the required modifications to the Transmission Provider's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested transmission service.

1.15 Firm Point-To-Point Transmission Service

Transmission Service under this Tariff that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of this Tariff.

1.16 Good Utility Practice

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

1.17 Interruption

A reduction in non-firm transmission service due to economic reasons pursuant to Section 14.7.

1.18 Load Ratio Share

Ratio of a Transmission Customer's Network Load to the Transmission Provider's total load computed in accordance with Sections 34.2 and 34.3 of the Network Integration Transmission Service under Part III the Tariff and calculated on a rolling twelve month basis.

1.19 Load Shedding

The systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Part III of the Tariff.

1.20 Long-Term Firm Point-To-Point Transmission Service

Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of one year or more.

1.21 Native Load Customers

The wholesale and retail power customers of the Transmission Provider on whose behalf the Transmission Provider, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate the Transmission Provider's system to meet the reliable electric needs of such customers.

1.22 Network Customer

An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

1.23 Network Integration Transmission Service

The transmission service provided under Part III of the Tariff.

1.24 Network Load

The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where a Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

1.25 Network Operating Agreement

An executed agreement that contains the terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service under Part III of the Tariff.

1.26 Network Operating Committee

A group made up of representatives from the Network Customer(s) and the Transmission Provider established to coordinate operating criteria and other technical considerations required for implementation of Network Integration

Transmission Service under Part III of this Tariff.

1.27 Network Resource

Any designated generating resource owned, purchased or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

1.28 Network Upgrades

Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.

1.29 Non-Firm Point-To-Point Transmission Service

Point-To-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of this Tariff. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

1.30 Non-Firm Sale

An energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.

1.31 Open Access Same-Time Information System (OASIS)

The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

1.32 Part I

Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

1.33 Part II

Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.34 Part III

Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.35 Parties

The Transmission Provider and the Transmission Customer receiving service under the Tariff.

1.36 Point(s) of Delivery

Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-To-Point Transmission Service.

1.37 Point(s) of Receipt

Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.38 Point-To-Point Transmission Service

The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

1.39 Power Purchaser

The entity that is purchasing the capacity and energy to be transmitted under the Tariff.

1.40 Pre-Confirmed Application

An Application that commits the Transmission Customer to execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service.

1.41 Receiving Party

The entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.

1.42 Regional Transmission Group (RTG)

A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

1.43 Reserved Capacity

The maximum amount of capacity and energy that the Transmission Provider agrees to transmit for the Transmission Customer over the Transmission Provider's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis.

1.44 Service Agreement

The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and the Transmission Provider for service under the Tariff.

1.45 Service Commencement Date

The date the Transmission Provider begins to provide service pursuant to the terms of an executed Service Agreement, or the date the Transmission Provider begins to provide service in accordance with Section 15.3 or Section 29.1 under the Tariff.

1.46 Short-Term Firm Point-to-Point Transmission Service

Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of less than one year.

1.47 System Impact Study

An assessment by the Transmission Provider of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.48 Third-Party Sale

Any sale for resale in interstate commerce to a Power Purchaser that is not designated as part of Network Load under the Network Integration Transmission Service.

1.49 Transmission Customer

Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.

1.50 Transmission Provider

The public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce

and provides transmission service under the Tariff.

1.51 Transmission Provider's Monthly Transmission System Peak

The maximum firm usage of the Transmission Provider's Transmission System in a calendar month.

1.52 Transmission Service

Point-To-Point Transmission Service provided under Part II of the Tariff on a firm and non-firm basis.

1.53 Transmission System

The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff.

2 Initial Allocation and Renewal Procedures

2.1 Initial Allocation of Available Transfer Capability

For purposes of determining whether existing capability on the Transmission Provider's Transmission System is adequate to accommodate a request for firm service under this Tariff, all Completed Applications for new firm transmission service received during the initial sixty (60) day period commencing with the effective date of the Tariff will be deemed to have been filed simultaneously. A lottery system conducted by an independent party shall be used to assign priorities for Completed Applications filed simultaneously. All Completed Applications for firm transmission service received after the initial sixty (60) day period shall be assigned a priority pursuant to Section 13.2.

2.2 Reservation Priority For Existing Firm Service Customers

Existing firm service customers (wholesale requirements and transmission-only, with a contract term of five years or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to the longer of a competing request by any new Eligible Customer or five years and to pay the current just and reasonable rate, as approved by the Commission, for such service. The existing firm service customer must provide notice to the Transmission Provider whether it will exercise its right of first refusal no less than one year prior to the expiration date of its transmission service agreement. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of five years or longer. Service agreements subject to a right of first refusal entered into prior to [the acceptance by the Commission of the Transmission Provider's Attachment K], unless terminated, will become subject to the five year/one year requirement on the first rollover date after [the acceptance by the Commission of the Transmission Provider's Attachment K].

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider.

If the Transmission Provider is a public utility providing transmission service but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5 and 6) from a third party or by self-supply when technically feasible. The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.6 below list the six Ancillary Services.

3.1 Scheduling, System Control and Dispatch Service

The rates and/or methodology are described in Schedule 1.

3.2 Reactive Supply and Voltage Control From Generation Sources Service

The rates and/or methodology are described in Schedule 2.

3.3 Regulation and Frequency Response Service

Where applicable the rates and/or methodology are described in Schedule 3.

3.4 Energy Imbalance Service

Where applicable the rates and/or methodology are described in Schedule 4.

3.5 Operating Reserve—Spinning Reserve Service

Where applicable the rates and/or methodology are described in Schedule 5.

3.6 Operating Reserve—Supplemental Reserve Service

Where applicable the rates and/or methodology are described in Schedule 6.

4 Open Access Same-Time Information System (OASIS)

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR 37 of the Commission's regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities) and 18 CFR 38 of the Commission's regulations (Business Practice Standards and Communication Protocols for Public Utilities). In the event available transfer capability as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

5 Local Furnishing Bonds

5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds

This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code (''local furnishing bonds''). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

5.2 Alternative Procedures for Requesting Transmission Service

(i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.

(ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

6. Reciprocity

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates. A Transmission Customer that is a member of a power pool or Regional Transmission Group also agrees to provide comparable transmission service to the members of such power pool and Regional Transmission Group on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

7 Billing and Payment

7.1 Billing Procedure

Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

7.2 Interest on Unpaid Balances

Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

7.3 Customer Default

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all

payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

8 Accounting for the Transmission Provider's Use of the Tariff

The Transmission Provider shall record the following amounts, as outlined below.

8.1 Transmission Revenues

Include in a separate operating revenue account or subaccount the revenues it receives from Transmission Service when making Third-Party Sales under Part II of the Tariff.

8.2 Study Costs and Revenues

Include in a separate transmission operating expense account or subaccount, costs properly chargeable to expense that are incurred to perform any System Impact Studies or Facilities Studies which the Transmission Provider conducts to determine if it must construct new transmission facilities or upgrades necessary for its own uses, including making Third-Party Sales under the Tariff; and include in a separate operating revenue account or subaccount the revenues received for System Impact Studies or Facilities Studies performed when such amounts are separately stated and identified in the Transmission Customer's billing under the Tariff.

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally make application to the Commission for a change in rates, terms and conditions, charges, classification of service, Service Agreement, rule or regulation under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

10 Force Majeure and Indemnification

10.1 Force Majeure

An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

10.2 Indemnification

The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider.

11 Creditworthiness

The Transmission Provider will specify its Creditworthiness procedures in Attachment L.

12 Dispute Resolution Procedures

12.1 Internal Dispute Resolution Procedures

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution) shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon] by mutual agreement, such dispute may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.

12.2 External Arbitration Procedures

Any arbitration initiated under the Tariff shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable Commission regulations or Regional Transmission Group rules.

12.3 Arbitration Decisions

Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Tariff and any Service Agreement entered into under the Tariff and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with the Commission if it affects jurisdictional rates, terms and conditions of service or facilities.

12.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable:

1. The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or

2. One half the cost of the single arbitrator jointly chosen by the Parties.

12.5 Rights Under the Federal Power Act

Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

II. Point-To-Point Transmission Service

Preamble

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service pursuant to the applicable terms and conditions of this Tariff. Point-To-Point Transmission Service is for the receipt of capacity and energy at designated Point(s) of Receipt and the transfer of such capacity and energy to designated Point(s) of Delivery.

13 Nature of Firm Point-To-Point Transmission Service

13.1 Term

The minimum term of Firm Point-To-Point Transmission Service shall be one hour and the maximum term shall be specified in the Service Agreement.

13.2 Reservation Priority

(i) Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis, *i.e.*, in the chronological sequence in which each Transmission Customer has requested service. However, Pre-Confirmed Applications for service will receive priority over earlier-submitted requests that are not Pre-Confirmed. Within classes of requests (Pre-Confirmed or not confirmed), the highest price offered by the Eligible Customer is the first tiebreaker, followed by the date and time of the request.

(ii) Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. However, Pre-Confirmed Applications for Short-Term Point-To-Point Transmission Service will receive priority over earlier-submitted requests that are not Pre-Confirmed. Within classes of requests (Pre-Confirmed or not confirmed), duration is the first tiebreaker, followed by the highest price offered by the Eligible Customer, followed by the date and time of the request.

(iii) If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines: one hour before the commencement of hourly service, one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transfer capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff.

(iv) Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

13.3 Use of Firm Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under (i) agreements executed on or after August 7, 2006 or (ii) agreements executed prior to the aforementioned date that the Commission requires to be unbundled, by the date specified by the Commission. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.

13.4 Service Agreements

The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-To-Point Transmission Service pursuant to the Tariff. Executed Service Agreements that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations.

13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs

In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without (1) degrading or impairing the reliability of service to Native Load Customers, Network Customers and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of Section 15.4. The Transmission Customer must agree to compensate the Transmission Provider for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint more economically by redispatching the Transmission Provider's resources than through constructing Network Upgrades, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement prior to initiating service.

13.6 Curtailment of Firm Transmission Service

In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such

system and the system directly and indirectly interconnected with Transmission Provider's Transmission system. Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and implements emergency procedures to Curtail Firm Transmission Service, the Transmission Customer shall make the required reductions upon request of the Transmission Provider. However, the Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. The Transmission Provider will notify all affected Transmission Customers in a timely manner of any scheduled Curtailments.

13.7 Classification of Firm Transmission Service

(a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.2.

(b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.

(c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transfer capability is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either (1) the sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedule 7. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved.

13.8 Scheduling of Firm Point-To-Point Transmission Service

Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *10 a.m.* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10 a.m. will be accommodated, if practicable. Hour-to-hour schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Transmission customers may also batch requests and schedules for hourly firm service to be provided on the same day. Scheduling changes will be permitted up to *twenty (20) minutes* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14 Nature of Non-Firm Point-To-Point Transmission Service

14.1 Term

Non-Firm Point-To-Point Transmission Service will be available for periods ranging from one (1) hour to one (1) month. However, a Purchaser of Non-Firm Point-To-Point Transmission Service will be entitled to reserve a sequential term of service (such as a sequential monthly term without having to wait for the initial term to expire before requesting another monthly term) so that the total time period for which the reservation applies is greater than one month, subject to the requirements of Section 18.3.

14.2 Reservation Priority

Non-Firm Point-To-Point Transmission Service shall be available from transfer capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned first to Pre-Confirmed Applications and second

to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of the same Pre-Confirmation status and equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) Immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under (i) agreements executed on or after August 7, 2006 or (ii) agreements executed prior to the aforementioned date that the Commission requires to be unbundled, by the date specified by the Commission. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of Non-Firm Point-To-Point Transmission Service to make Third-Party Sales.

14.4 Service Agreements

The Transmission Provider shall offer a standard form Non-Firm Point-To-Point Transmission Service Agreement (Attachment B) to an Eligible Customer when it first submits a Completed Application for Non-Firm Point-To-Point Transmission Service pursuant to the Tariff. Executed Service Agreements that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations.

14.5 Classification of Non-Firm Point-To-Point Transmission Service

Non-Firm Point-To-Point Transmission Service shall be offered under terms and conditions contained in Part II of the Tariff. The Transmission Provider undertakes no obligation under the Tariff to plan its Transmission System in order to have sufficient capacity for Non-Firm Point-To-Point Transmission Service. Parties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation. Non-Firm Point-To-Point Transmission Service shall include transmission of energy on an hourly basis and transmission of scheduled short-term capacity and energy on a daily, weekly or monthly basis, but not to exceed one month's reservation for any one Application, under Schedule 8.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service

Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *2 p.m.* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2 p.m. will be accommodated, if practicable. Hour-to-hour schedules of energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to *twenty (20) minutes* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.7 Curtailment or Interruption of Service

The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System or the systems directly and indirectly interconnected with Transmission Provider's Transmission System. Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (*e.g.*, hourly non-firm transactions will be Curtailed or

Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

15 Service Availability

15.1 General Conditions

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.

15.2 Determination of Available Transfer Capability

A description of the Transmission Provider's specific methodology for assessing available transfer capability posted on the Transmission Provider's OASIS (Section 4) is contained in Attachment C of the Tariff. In the event sufficient transfer capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.

15.3 Initiating Service in the Absence of an Executed Service Agreement

If the Transmission Provider and the Transmission Customer requesting Firm or Non-Firm Point-To-Point Transmission Service cannot agree on all the terms and conditions of the Point-To-Point Service Agreement, the Transmission Provider shall file with the Commission, within thirty (30) days after the date the Transmission Customer provides written notification directing the Transmission Provider to file, an unexecuted Point-To-Point Service Agreement containing terms and conditions deemed appropriate by the Transmission Provider for such requested Transmission Service. The Transmission Provider shall commence providing Transmission Service subject to the Transmission Customer agreeing to (i) compensate the Transmission Provider at whatever rate the Commission ultimately determines to be just and reasonable, and (ii) comply with the terms and conditions of the Tariff including posting appropriate security deposits in accordance with the terms of Section 17.3.

15.4 Obligation To Provide Transmission Service That Requires Expansion or Modification of the Transmission System

If the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to redispatch its own resources or expand or modify its Transmission System to provide the requested Firm Transmission Service, consistent with its planning obligations in Attachment K, provided the Transmission Customer agrees to compensate the Transmission Provider for such costs pursuant to the terms of Section 27. The Transmission Provider will conform to Good Utility Practice and its planning obligations in Attachment K, in determining the need for new facilities and in the design and construction of such facilities. The obligation applies only to those facilities that the Transmission Provider has the right to expand or modify. To the extent a Transmission Provider cannot redispatch its own resources to provide the requested Firm Transmission Service, it shall identify generators in other control areas that could relieve the constraint and allow the Transmission Customer to seek redispatch with Transmission Providers in adjacent Control Areas.

15.5 Deferral of Service

The Transmission Provider may defer providing service until it completes construction of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

15.6 Other Transmission Service Schedules

Eligible Customers receiving transmission service under other agreements on file with the Commission may continue to receive transmission service under those agreements until such time as those agreements may be modified by the Commission.

15.7 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Transmission Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are as follows: [To be completed by the Transmission Provider].

16 Transmission Customer Responsibilities

16.1 Conditions Required of Transmission Customers

Point-To-Point Transmission Service shall be provided by the Transmission Provider only if the following conditions are satisfied by the Transmission Customer:

(a) The Transmission Customer has pending a Completed Application for service;

(b) The Transmission Customer meets the creditworthiness criteria set forth in Section 11;

(c) The Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II of the Tariff commences;

(d) The Transmission Customer agrees to pay for any facilities constructed and chargeable to such Transmission Customer under Part II of the Tariff, whether or not the Transmission Customer takes service for the full term of its reservation;

(e) The Transmission Customer provides the information required by the Transmission Provider's planning process established in Attachment K; and

(f) The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements

Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake

reasonable efforts to assist the Transmission Customer in making such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application

A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to: [Transmission Provider Name and Address], at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

17.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties;

(iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by this Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations;

(v) A description of the supply characteristics of the capacity and energy to be delivered;

(vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party;

(vii) The Service Commencement Date and the term of the requested Transmission Service;

(viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement;

(ix) A statement indicating whether the Transmission Customer commits to a Pre-Confirmed Request, *i.e.*, will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service; and

(x) Any additional information required by the Transmission Provider's planning process established in Attachment K.

The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

17.3 Deposit

A Completed Application for Firm Point-To-Point Transmission Service also shall include a deposit of either one month's charge for Reserved Capacity or the full charge for Reserved Capacity for service requests of less than one month. If the Application is rejected by the Transmission Provider because it does not meet the conditions for service as set forth herein, or in the case of requests for service arising in connection with losing bidders in a Request For Proposals (RFP), said deposit shall be returned with interest less any reasonable costs incurred by the Transmission Provider in connection with the review of the losing bidder's Application. The deposit also will be returned with interest less any reasonable costs incurred by the Transmission Provider if the Transmission Provider is unable to complete new facilities needed to provide the service. If an Application is withdrawn or the Eligible Customer decides not to enter into a Service Agreement for Firm Point-To-Point Transmission Service, the deposit shall be refunded in full, with interest, less reasonable costs incurred by the Transmission Provider to the extent such costs have not already been recovered by the Transmission Provider from the Eligible Customer. The Transmission Provider will provide to the Eligible Customer a complete accounting of all costs deducted from the refunded deposit, which the Eligible Customer may contest if there is a dispute concerning the deducted costs. Deposits associated with construction of new facilities are subject to the provisions of Section 19. If a Service Agreement for Firm Point-To-Point Transmission Service is executed, the deposit, with interest, will be returned to the Transmission Customer upon expiration or termination of the Service Agreement for Firm Point-To-Point Transmission Service. Applicable interest shall be computed in accordance with the Commission's regulations at 18 CFR ? 35.19a(a)(2)(iii), and shall be calculated from the day the deposit check is credited to the Transmission Provider's account.

17.4 Notice of Deficient Application

If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application, along with any deposit, with interest. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

17.5 Response to a Completed Application

Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission

Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

17.6 Execution of Service Agreement

Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but no later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request the filing of an unexecuted service agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application and any deposit submitted shall be refunded with interest. Nothing herein limits the right of an Eligible Customer to file another Application after such withdrawal and termination.

17.7 Extensions for Commencement of Service

The Transmission Customer can obtain up to *five (5) one-year extensions* for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service

18.1 Application

Eligible Customers seeking Non-Firm Point-To-Point Transmission Service must submit a Completed Application to the Transmission Provider. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application.

18.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) The Point(s) of Receipt and the Point(s) of Delivery;

(iv) The maximum amount of capacity requested at each Point of Receipt and Point of Delivery; and

(v) The proposed dates and hours for initiating and terminating transmission service hereunder.

In addition to the information specified above, when required to properly evaluate system conditions, the Transmission Provider also may ask the Transmission Customer to provide the following:

(vi) The electrical location of the initial source of the power to be transmitted pursuant to the Transmission Customer's request for service; and

(vii) The electrical location of the ultimate load.

The Transmission Provider will treat this information in (vi) and (vii) as confidential at the request of the Transmission Customer except to the extent that disclosure of this information is required by this Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

(viii) A statement indicating whether the Transmission Customer commits to a Pre-Confirmed Request, *i.e.*, will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service.

18.3 Reservation of Non-Firm Point-To-Point Transmission Service

Requests for monthly service shall be submitted *no earlier than sixty (60) days* before service is to commence; requests for weekly service shall be submitted *no earlier than fourteen (14) days* before service is to commence, requests for daily service shall be submitted *no earlier than two (2) days* before service is to commence, and requests for hourly service shall be submitted *no earlier than noon the day* before service is to commence. Requests for service received *later than 2:00 p.m.* prior to the day service is scheduled to commence will be accommodated if practicable [or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

18.4 Determination of Available Transfer Capability

Following receipt of a tendered schedule the Transmission Provider will make a determination on a non-discriminatory basis of available transfer capability pursuant to Section 15.2. Such determination shall be made as soon as reasonably practicable after receipt, but not later than the following time periods for the following terms of service *(i) thirty (30) minutes for hourly service, (ii) thirty (30) minutes for daily service, (iii) four (4) hours for weekly service, and (iv) two (2) days for monthly service.* [Or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

19 Additional Study Procedures for Firm Point-To-Point Transmission Service Requests

19.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to

which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its application shall be deemed withdrawn and its deposit, pursuant to Section 17.3, shall be returned with interest.

19.2 System Impact Study Agreement and Cost Reimbursement

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the requests for service, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 20.

19.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, including an estimate of the number of hours of redispatch that may be required to accommodate the request for Transmission Service and a preliminary estimate of the cost of redispatch, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn.

19.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its application shall be deemed withdrawn and its deposit, pursuant to Section 17.3, shall be returned with interest. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Transmission Customer, (ii) the Transmission Customer's appropriate share of the cost of any required Network Upgrades as determined pursuant to the provisions of Part II of the Tariff, and (iii) the time required to complete such construction and initiate the requested service. The Transmission Customer shall provide the Transmission Provider with a letter of credit or other reasonable form of security acceptable to the Transmission Provider equivalent to the costs of new facilities or upgrades consistent with commercial practices as established by the Uniform Commercial Code. The Transmission Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn.

19.5 Facilities Study Modifications

Any change in design arising from inability to site or construct facilities as proposed will require development of a revised good faith estimate. New good faith estimates also will be required in the event of new statutory or regulatory requirements that are effective before the completion of construction or other circumstances beyond the control of the Transmission Provider that significantly affect the final cost of new facilities or upgrades to be charged to the Transmission Customer pursuant to the provisions of Part II of the Tariff.

19.6 Due Diligence in Completing New Facilities

The Transmission Provider shall use due diligence to add necessary facilities or upgrade its Transmission System within a reasonable time. The Transmission Provider will not upgrade its existing or planned Transmission System in order to provide the requested Firm Point-To-Point Transmission Service if doing so would impair system reliability or otherwise impair or degrade existing firm service.

19.7 Partial Interim Service

If the Transmission Provider determines that it will not have adequate transfer capability to satisfy the full amount of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission

Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Point-To-Point Transmission Service that can be accommodated without addition of any facilities and through redispatch. However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Point-To-Point Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

19.8 Expedited Procedures for New Facilities

In lieu of the procedures set forth above, the Eligible Customer shall have the option to expedite the process by requesting the Transmission Provider to tender at one time, together with the results of required studies, an ''Expedited Service Agreement'' pursuant to which the Eligible Customer would agree to compensate the Transmission Provider for all costs incurred pursuant to the terms of the Tariff. In order to exercise this option, the Eligible Customer shall request in writing an expedited Service Agreement covering all of the above-specified items within thirty (30) days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested service. While the Transmission Provider agrees to provide the Eligible Customer with its best estimate of the new facility costs and other charges that may be incurred, such estimate shall not be binding and the Eligible Customer must agree in writing to compensate the Transmission Provider for all costs incurred pursuant to the provisions of the Tariff. The Eligible Customer shall execute and return such an Expedited Service Agreement within fifteen (15) days of its receipt or the Eligible Customer's request for service will cease to be a Completed Application and will be deemed terminated and withdrawn.

19.9 Penalties for Failure To Meet Study Deadlines

Sections 19.3 and 19.4 require a Transmission Provider to use due diligence to meet 60-day study completion deadlines for System Impact Studies and Facilities Studies.

(i) The Transmission Provider is required to file a notice with the Commission in the event that more than twenty (20) percent of non-Affiliates' System Impact Studies and Facilities Studies completed by the Transmission Provider in any two consecutive calendar quarters are not completed within the 60-day study completion deadlines. Such notice must be filed within thirty (30) days of the end of the calendar quarter triggering the notice requirement.

(ii) For the purposes of calculating the percent of non-Affiliates' System Impact Studies and Facilities Studies processed outside of the 60-day study completion deadlines, the Transmission Provider shall consider all System Impact Studies and Facilities Studies that it completes for non-Affiliates during the calendar quarter. The percentage should be calculated by dividing the number of those studies which are completed on time by the total number of completed studies. The Transmission Provider may provide an explanation in its notification filing to the Commission if it believes there are extenuating circumstances that prevented it from meeting the 60-day study completion deadlines.

(iii) The Transmission Provider is subject to an operational penalty if it completes ten (10) percent or more of non-Affiliates' System Impact Studies and Facilities Studies outside of the 60-day study completion deadlines for each of the two calendar quarters immediately following the quarter that triggered its notification filing to the Commission. The operational penalty will be assessed for each calendar quarter for which an operational penalty applies, starting with the calendar quarter immediately following the quarter that triggered the Transmission Provider's notification filing to the Commission. The operational penalty will continue to be assessed each quarter until the Transmission Provider completes at least ninety (90) percent of all non-Affiliates' System Impact Studies and Facilities Studies within the 60-day deadline.

(iv) For penalties assessed in accordance with subsection (iii) above, the penalty amount for each System Impact Study or Facilities Study shall be equal to $500 for each day the Transmission Provider takes to complete that study beyond the 60-day deadline.

20 Procedures if the Transmission Provider Is Unable To Complete New Transmission Facilities for Firm Point-To-Point Transmission Service

20.1 Delays in Construction of New Facilities

If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Transmission Provider shall promptly notify the Transmission Customer. In such circumstances, the Transmission Provider shall within thirty (30) days of notifying the Transmission Customer of such delays, convene a technical meeting with the Transmission Customer to evaluate the alternatives available to the Transmission Customer. The Transmission Provider also shall make available to the Transmission Customer studies and work papers related to the delay, including all information that is in the possession of the Transmission Provider that is reasonably needed by the Transmission Customer to evaluate any alternatives.

20.2 Alternatives to the Original Facility Additions

When the review process of Section 20.1 determines that one or more alternatives exist to the originally planned construction project, the Transmission Provider shall present such alternatives for consideration by the Transmission Customer. If, upon review of any alternatives, the Transmission Customer desires to maintain its Completed Application subject to construction of the alternative facilities, it may request the Transmission Provider to submit a revised Service Agreement for Firm Point-To-Point Transmission Service. If the alternative approach solely involves Non-Firm Point-To-Point Transmission Service, the Transmission Provider shall promptly tender a Service Agreement for Non-Firm Point-To-Point Transmission Service providing for the service. In the event the Transmission Provider concludes that no reasonable alternative exists and the Transmission Customer disagrees, the Transmission Customer may seek relief under the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

20.3 Refund Obligation for Unfinished Facility Additions

If the Transmission Provider and the Transmission Customer mutually agree that no other reasonable alternatives exist and the requested service cannot be provided out of existing capability under the conditions of Part II of the Tariff, the obligation to provide the requested Firm Point-To-Point Transmission Service shall terminate and any deposit made by the Transmission Customer shall be returned with interest pursuant to Commission regulations 35.19a(a)(2)(iii). However, the Transmission Customer shall be responsible for all prudently incurred costs by the Transmission Provider through the time construction was suspended.

21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities

21.1 Responsibility for Third-Party System Additions

The Transmission Provider shall not be responsible for making arrangements for any necessary engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

21.2 Coordination of Third-Party System Additions

In circumstances where the need for transmission facilities or upgrades is identified pursuant to the provisions of Part II of the Tariff, and if such upgrades further require the addition of transmission facilities on other systems, the Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner. The Transmission Provider shall notify the Transmission Customer in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of new facilities. Within sixty (60) days of receiving written notification by the Transmission Provider of its intent to defer construction pursuant to this section, the Transmission Customer may challenge the decision in accordance with the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

22 Changes in Service Specifications

22.1 Modifications on a Non-Firm Basis

The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement (''Secondary Receipt and Delivery Points''), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions.

(a) Service provided over Secondary Receipt and Delivery Points will be non-firm only, on an as-available basis and will not displace any firm or non-firm service reserved or scheduled by third-parties under the Tariff or by the Transmission Provider on behalf of its Native Load Customers.

(b) The sum of all Firm and non-firm Point-To-Point Transmission Service provided to the Transmission Customer at any time pursuant to this section shall not exceed the Reserved Capacity in the relevant Service Agreement under which such services are provided.

(c) The Transmission Customer shall retain its right to schedule Firm Point-To-Point Transmission Service at the Receipt and Delivery Points specified in the relevant Service Agreement in the amount of its original capacity reservation.

(d) Service over Secondary Receipt and Delivery Points on a non-firm basis shall not require the filing of an Application for Non-Firm Point-To-Point Transmission Service under the Tariff. However, all other requirements of Part II of the Tariff (except as to transmission rates) shall apply to transmission service on a non-firm basis over Secondary Receipt and Delivery Points.

22.2 Modification on a Firm Basis

Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof, except that such Transmission Customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service

Subject to Commission approval of any necessary filings, a Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. Compensation to Resellers that are Affiliates of the Transmission Provider shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion. Compensation to Resellers that are not Affiliates of the Transmission Provider shall be at rates established by agreement with the Assignee. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. A Reseller should notify the Transmission Provider as soon as possible after any assignment or transfer of service occurs but in any event, notification must be provided prior to any provision of service to the Assignee. The Assignee will be subject to all terms and conditions of this Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

23.2 Limitations on Assignment or Transfer of Service

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the Transmission Provider for performing any System Impact Study needed to evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Parties through an amendment to the Service Agreement.

23.3 Information on Assignment or Transfer of Service

In accordance with Section 4, Resellers may use the Transmission Provider's OASIS to post transmission capacity available for resale.

24 Metering and Power Factor Correction at Receipt and Delivery Points(s)

24.1 Transmission Customer Obligations

Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. Such equipment shall remain the property of the Transmission Customer.

24.2 Transmission Provider Access to Metering Data

The Transmission Provider shall have access to metering data, which may reasonably be required to facilitate measurements and billing under the Service Agreement.

24.3 Power Factor

Unless otherwise agreed, the Transmission Customer is required to maintain a power factor within the same range as the Transmission Provider pursuant to Good Utility Practices. The power factor requirements are specified in the Service Agreement where applicable.

25 Compensation for Transmission Service

Rates for Firm and Non-Firm Point-To-Point Transmission Service are provided in the Schedules appended to the Tariff: Firm Point-To-Point Transmission Service (Schedule 7); and Non-Firm Point-To-Point Transmission Service (Schedule 8). The Transmission Provider shall use Part II of the Tariff to make its Third-Party Sales. The Transmission Provider shall account for such use at the applicable Tariff rates, pursuant to Section 8.

26 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Transmission Customer pursuant to this Tariff in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, the Transmission Provider must separately file any specific proposed stranded cost charge under Section 205 of the Federal Power Act.

27 Compensation for New Facilities and Redispatch Costs

Whenever a System Impact Study performed by the Transmission Provider in connection with the provision of Firm Point-To-Point Transmission Service identifies the need for new facilities, the Transmission Customer shall be responsible for such costs to the extent consistent with Commission policy. Whenever a System Impact Study performed by the Transmission Provider identifies capacity constraints that may be relieved more economically by redispatching the Transmission Provider's resources than by building new facilities or upgrading existing facilities to eliminate such constraints, the Transmission Customer shall be responsible for the redispatch costs to the extent consistent with Commission policy.

III. Network Integration Transmission Service

Preamble

The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load Customers. Network Integration Transmission Service also may be used by the Network Customer to deliver economy energy purchases to its Network Load from non-designated resources on an as-available basis without additional charge. Transmission service for sales to non-designated loads will be provided pursuant to the applicable terms and conditions of Part II of the Tariff.

28 Nature of Network Integration Transmission Service

28.1 Scope of Service

Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Transmission Provider's Control Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff. The Network Customer taking Network Integration Transmission Service must obtain or provide Ancillary Services pursuant to Section 3.

28.2 Transmission Provider Responsibilities

The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice and its planning obligations in Attachment K in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System. The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transfer capability. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice and Attachment K, endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers.

28.3 Network Integration Transmission Service

The Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.

28.4 Secondary Service

The Network Customer may use the Transmission Provider's Transmission System to deliver Economy Energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Secondary Service shall not require the filing of an Application for Network Integration Transmission Service under the Tariff. However, all other requirements of Part III of the Tariff (except for transmission rates) shall apply to Secondary Service. Deliveries from resources other than

Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under Part II of the Tariff.

28.5 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Network Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are as follows: [To be completed by the Transmission Provider].

28.6 Restrictions on Use of Service

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System.

29 Initiating Service

29.1 Condition Precedent for Receiving Service

Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer, provided that (i) the Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider file a proposed unexecuted Service Agreement with the Commission, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G, or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.

29.2 Application Procedures

An Eligible Customer requesting service under Part III of the Tariff must submit an Application, with a deposit approximating the charge for one month of service, to the Transmission Provider as far as possible in advance of the month in which service is to commence. Unless subject to the procedures in Section 2, Completed Applications for Network Integration Transmission Service will be assigned a priority according to the date and time the Application is received, with the earliest Application receiving the highest priority. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application. A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the party requesting service;

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence;

(iv) The amount and location of any interruptible loads included in the Network Load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been interruptible), that portion of the load subject to interruption, the conditions under which an interruption can be implemented and any limitations on the amount and frequency of interruptions. An Eligible Customer should identify the amount of interruptible customer load (if any) included in the 10 year load forecast provided in response to (iii) above;

(v) A description of Network Resources (current and 10-year projection), which shall include, for each Network Resource:

- Unit size and amount of capacity from that unit to be designated as Network Resource
- VAR capability (both leading and lagging) of all generators
- Operating restrictions

—Any periods of restricted operations throughout the year
—Maintenance schedules
—Minimum loading level of unit
—Normal operating level of unit
—Any must-run unit designations required for system reliability or contract reasons

- Approximate variable generating cost ($/MWH) for redispatch computations
- Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider Control Area, where only a portion of unit output is designated as a Network Resource
- Description of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System;

(vi) Description of Eligible Customer's transmission system:

- Load flow and stability data, such as real and reactive parts of the load, lines, transformers, reactive devices and load type, including normal and emergency ratings of all transmission equipment in a load flow format compatible with that used by the Transmission Provider
- Operating restrictions needed for reliability
- Operating guides employed by system operators
- Contractual restrictions or committed uses of the Eligible Customer's transmission system, other than the Eligible Customer's Network Loads and Resources
- Location of Network Resources described in subsection (v) above
- 10 year projection of system expansions or upgrades
- Transmission System maps that include any proposed expansions or upgrades
- Thermal ratings of Eligible Customer's Control Area ties with other Control Areas;

(vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year;

(viii) A statement signed by an authorized officer from or agent of the Network Customer attesting that all of the network resources listed pursuant to

Section 29.2(v) satisfy the following conditions: (1) The Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) the Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis; and

(ix) Any additional information required of the Transmission Customers as specified in the Transmission Provider's planning process established in Attachment K.

Unless the Parties agree to a different time frame, the Transmission Provider must acknowledge the request within ten (10) days of receipt. The acknowledgement must include a date by which a response, including a Service Agreement, will be sent to the Eligible Customer. If an Application fails to meet the requirements of this section, the Transmission Provider shall notify the Eligible Customer requesting service within fifteen (15) days of receipt and specify the reasons for such failure. Wherever possible, the Transmission Provider will attempt to remedy deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application without prejudice to the Eligible Customer filing a new or revised Application that fully complies with the requirements of this section. The Eligible Customer will be assigned a new priority consistent with the date of the new or revised Application. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

29.3 Technical Arrangements To Be Completed Prior to Commencement of Service

Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer, or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer, to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.

29.4 Network Customer Facilities

The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer's constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission Provider's Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

29.5 Filing of Service Agreement

The Transmission Provider will file Service Agreements with the Commission in compliance with applicable Commission regulations.

30 Network Resources

30.1 Designation of Network Resources

Network Resources shall include all generation owned, purchased or leased by the Network Customer designated to serve Network Load under the Tariff. Network Resources may not include resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer terminates the designation of such resources.

30.2 Designation of New Network Resources

The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A designation of a new Network Resource must be made through the Transmission Provider's OASIS by a request for modification of service pursuant to an Application under Section 29. This request must include a statement that the new network resource satisfies the following conditions: (1) The Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) The Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis. The Network Customer's request will be deemed deficient if it does not include this statement and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.

30.3 Termination of Network Resources

The Network Customer may terminate the designation of all or part of a generating resource as a Network Resource at any time but should provide notification to the Transmission Provider through OASIS as soon as reasonably practicable.

30.4 Operation of Network Resources

The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Part II of the Tariff, plus losses. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System. The Network Customer may not schedule delivery of a Network Resource not physically interconnected with the Transmission Provider's Transmission System in excess of the Network Resource's capacity, as specified in the Network Customer's Application pursuant to Section 29. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Network Customer's schedule at the Point of Delivery for a Network Resource not physically interconnected with the Transmission Provider's Transmission System exceeds the Network Resource's designated capacity.

30.5 Network Customer Redispatch Obligation

As a condition to receiving Network Integration Transmission Service, the Network Customer agrees to redispatch its Network Resources as requested by the Transmission Provider pursuant to

Section 33.2. To the extent practical, the redispatch of resources pursuant to this section shall be on a least cost, non-discriminatory basis between all Network Customers, and the Transmission Provider.

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With the Transmission Provider

The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

30.7 Limitation on Designation of Network Resources

The Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a Network Resource. Alternatively, the Network Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff.

30.8 Use of Interface Capacity by the Network Customer

There is no limitation upon a Network Customer's use of the Transmission Provider's Transmission System at any particular interface to integrate the Network Customer's Network Resources (or substitute economy purchases) with its Network Loads. However, a Network Customer's use of the Transmission Provider's total interface capacity with other transmission systems may not exceed the Network Customer's Load.

30.9 Network Customer Owned Transmission Facilities

The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider, to serve its power and transmission customers. For facilities added by the Network Customer subsequent to [the effective date of a Final Rule in RM05–25–000], the Network Customer shall receive credit provided such facilities are integrated into the operations of the Transmission Provider's facilities and, if the transmission facilities were owned by the Transmission Provider, would be eligible for inclusion in the Transmission Provider's Annual Transmission Revenue Requirement. Calculation of any credit under this subsection shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

31 Designation of Network Load

31.1 Network Load

The Network Customer must designate the individual Network Loads on whose behalf the Transmission Provider will provide Network Integration Transmission Service. The Network Loads shall be specified in the Service Agreement.

31.2 New Network Loads Connected With the Transmission Provider

The Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable of the designation of new Network Load that will be added to its Transmission System. A designation of new Network Load must be made through a modification of service pursuant to a new Application. The Transmission Provider will use due diligence to install any transmission facilities required to interconnect a new Network Load designated by the Network Customer. The costs of new facilities required to interconnect a new Network Load shall be determined in accordance with the procedures provided in Section 32.4 and shall be charged to the Network Customer in accordance with Commission policies.

31.3 Network Load Not Physically Interconnected With the Transmission Provider

This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Provider. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Provider's Transmission System, the Network Customer shall have the option of (1) electing to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

31.4 New Interconnection Points

To the extent the Network Customer desires to add a new Delivery Point or interconnection point between the Transmission Provider's Transmission System and a Network Load, the Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable.

31.5 Changes in Service Requests

Under no circumstances shall the Network Customer's decision to cancel or delay a requested change in Network Integration Transmission Service (*e.g.* the addition of a new Network Resource or designation of a new Network Load) in any way relieve the Network Customer of its obligation to pay the costs of transmission facilities constructed by the Transmission Provider and charged to the Network Customer as reflected in the Service Agreement. However, the Transmission Provider must treat any requested change in Network Integration Transmission Service in a non-discriminatory manner.

31.6 Annual Load and Resource Information Updates

The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff including, but not limited to, any information provided under section 29.2(ix) pursuant to the Transmission Provider's planning process in Attachment K. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

32 Additional Study Procedures for Network Integration Transmission Service Requests

32.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest.

32.2 System Impact Study Agreement and Cost Reimbursement

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the service requests, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

32.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, including an estimate of the number of hours of redispatch that may be required to accommodate the request for Transmission Service and a preliminary estimate of the cost of redispatch, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement, or the Application shall be deemed terminated and withdrawn.

32.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Eligible Customer, (ii) the Eligible Customer's appropriate share of the cost of any required Network Upgrades, and (iii) the time required to complete such construction and initiate the requested service. The Eligible Customer shall provide the Transmission Provider with a letter of credit or other reasonable form of security acceptable to the Transmission Provider equivalent to the costs of new facilities or upgrades consistent with commercial practices as established by the Uniform Commercial Code. The Eligible Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

32.5 Penalties for Failure to Meet Study Deadlines

Section 19.9 defines penalties that apply for failure to meet the 60-day study completion due diligence deadlines for System Impact Studies and Facilities Studies under Part II of the Tariff. These same requirements and penalties apply to service under Part III of the Tariff.

33 Load Shedding and Curtailments

33.1 Procedures

Prior to the Service Commencement Date, the Transmission Provider and the Network Customer shall establish Load Shedding and Curtailment procedures

pursuant to the Network Operating Agreement with the objective of responding to contingencies on the Transmission System and on systems directly and indirectly interconnected with Transmission Provider's Transmission System. The Parties will implement such programs during any period when the Transmission Provider determines that a system contingency exists and such procedures are necessary to alleviate such contingency. The Transmission Provider will notify all affected Network Customers in a timely manner of any scheduled Curtailment.

33.2 Transmission Constraints

During any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. To the extent the Transmission Provider determines that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resources. Any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

33.3 Cost Responsibility for Relieving Transmission Constraints

Whenever the Transmission Provider implements least-cost redispatch procedures in response to a transmission constraint, the Transmission Provider and Network Customers will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares.

33.4 Curtailments of Scheduled Deliveries

If a transmission constraint on the Transmission Provider's Transmission System cannot be relieved through the implementation of least-cost redispatch procedures and the Transmission Provider determines that it is necessary to Curtail scheduled deliveries, the Parties shall Curtail such schedules in accordance with the Network Operating Agreement or pursuant to the Transmission Loading Relief procedures specified in Attachment J.

33.5 Allocation of Curtailments

The Transmission Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieve the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be shared by the Transmission Provider and Network Customer in proportion to their respective Load Ratio Shares. The Transmission Provider shall not direct the Network Customer to Curtail schedules to an extent greater than the Transmission Provider would Curtail the Transmission Provider's schedules under similar circumstances.

33.6 Load Shedding

To the extent that a system contingency exists on the Transmission Provider's Transmission System and the Transmission Provider determines that it is necessary for the Transmission Provider and the Network Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the Network Operating Agreement.

33.7 System Reliability

Notwithstanding any other provisions of this Tariff, the Transmission Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Network Integration Transmission Service without liability on the Transmission Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Network Integration Transmission Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Transmission Provider's Transmission System or on any other system(s) directly or indirectly interconnected with the Transmission Provider's Transmission System, the Transmission Provider, consistent with Good Utility Practice, also may Curtail Network Integration Transmission Service in order to (i) limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to generating or transmission facilities, or (iii) expedite restoration of service. The Transmission Provider will give the Network Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Network Integration Transmission Service will be not unduly discriminatory relative to the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Network Customer fails to respond to established Load Shedding and Curtailment procedures.

34 Rates and Charges

The Network Customer shall pay the Transmission Provider for any Direct Assignment Facilities, Ancillary Services, and applicable study costs, consistent with Commission policy, along with the following:

34.1 Monthly Demand Charge

The Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement specified in Schedule H.

34.2 Determination of Network Customer's Monthly Network Load

The Network Customer's monthly Network Load is its hourly load (including its designated Network Load not physically interconnected with the Transmission Provider under Section 31.3) coincident with the Transmission Provider's Monthly Transmission System Peak.

34.3 Determination of Transmission Provider's Monthly Transmission System Load

The Transmission Provider's monthly Transmission System load is the Transmission Provider's Monthly Transmission System Peak minus the coincident peak usage of all Firm Point-To-Point Transmission Service customers pursuant to Part II of this Tariff plus the Reserved Capacity of all Firm Point-To-Point Transmission Service customers.

34.4 Redispatch Charge

The Network Customer shall pay a Load Ratio Share of any redispatch costs allocated between the Network Customer and the Transmission Provider pursuant to Section 33. To the extent that the Transmission Provider incurs an obligation to the Network Customer for redispatch costs in accordance with Section 33, such amounts shall be credited against the Network Customer's bill for the applicable month.

34.5 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Network Customer pursuant to this Tariff in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, the Transmission Provider must separately file any proposal to recover stranded costs under Section 205 of the Federal Power Act.

35 Operating Arrangements

35.1 Operation Under the Network Operating Agreement

The Network Customer shall plan, construct, operate and maintain its facilities in accordance with Good Utility Practice and in conformance with the Network Operating Agreement.

35.2 Network Operating Agreement

The terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Part III of the Tariff shall be specified in the Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to (i) operate and maintain equipment necessary for integrating the Network Customer within the Transmission Provider's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment), (ii) transfer data between the Transmission Provider and the Network Customer (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside the Transmission Provider's Transmission System, interchange schedules, unit outputs for redispatch required under Section 33, voltage schedules, loss factors and other real time data), (iii) use software programs required for data links and constraint dispatching, (iv) exchange data on forecasted loads and resources necessary for long-term planning, and (v) address any other technical and operational considerations required for implementation of Part III of the Tariff, including scheduling protocols. The Network Operating Agreement will recognize that the Network Customer shall either (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC) and the [applicable regional reliability council], (ii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with the Transmission Provider, or (iii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with another entity, consistent with Good Utility Practice, which satisfies NERC and the [applicable regional reliability council] requirements. The Transmission Provider shall not unreasonably refuse to accept contractual arrangements with another entity for Ancillary Services. The Network Operating Agreement is included in Attachment G.

35.3 Network Operating Committee

A Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under the Network Operating Agreement. Each Network Customer shall be entitled to have at least one representative on the Committee. The Committee shall meet from time to time as need requires, but no less than once each calendar year.

Schedule 1

Scheduling, System Control and Dispatch Service

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch Service are to be based on the rates set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 2

Reactive Supply and Voltage Control From Generation Sources Service

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities under the control of the control area operator are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation Sources Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for such service will be based on the rates set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

Schedule 3

Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The amount of and charges

for Regulation and Frequency Response Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 4

Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator. The Transmission Provider may only charge a Transmission Customer for either hourly generator imbalances under Schedule 9 or hourly energy imbalances under this schedule for the same imbalance, but not both.

The Transmission Provider shall establish a deviation band of ±1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider. If an energy imbalance is not corrected within thirty (30) days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the Transmission Provider, the Transmission Customer will compensate the Transmission Provider for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by the Transmission Provider. The charges for Energy Imbalance Service are set forth below.

Schedule 5

Operating Reserve—Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The amount of and charges for Spinning Reserve Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 6

Operating Reserve—Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The amount of and charges for Supplemental Reserve Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 7

Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity at the sum of the applicable charges set forth below:

(1) Yearly delivery: one-twelfth of the demand charge of $_____/KW of Reserved Capacity per year.

(2) Monthly delivery: $_____/KW of Reserved Capacity per month.

(3) Weekly delivery: $_____/KW of Reserved Capacity per week.

(4) Daily delivery: $_____/KW of Reserved Capacity per day.

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any day during such week.

(5) Hourly delivery: $_____/KW of Reserved Capacity per hour.

The total demand charge in any day, pursuant to a reservation for Hourly delivery, shall not exceed the rate specified in section (4) above times the highest amount in kilowatts of Reserved Capacity in any hour during such day. In addition, the total demand charge in any week, pursuant to a reservation for Hourly or Daily delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any hour during such week.

(6) Discounts: Three principal requirements apply to discounts for transmission service as follows (1) any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Schedule 8

Non-Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-To-Point Transmission Service up to the sum of the applicable charges set forth below:

(1) Monthly delivery: $_____/KW of Reserved Capacity per month.

(2) Weekly delivery: $_____/KW of Reserved Capacity per week.

(3) Daily delivery: $_____/KW of Reserved Capacity per day.

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified in section (2) above times the highest amount in kilowatts of Reserved Capacity in any day during such week.

(4) Hourly delivery: The basic charge shall be that agreed upon by the Parties at the time this service is reserved and in no event shall exceed $_____/MWH. The total demand charge in any day, pursuant to a reservation for Hourly delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any hour during such day. In addition, the total demand charge in any week, pursuant to a reservation for Hourly or Daily delivery, shall not exceed the rate specified in section (2) above times the highest amount in kilowatts of Reserved Capacity in any hour during such week.

(5) Discounts: Three principal requirements apply to discounts for transmission service as follows (1) any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Schedule 9

Generator Imbalance Service

Generator Imbalance Service is provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. The Transmission Provider must offer this service when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Generator Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area Operator. The Transmission Provider may only charge a Transmission Customer for either hourly generator imbalances under this Schedule or hourly energy imbalances under Schedule 4 for the same imbalance, but not both.

The Transmission Provider shall establish a deviation band of +/-1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied on a net hourly basis to any Generator Imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). The charges for Generator Imbalance Service are set out below:

Attachment A—Form of Service Agreement for Firm Point-to-Point Transmission Service

1.0 This Service Agreement, dated as of_____, is entered into, by and between_____ (the Transmission Provider), and_____ (''Transmission Customer'').

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Firm Point-To-Point Transmission Service under the Tariff.

3.0 The Transmission Customer has provided to the Transmission Provider an Application deposit in accordance with the provisions of Section 17.3 of the Tariff.

4.0 Service under this agreement shall commence on the later of (l) the requested service commencement date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as it is permitted to become effective by the Commission. Service under this agreement shall terminate on such date as mutually agreed upon by the parties.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff is incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By:
Name_____ _____
Title_____ _____
Date_____ _____

Transmission Customer:

By:
Name_____ _____
Title_____ _____
Date_____ _____

Specifications for Long-Term Firm Point-to-Point Transmission Service

1.0 Term of Transaction: _____ ____
Start Date:_____ _____
Termination Date:_____ _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

_____

3.0 Point(s) of Receipt:_____
Delivering Party:_____ _____

4.0 Point(s) of Delivery: _____ ____
Receiving Party:_____ _____

5.0 Maximum amount of capacity and energy to be transmitted (Reserved Capacity):_____ _____

6.0 Designation of party(ies) subject to reciprocal service obligation: _____

_____

_____

_____

_____

7.0 Name(s) of any Intervening Systems providing transmission service: __

_____

_____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. (The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.)

8.1 Transmission Charge:

_____

_____

8.2 System Impact and/or Facilities Study Charge(s):

_____

_____

8.3 Direct Assignment Facilities Charge:

_____

_____

8.4 Ancillary Services Charges:

_____

_____

_____

_____

_____

_____

_____

_____

Attachment B—Form of Service Agreement for Non-Firm Point-to-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between _____ (the Transmission Provider), and _____ (Transmission Customer).

2.0 The Transmission Customer has been determined by the Transmission Provider to be a Transmission Customer under Part II of the Tariff and has filed a Completed Application for Non-Firm Point-To-Point Transmission Service in accordance with Section 18.2 of the Tariff.

3.0 Service under this Agreement shall be provided by the Transmission Provider upon request by an authorized representative of the Transmission Customer.

4.0 The Transmission Customer agrees to supply information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice in order for it to provide the requested service.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff is incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By:

Name _____

Title _____

Date _____

Transmission Customer:

By:

Name _____

Title _____

Date _____

Attachment C—Methodology To Assess Available Transfer Capability

The Transmission Provider must include, at a minimum, the following information concerning its ATC calculation methodology:

(1) the specific mathematical algorithm used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling horizon (same day and real-time), operating horizon (day ahead and pre-schedule) and planning horizon (beyond the operating horizon);

(2) a process flow diagram that illustrates the various steps through which ATC/AFC is calculated; and

(3) a detailed explanation of how each of the ATC components is calculated for both the operating and planning horizons.

(a) For TTC, a Transmission Provider shall: (i) Explain its definition of TTC; (ii) explain its TTC calculation methodology (*e.g.*, load flow, short circuit, stability, transfer studies); (iii) list the databases used in its TTC assessments; and (iv) explain the assumptions used in its TTC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

(b) For ETC, a transmission provider shall explain: (i) Its definition of ETC; (ii) the calculation methodology used to determine the transmission capacity to be set aside for native load, network load, and non-OATT customers (including, if applicable, an explanation of assumptions on the selection of generators that are modeled in service); (iii) how point-to-point transmission service requests are incorporated; (iv) how rollover rights are accounted for; and (v) its processes for ensuring that non-firm capacity is released properly (*e.g.*, when real time schedules replace the associated transmission service requests in its real-time calculations).

(c) If a Transmission Provider uses an AFC methodology to calculate ATC, it shall explain: (i) its definition of AFC; (ii) its AFC calculation methodology (*e.g.*, load flow, short circuit, stability, transfer studies); (iii) its process for converting AFC into ATC; (iv) what databases are used in its AFC assessments; (v) the assumptions used in its AFC assessments; and (vi) the reliability criteria used for contingency outages simulation.

(d) For TRM, a Transmission Provider shall explain: (i) Its definition of TRM; (ii) its TRM calculation methodology (*e.g.*, its assumptions on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources); (iii) the databases used in its TRM assessments; (iv) the conditions under which the transmission provider uses TRM; and (v) the process used to prevent double-counting of contingency outages used in its TTC and TRM calculations. A Transmission Provider that does not reserve TRM must so state.

(e) For CBM, the Transmission Provider shall include a specific and self-contained narrative explanation of its CBM practice, including: (i) Who performs the assessment (transmission or merchant staff); (ii) the methodology used to perform generation reliability assessments (*e.g.*, probabilistic or deterministic); (iii) whether the assessment method reflects a specific regional practice; (iv) the assumptions used in those assessments; and (v) the basis for the selection of paths on which CBM is set aside.

(f) In addition, for CBM, a Transmission Provider shall: (i) Explain its definition of CBM; (ii) list the databases used in its CBM calculations; and (iii) prove that there is no double-counting of contingency outages when performing CBM, TTC, and TRM calculations.

(g) The Transmission Provider shall post its procedures for allowing CBM during emergencies (with an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies and the procedures which must be followed by the transmission providers' merchant function and other load-serving entities when they need to access CBM). If the Transmission Provider's practice is not to reserve CBM, it shall so state.

Attachment D—Methodology for Completing a System Impact Study

To be filed by the Transmission Provider.

Attachment E—Index of Point-to-Point Transmission Service Customers

_____

Customer:

_____

Date of Service Agreement

_____

Attachment F—Service Agreement for Network Integration Transmission Service

To be filed by the Transmission Provider.

Attachment G—Network Operating Agreement

To be filed by the Transmission Provider.

Attachment H—Annual Transmission Revenue Requirement for Network Integration Transmission Service

1. The Annual Transmission Revenue Requirement for purposes of the Network Integration Transmission Service shall be _____.

2. The amount in (1) shall be effective until amended by the Transmission Provider or modified by the Commission.

Attachment I—Index of Network Integration Transmission Service Customers

Customer	Date of Service Agreement

Attachment J—Procedures for Addressing Parallel Flows

To be filed by the Transmission Provider.

Attachment K—Transmission Planning Process

The Transmission Provider shall establish a coordinated, open and transparent planning process with its Network and Firm Point-to-Point Transmission Customers and other interested parties, including the coordination of such planning with interconnected systems within its region, to ensure that the Transmission System is planned to meet the needs of both the Transmission Provider and its Network and Firm Point-to-Point Transmission Customers on a comparable and nondiscriminatory basis. The Transmission Provider's coordinated, open and transparent planning process shall be provided as an attachment to the Transmission Provider's Tariff.

The Transmission Provider's planning process shall satisfy the following eight principles, as defined in the Final Rule in Docket No. RM05–25–000: Coordination, openness, transparency, information exchange, comparability, dispute resolution, regional coordination, and congestion studies.

Attachment L—Creditworthiness Procedures

For the purpose of determining the ability of the Transmission Customer to meet its obligations related to service hereunder, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices and must specify quantitative and qualitative criteria to determine the level of secured and unsecured credit.

The Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices established by the Uniform Commercial Code that protects the Transmission Provider against the risk of non-payment.

Additionally, the Transmission Provider must include, at a minimum, the following information concerning its creditworthiness procedures:

(1) A summary of the procedure for determining the level of secured and unsecured credit;

(2) A list of the acceptable types of collateral/security;

(3) A procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements;

(4) A procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements;

(5) A reasonable opportunity to contest determinations of credit levels or collateral requirements; and

(6) A reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.

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June 6, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Critical Habitat for Five Endangered and Two Threatened Mussels in Four Northeast Gulf of Mexico Drainages; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU87

Endangered and Threatened Wildlife and Plants; Critical Habitat for Five Endangered and Two Threatened Mussels in Four Northeast Gulf of Mexico Drainages

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the endangered fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, and oval pigtoe, and the threatened Chipola slabshell and purple bankclimber (collectively referred to as the seven mussels), pursuant to the Endangered Species Act of 1973, as amended (Act). We propose to designate 11 units encompassing approximately 1,864 kilometers (1,158 miles) of river and stream channels as critical habitat. Proposed critical habitat includes portions of the Econfina Creek drainage in Florida, the Apalachicola—Chattahoochee—Flint River drainage in Alabama, Florida, and Georgia, the Ochlockonee River drainage in Florida and Georgia, and the Suwannee River drainage in Florida.

DATES: We will accept comments from all interested parties until August 7, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 21, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405.

2. You may hand-deliver written comments to our office, at the above address.

3. You may send comments by electronic mail (e-mail) to *FW4ESFRPanamaCity@FWS.gov.* Please see the ''Public Comments Solicited'' section under **SUPPLEMENTARY INFORMATION** for file format and other information about electronic filing.

4. You may fax your comments to 850–763–2177.

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

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405 (telephone 850–769–0552).

FOR FURTHER INFORMATION CONTACT: Jerry Ziewitz at the address above (telephone 850–769–0552 ext. 223; facsimile 850–763–2177).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. We particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of habitat for the seven mussels, including areas occupied by the seven mussels at the time of listing and containing the features essential to the conservation of the species, and areas not occupied at the time of listing that are essential to the conservation of the species;

(3) Whether the middle section of the Flint River complex, between the confluence of Gum Creek and the confluence of Auchumpkee/Ulcohatchee Creek, has the Primary Constituent Elements for the mussels, is occupied by the mussels, or is essential to the conservation of the mussels;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit e-mail comments to *FW4ESFRPanamaCity@FWS.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: 7 mussels—RIN 1018–AU87'' in your e-mail subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Panama City, Florida, Fish and Wildlife Office at phone number 850–769–0552. Please note that the e-mail address *FW4ESFRPanamaCity@FWS.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. There are significant limitations on the regulatory effect of designation under Act section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the

absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,311 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, non-regulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service (378 F. 3d 1059 (9th Cir 2004).* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. Rather, it relies on the guidance issued by the Director in response to the *Gifford Pinchot* decision (see ''Adverse Modification Standard'' discussion below). The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless and is expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4371 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

In this proposed rule, we intend to discuss only information about the seven mussels that is directly relevant to the designation of critical habitat. For more information about these seven mussels, please refer to our final rule listing fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, and oval pigtoe as endangered, and Chipola slabshell and purple bankclimber as threatened published in the **Federal Register** on March 16, 1998 (63 FR 12664) and to our final recovery plan, which is available from the Panama City, Florida Fish and Wildlife Office or online at *http://www.fws.gov/endangered/recovery/Index.html#plans.* The purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*) are variously distributed in four river basins that flow into the northeast Gulf of Mexico: Econfina Creek, Apalachicola River (a large basin generally labeled with the names of its major tributaries, the Chattahoochee and Flint rivers, as the ACF River Basin), Ochlockonee River, and Suwannee River.

The endangered fat threeridge is a medium-sized to large, subquadrate, inflated, solid, and heavy-shelled mussel that reaches a length of 10.2 centimeters (cm) (4.0 inches (in)). Large specimens are so inflated that the width approximates the height. The umbos (bulges near the hinge of the shell) are in the anterior quarter of the shell. The dark brown to black shell is strongly sculptured with seven or eight prominent horizontal parallel plications (ridges).

The endangered shinyrayed pocketbook is a medium-sized mussel that reaches approximately 8.4 cm (3.3 in) in length. The shell is generally elongated, with broad, somewhat inflated umbos and a rounded posterior ridge. The shell is thin but solid. The

surface is smooth and shiny and ranges from straw-yellow to chestnut-brown with a variable number of black to bright emerald-green rays, which emanate from the umbo across the disk.

The shinyrayed pocketbook was listed as federally endangered under the scientific name *Lampsilis subangulata.* The shinyrayed pocketbook and three other *Lampsilis* species that are not federally listed are now assigned to the newly recognized genus *Hamiota* (Roe and Hartfield 2005, p. 1). Several characteristics, including glochidia packaging in a superconglutinate, placement and shape of the marsupia, and glochidia release through the excurrent siphon, support recognition of these species as a distinct genus (Roe and Hartfield 2005, p. 1), and we plan to implement the name change in a separate rule-making.

The endangered Gulf moccasinshell is a small mussel that reaches a length of about 5.6 cm (2.2 in), is elongate-elliptical or rhomboidal in outline, fairly inflated, and has relatively thin valves. The ventral margin is nearly straight or slightly rounded. The posterior ridge is rounded to slightly angled and intersects the end of the shell at the base line. Females tend to have the posterior point above the ventral margin and are more inflated than males.

The endangered Ochlockonee moccasinshell is small, generally under 5.6 cm (2.2 in) long. It is slightly elongate-elliptical in outline, the posterior end obtusely rounded at the median line, and the ventral margin broadly curved. The posterior ridge is moderately angular and covered in its entire length with well-developed, irregular plications. Sculpturing may also extend onto the disk below the ridge. The periostracum (outside surface of the shell) is smooth. The color is light brown to yellowish green, with dark green rays formed by a series of connected chevrons or undulating lines across the length of the shell.

The endangered oval pigtoe is a small-to-medium-sized mussel that attains a length of about 6.1 cm (2.4 in). The shell is suboviform and compressed. The periostracum is shiny smooth; yellowish, chestnut, or dark brown; rayless; and with distinct growth lines. The posterior slope is biangulate and forms a blunt point on the posterior margin. The umbos are slightly elevated above the hingeline.

The endangered oval pigtoe is the only species among the seven mussels of this proposed rule that occurs in all four Gulf of Mexico river basins comprising their collective range: Econfina Creek, ACF, Ochlockonee, and Suwannee. Morphological variation across this broad range has led to the description of several nominal species since it was originally described as *Unio pyriformis* (Lea 1857, p. 169–172). Williams and Butler (1994, p. 111) recognized the form distributed in the Ochlockonee and Suwannee River systems as the Florida pigtoe, *Pleurobema reclusum* (Wright 1898, p. 111–112), consistent with Simpson (1914, p. 1–1540). However, Turgeon *et al.* (1998, p. 36) recognized the forms from all four basins as one species, *P. pyriforme*, which was the taxonomic classification upon which we relied on for the 1998 final rule listing this species as endangered. A recent study using molecular genetic techniques compared tissue samples from three of the four basins (Econfina Creek, ACF, and Suwannee), and concluded that the Suwannee samples were distinctive and warranted specific status as *P. reclusum* (Kandl *et al.* 2001, p. 10). We acknowledged these findings in our 2003 final recovery plan, but have deferred any revisions to the listing taxonomy pending review of an analysis that includes samples from the Ochlockonee Basin as well. Peer review and publication of a genetic analysis of samples from all four basins is expected sometime in 2006 (J.D. Williams, USGS, pers. comm. 2005).

The threatened Chipola slabshell is a medium-sized species reaching a length of about 8.4 cm (3.3 in). The shell is ovate to subelliptical, somewhat inflated, and with the posterior ridge starting out rounded but flattening to form a prominent biangulate margin. The periostracum is smooth and chestnut-colored. Dark brown coloration may appear in the umbo region, and the remaining surface may exhibit alternating light and dark bands.

The threatened purple bankclimber is a large, heavy-shelled, strongly sculptured mussel reaching lengths of 20.5 cm (8.0 in). A well-developed posterior ridge extends from the umbo to the posterior ventral margin of the shell. The posterior slope and the disk just anterior to the posterior ridge are sculptured by several irregular plications that vary greatly in development. The umbos are low, extending just above the dorsal margin of the shell.

Life History

The seven mussels are all bivalve mollusks (clams) of the family Unionidae. Unionid mussels generally live embedded in the bottom of rivers, streams, and other bodies of water. They siphon water into their shells and across four gills that are specialized for respiration and food collection. Known food items include detritus (disintegrated organic debris), diatoms, phytoplankton, zooplankton, and other microorganisms (Coker *et al.* 1921, p. 88; Churchill and Lewis 1924, p. 462; Fuller 1974, p. 221). Adults are filter feeders and generally orient themselves on or near the substrate surface to take food and oxygen from the water above them (Kraemer 1979, p. 1085–1096). Juveniles typically burrow completely beneath the substrate surface and are pedal (foot) feeders (bringing food particles inside the shell for ingestion that adhere to the foot while it is extended outside the shell) until the structures for filter feeding are more fully developed (Gatenby *et al.* 1996, p. 604; Yeager *et al.* 1994, p. 221).

Sexes in unionid mussels are usually separate. Males release sperm into the water, which females take in through their siphons during feeding and respiration. Eggs are fertilized and retained in the gills of the female until the larvae (glochidia) fully develop. The glochidia of most unionid species, including all seven species addressed in this proposed rule, require a parasitic stage on the fins, gills, or skin of a fish to transform into juvenile mussels (for species-specific information, see ''Primary Constituent Elements—Fish Hosts''). Females release glochidia either separately or in masses termed conglutinates, depending on the mussel species. Exceptionally large conglutinates, such as those of the shinyrayed pocketbook, are termed superconglutinates. The duration of the parasitic stage varies by mussel species, water temperature, and perhaps host fish species. When the transformation is complete, juvenile mussels normally detach from their fish host and sink to the stream bottom where, given suitable conditions, they grow and mature to the adult form.

Distribution

The historical and current range of the seven mussels includes portions of four river basins of the northeast Gulf of Mexico in Alabama, Florida, and Georgia: Econfina Creek, ACF, Ochlockonee, and Suwannee. Of these four basins, the ACF is the largest and the only one that extends beyond the Coastal Plain physiographic province into the Piedmont of Georgia and Alabama. Two or more of the seven mussels occur in each of the four basins, except the Suwannee, in which only the oval pigtoe is found. Because large reservoirs are unsuitable as habitat for these mussels and the dams that impound them are barriers to the movement of their host fishes, their

range within two of the basins (ACF and Ochlockonee) is divided into two or more sub-basins that likely represent the maximum spatial extent of potentially interbreeding populations. We estimate that the five species listed as endangered are each extirpated from over half of their historical ranges, and the two threatened species are extirpated from about one-third of their historical ranges (USFWS 2003, p. 77).

Summary of Threats to Surviving Populations

The declining range and abundance of the seven mussels is due mostly to changes in their riverine habitats resulting from dams, dredging, mining, channelization, pollution, sedimentation, and water withdrawals, and possibly also the introduction of nonnative species, such as the Asian clam. Each of these threats affect one or more of the physical and biological habitat features that we have identified as essential to the conservation of the seven mussels, which we discuss in detail under ''Primary Constituent Elements.''

More than 350 kilometers (km) (217 miles (mi)) of large and small river habitat in the ACF and Ochlockonee basins within the current range of the seven mussels is inundated by reservoirs. None of the seven species are known to persist in impoundments, although a single purple bankclimber was found in an impounded portion of the Chattahoochee River (C. Stringfellow, Columbus State University, pers. comm. 2000). Obligate riverine fishes, some of which may serve as hosts for larvae of the seven mussels, are also eliminated by dams and impoundments. Several populations of the seven species persist in relatively small fragments of the four major river basins that are isolated from other populations by impoundments or other large patches of unsuitable habitat and by dams or other barriers to dispersal via their fish hosts. Habitat fragmentation reduces the probability of population persistence (Wilcox and Murphy 1985, p. 879–884), because smaller, more isolated populations are less able to rebound from chance adverse environmental, demographic, and genetic events (Shaffer 1981, p. 131; Lande 1988, p. 1455).

A variety of activities may induce channel instability that adversely affects habitat conditions for mussels. Because impoundments block the natural downstream movement of sediment, channel degradation is commonly observed in the tailwaters of dams (Williams and Wolman 1984, p. 14; Lignon *et al.* 1995, p. 187). The mean bed elevation of the Apalachicola River downstream of Jim Woodruff Lock and Dam, which is located at the confluence of the Chattahoochee and Flint rivers, has degraded about 1.2 to 1.5 meters (m) (4 to 5 feet (ft)) since its construction in the late 1950s (Light *et al.* 1998, p. 21). The main channel of the river widened at a rate of about 0.45 m (1.5 ft) per year, based on cross sections measured by the U.S. Army Corps of Engineers (USACE) between 1980 and 2001 (USACE 2002, p. 1.1–8.3). The Apalachicola River near the Chattahoochee-Flint confluence once supported a particularly rich mussel bed, which included large numbers of fat threeridge and purple bankclimber, but this bed had declined substantially in diversity and numbers by the early 1970s (Heard 1975, p. 1–31). Although the purple bankclimber persists, the fat threeridge is now rare in the upper river (Brim Box and Williams 2000, p. 89). Quantitative sampling using substrate sieves at two locations in the upper river failed to detect juveniles of any unionid mussels (Richardson and Yokley 1996, p. 137). The decline of the rich mussel fauna of the Chattahoochee River was attributed partly to erosion from intensive farming before the Civil War (van der Schalie 1938, p. 56; Clench 1955, p. 96), although substantial erosion continued for several more decades (Glenn 1911, p. 1–137; Trimble 1972, p. 454–457). The most striking example of this erosion and resulting stream channel instability is in the headwaters of Turner Creek, a Chattahoochee River tributary in Stewart County, Georgia. The massive amount of sediment that washed away was conveyed via Turner Creek over time to the Chattahoochee River.

Channelization

Channelization (straightening a stream course by artificial cutoffs and other means for flood control and navigation), dredging, snagging (removal of large woody debris), in-stream gravel mining, and other forms of direct stream channel modifications may induce channel instability. A well-documented example of how direct modifications to a stream induced substantial instability is the Homochitto River in Mississippi, which incised 5 m (16.4 ft) and widened 450 percent following channelization (Kesel and Yodis 1992, p. 99). Hartfield (1993, p. 131–141) and Neves *et al.* (1997, p. 71–72) reviewed the adverse effects of channel modifications on freshwater mollusks. Dredging in the Apalachicola River to maintain navigability may be contributing to observed channel instability in that system (letter from G. Carmody, Service, to R. Keyser, USACE, dated August 8, 2003). Channel instability induced by gravel mining has probably played a significant role in extirpating the Gulf moccasinshell and oval pigtoe from the Uchee Creek system (Howard 1997, p. 157), where a small population of the shinyrayed pocketbook persists. A recent Service stream habitat condition survey in the Ochlockonee Basin found evidence of substantial channel instability (actively eroding banks) at only 9 of 181 sites surveyed, but classified over half of the sites (99) as having a moderate risk of bank erosion (H. Blalock-Herod, Service, pers. comm. 2006).

Sedimentation

Sedimentation is widely reported as a contributing factor in the decline of stream mussel populations (Kunz 1898, p. 328; Ellis 1931, p. 5; 1936, p. 29; Imlay 1972, p. 76; Coon *et al.* 1977, p. 279; Marking and Bills 1979, p. 204; Dennis 1985, p. 1–171; Aldridge *et al.* 1987, p. 17; Schuster *et al.* 1989, p. 84; Wolcott and Neves 1990, p. 74; Houp 1993, p. 93–97; Richter *et al.* 1997a, p. 1090; Brim Box 1999, p. 1–108). Sedimentation is the process by which water detaches, transports, and deposits soil materials on the substrates of streams, lakes, and wetlands. In geomorphically stable stream reaches, sediment input is balanced by sediment output, resulting in no net accumulation or loss of sediment from the stream bed. Sediment input is increased by a variety of human activities that are common in the range of the seven mussels. Substantial sediment accumulation is one factor that may induce channel instability. Lesser amounts may also adversely affect substrate quality for mussels by altering its texture (usually by increasing the percentage of fine materials) and by introducing harmful pollutants.

Waters (1995, p. 173–176) reviewed the biological effects of sediments in streams, and Mount (1995, p. 1–359) provided an overview of the effects of various land uses on stream systems. Brim Box and Mossa (1999, p. 99–117) reviewed the effects of sediments and land uses specifically on mussels. They identified several activities that may affect mussels through sedimentation, including logging, farming, ranching, mining, and urbanization. Without adequate measures to control erosion, these activities may deliver sediment to streams via upland gullies, unpaved roads, road-side ditches, construction sites, and other areas of soil disturbance. All of these activities are widespread in the current range of the seven mussels.

Sediment samples from several ACF Basin streams contained elevated

concentrations of two heavy metals that are harmful to mussels: Copper (found throughout the Piedmont) and cadmium (found in large Coastal Plain tributaries of the Flint River) (Frick *et al.* 1998, p. 19). Elevated concentrations of heavy metals (such as chromium and cadmium) were measured in Asian clams and in sediment samples collected downstream of two abandoned battery salvage operations on the Chipola River (Winger *et al.* 1985, p. 141, 144). Farther downstream in the Chipola River, the chromium concentrations found in the sediments of Dead Lake (Winger *et al.* 1985, p. 141, 144) are toxic to mussels (Havlik and Marking 1987, p. 1–20).

Impoundments

The operations of several dams and withdrawals of surface and groundwater may alter flow regimes to a degree that adversely affects mussels. Four portions of the range of the seven mussels are immediately downstream of major mainstem dams. The Apalachicola River is downstream of Jim Woodruff Lock and Dam (JWLD), which impounds Lake Seminole, a large but shallow reservoir in the southwest corner of Georgia with a storage capacity of about 86 million meters^3 (70,000 acre-feet). Seminole is the downstream-most reservoir in a series of much larger reservoirs on the Chattahoochee River with a cumulative capacity of about 2.2 billion m^3 (1.8 million ac-ft), which represents about 11 percent of the average annual discharge from JWLD (USACE 1998, p. 4.10, 4.48, 4.56). During extended periods without substantial rainfall, however, as during 1999 to 2002, the flow of the Apalachicola River may consist mostly of releases from storage in the Chattahoochee reservoirs.

The Flint River is impounded by two mainstem reservoirs, Lake Blackshear and Lake Worth. By impeding passage of host fishes, these dams separate individuals of the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber into at least three populations within the basin. Both dams are used for hydropower and are licensed to operate generally in a run-of-river mode (releases approximately equal reservoir inflow) (USACE 1998, p. 4.48, 4.56), but short-term alterations of river flow may occur. A mainstem dam on the Ochlockonee River creates Lake Talquin, which is licensed and operated in a similar fashion. No dams have been constructed on Econfina Creek or the Suwannee River and its major tributaries within the range of the seven mussels.

Water Withdrawals

Water withdrawals for agricultural, municipal, and industrial use may reduce stream flow and affect mussels. In the Dougherty Plain of the lower Flint River Basin and upper Chipola River Basin, irrigated agriculture is the largest consumptive water use (Marella *et al.* 1993, p. 6, 13, 29, 42). Major crops in the region include cotton, peanuts, corn, and soybeans, with the largest acreage irrigated by groundwater using center pivot sprinkler systems. Due to the porous limestone underlying this area, ground and surface waters are highly connected, and the base flow of many streams is supported by the discharge of springs (Torak *et al.* 1996, p. 1–106). This area is also the center of the current range of several of the seven mussels. Approximately 172,125 hectares (ha) (425,000 acres (ac)) of cropland were irrigated using center pivot systems in a 16-county area of Georgia in the lower Flint River Basin, with an additional 30,375 ha (75,000 ac) irrigated with surface waters (Litts *et al.* 2001, p. 23). Using models representing surface water—groundwater dynamics in the lower Flint–upper Chipola area, Albertson and Torak (2002, p. 22) found that 8 of 37 streams examined (7 of these 37 support listed mussels) were highly sensitive to groundwater withdrawal and that during droughts these streams may go dry.

Water supply for municipal and industrial needs are greatest in the areas of greatest human population. Several large urban areas (population greater than 100,000) are near or within the current range of the seven mussels, including Dothan, Alabama; Panama City and Tallahassee, Florida; and Albany, Atlanta, and Columbus, Georgia. The largest of these is the Atlanta metro area, which extends into the headwaters of the Flint River Basin. Population in the 16-county metro area is forecast to increase from about 4 million people in 2000 to about 8 million in 2030, when regional water planning authorities predict water demand will equal available water supply from existing and presently planned sources (Ashley 2005, p. 1). Water use will likely increase along with increasing human population in each of the four basins that support the seven mussels.

Water Quality

Water quality is reported as impaired or potentially impaired in some portions of all four river basins within the current range of the seven mussels, according to the water quality agencies of the three States in their periodic assessments under Section 305(b) of the Clean Water Act (CWA). Although water quality in the smallest of the four basins, Econfina Creek, is generally good, mercury accumulation in fish populations was cited as a potential impairment in Florida's most recent basin status report (FDEP 2003a, p. 71). Barrios and Chelette (2004, p. 7) described the hydrologic setting of Econfina Creek, which strongly influences its water quality characteristics. Except during periods of high rainfall, most of the flow in Econfina Creek derives from the discharge of a series of at least 39 spring vents from the Floridan Aquifer in the middle section of the creek. The ground water contribution zone for these springs is large and encompasses a significant portion of the creek's surface water basin. Water quality in the Floridan Aquifer is vulnerable to land use activities in this contribution zone.

Water quality in the largest of the four basins, the ACF, varies considerably. Two small portions of the seven mussels' current range in the ACF are within the State of Alabama: The entire Uchee Creek watershed (a Chattahoochee River tributary) and the headwaters of the Chipola River watershed (an Apalachicola River tributary). In the latter, the Alabama Department of Environmental Management (2004, p. 7) reports that Cypress Creek is impaired due to organic enrichment and low dissolved oxygen (DO). We have no records of the seven mussels in Cypress Creek; however, three of the species are known to occur within a few miles downstream of its mouth. In the Florida portion of the ACF, several stream segments that support one or more of the seven mussels in the Chipola and Apalachicola watersheds are potentially impaired due to excessive coliform bacteria, nutrients, un-ionized ammonia, or turbidity (FDEP 2003b, p. 1–208). Mercury-based fish advisories apply to one or more segments of both watersheds. The current range of the seven mussels in the Flint River Basin includes 131 km (81 mi) that are reported as not supporting or partially supporting designated uses due to departures from Georgia's standards for DO or biological integrity, or are under mercury-based fish consumption advisories (GDNR–EPD 2002, p. 1/1–9/2). The streams listed include such Flint River tributaries as Spring Creek and Kinchafoonee Creek, but not the mainstem. The conditions in an additional 58 km (36 mi) of Flint River tributaries occupied by the mussels violate the coliform bacteria standard.

Water quality is considered impaired in a majority of the mussels' range in the Ochlockonee River Basin of Florida and Georgia. In both States, the entire mainstem length of the river is impaired or potentially impaired by excessive coliform bacteria or nutrients, low DO, or is under mercury-based fish consumption advisories (FDEP 2003c, p. 1–141; GDNR—EPD 2002, p. 1/1–9/2). A study of water and sediment quality in the basin in relation to mussels found that sites with low DO or elevated levels of lead, manganese, or ammonia no longer supported their historical mussel assemblages, including the listed species (Hemming *et al.* 2005, p. 2).

The range of the seven mussels in the Suwannee River Basin is limited to one species (the oval pigtoe), to the Florida portion of the basin, and to one watershed within that portion (the Santa Fe River watershed). The oval pigtoe is currently known only from the New River and a short segment of Santa Fe itself downstream of the mouth of the New River. Most of the New River was listed as impaired due to excessive coliform bacteria, excessive nutrients, and low DO in 1998, and remains potentially impaired under Florida's current standards (FDEP 2003d, p. 1–159).

Agricultural sources of contaminants in the ACF and Suwannee basins include nutrient enrichment from poultry farms and livestock feedlots, and pesticides and fertilizers from row crop agriculture (Couch *et al.* 1996, p. 1–58; Frick *et al.* 1998, p. 1–36; Berndt *et al.* 1998, p. 1–32). A study by the U.S. Soil Conservation Service (1993, p. 26) (now the Natural Resources Conservation Service) in the Flint River system determined that between 72 and 75 percent of the nutrients entering Lake Blackshear were derived from agricultural sources. Organochlorine pesticides were found at levels in ACF Basin streams that often exceeded chronic exposure criteria for the protection of aquatic life (Buell and Couch 1995, p. 1; Frick *et al.* 1998, p. 11). Cotton is raised in much of the region inhabited by these mussels. One of the most important pesticides used in cotton farming, malathion, affects mussels physiologically and may decrease respiration and feeding ability (Kabeer *et al.* 1979, p. 71–73). Within the Suwannee River basin, nutrient concentrations were greater in agricultural areas and nitrates were found to exceed U.S. Environmental Protection Agency (USEPA) drinking water standards in 20 percent of the surficial aquifer groundwater samples (Berndt *et al.* 1998, p. 6). Mostly in urban areas, pesticide concentrations were found to exceed criteria for protection of aquatic life.

Many pollutants in the ACF Basin originate from urban stormwater runoff, developmental activities, and municipal waste water facilities, primarily upstream of the fall line (the line marking the relatively abrupt elevation transition between the Piedmont physiographic province and the coastal plain) (Frick *et al.* 1998, p. 1–36). Urban catchments in Piedmont drainages have higher concentrations of nutrients, heavy metals, pesticides, and organic compounds than do agricultural or forested ones (Lenat and Crawford 1994, p. 185; Frick *et al.* 1998, p. 1–36), and at levels sufficient to affect fish health (Ostrander *et al.* 1995, p. 213). Couch *et al.* (1996, p. 50) counted 137 municipal wastewater treatment facilities in the ACF Basin.

Host Fish

Collectively, eight species of fish are now considered probable primary hosts for the larval life stage of four of the seven mussels: Largemouth bass, spotted bass, bluegill, redear sunfish, weed shiner, sailfin shiner, blackbanded darter, and brown darter (O'Brien and Brim Box 1999, p. 136; O'Brien and Williams 2002, p. 150–152) (*see* ''PCEs—Fish Hosts''). According to Lee *et al.* (1980, p. 1–854), the range of each of these fishes encompasses the range of the respective mussel(s) that successfully parasitized each species in laboratory tests, with the possible exception of the sailfin shiner—oval pigtoe association. The sailfin shiner does not occur far upstream of the fall line in the ACF basin (B. Albanese, GA DNR Wildlife Division, pers. comm. 2006), but the oval pigtoe does; therefore, at least one more fish likely serves as a host for this species. None of the eight fishes is protected under the Act or considered imperiled rangewide (Williams *et al.* 1989, p. 2–20); however, Georgia recognizes the sailfin shiner as a species of special concern (State rank ''S3''; rare or uncommon in State). The four centrarchid fishes (the two basses, bluegill, and redear sunfish) are each classified as game species by the three States. Riverine fish populations in the southeast generally have been adversely affected by a variety of the same habitat alterations that have contributed to the decline of the region's mussel fauna (Etnier 1997, p. 91; Neves *et al.* 1997, p. 60; Warren *et al.* 1997, p. 106, 123–125, 127, 131).

Non-Native Species

Asian Clam

The invasion of non-native aquatic species has contributed to the decline of several North American mussel species (Neves *et al.* 1977, p. 72–75; Strayer 1999, p. 74). Some native mussels may go extinct due to the continued spread of the zebra mussel (*Dreissena polymorpha*), a species not yet established in the southeast (Ricciardi *et al.* 1998, p. 618). Another non-native bivalve, the Asian clam (*Corbicula fluminea*), is well-established and almost ubiquitous in the range of the seven mussels. Reports of Asian clam density vary considerably, from 9 per square foot (Flint River, Sickel 1973, p. 11) to over 195 per square foot (Santa Fe River, Bass and Hitt 1974, p. 16). In the New River (Suwannee River drainage), Blalock and Herod (1999, p. 145–151) found an overall density of 8 Asian clams per square foot in an area where oval pigtoe density was 0.003 per square foot (Blalock-Herod 2000, p. 1–72). In one reach of the Apalachicola River immediately downstream of Jim Woodruff Lock and Dam, the stream bed is almost entirely covered with a layer of live and dead Asian clams several inches deep (J. Ziewitz, personal observation). Several researchers have suggested that the Asian clam competes with native mussels for food, nutrients, and space (Heard 1977, p. 1–177; Kraemer 1979, p. 1094; Clarke 1986, p. 8), particularly with juvenile unionids (Neves and Widlak 1987, p. 6). Yeager *et al.* (2000, p. 257) determined that high densities of Asian clams reduced survival and growth of newly metamorphosed juvenile mussels. However, Asian clams are present at almost all locations where the seven mussels for which we are proposing critical habitat in this proposed rule are currently found, and the specific impact of this species upon native mussels is largely unresolved (Leff *et al.* 1990, p. 415; Strayer 1999, p. 90).

Black Carp

The black carp (*Mylopharyngodon piceus*) is another introduced species that may pose a threat to the seven mussels. Largest of the Asiatic carp species, the black carp eats mollusks (snails and mussels), and sterile fish are sometimes used in catfish aquaculture to control snails that are the intermediate hosts of a catfish parasite (Nico *et al.* 2001, p. 1–124). Escape of substantial numbers of the sterile fish could significantly reduce numbers of native mussels where the escape occurs, and the establishment of non-sterile black carp in the wild could

conceivably extirpate entire mussel populations.

Previous Federal Actions

We listed the seven mussels under the Act on March 16, 1998 (63 FR 12664), and approved a final recovery plan for the seven species on September 19, 2003 (68 FR 56647; October 1, 2003). In the final 1998 rule, we determined that designation of critical habitat was not prudent. On March 15, 2004, the Center for Biological Diversity (Center) filed a lawsuit in the U.S. District Court for the Northern District of Georgia (Civil Action No. 1:04 CV–0729–GET) alleging that we violated the Act by failing to designate critical habitat for the seven mussels. We entered a settlement agreement with the Center on August 31, 2004, which stipulates that the Service would submit for publication in the **Federal Register**, on or before May 30, 2006, a new prudency determination, and if designation was determined to be prudent, a proposed rule designating critical habitat. This publication is our new prudency determination and our proposed rule designating critical habitat for the seven mussels.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing is likely, but not always, essential to the conservation of the species and is typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. In our March 16, 1998, final rule (63 FR 12664), we determined that designating critical habitat was not prudent for the seven mussels because it would result in no known benefit to the species and could further pose a threat to them through publication of their site-specific localities. However, several of our determinations that the

designation of critical habitat would not be prudent have been overturned by court decisions (for example, *Conservation Council for Hawaii* v. *Babbitt* (2 F. Supp. 2d 1280 [D. Hawaii 1998]); and *Natural Resources Defense Council* v. *U.S. Department of the Interior* (113 F. 3d 1121, 1125 [9th Cir. 1997])).

We are already working with Federal and State agencies, private individuals, and organizations in carrying out conservation activities for the seven mussels, conducting surveys for additional occurrences, and assessing habitat conditions. However, critical habitat designation may provide additional information to individuals, local and State governments, and other entities engaged in long-range planning, since areas with features essential to the conservation of the species are clearly delineated and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the subspecies are specifically identified. Furthermore, although the low numbers of these mussels make it unlikely that their populations could withstand even moderate collecting pressure or vandalism, we do not have specific evidence of taking, collection, vandalism, trade, or unauthorized human disturbance.

Accordingly, we withdraw our previous determination that the designation of critical habitat will not benefit the seven mussels and will increase the degree of threat to the species. We determine that the designation of critical habitat is prudent for these species. At this time, we have sufficient information necessary to identify specific areas that meet the definition of critical habitat and are, therefore, proposing critical habitat for the seven mussels.

Methods

As required by section 4(b)(1) of the Act, we used the best scientific and commercial data available in determining areas that contain the physical and biological features essential to the conservation of the seven mussels. We reviewed the available information pertaining to their historical and current distributions, life histories, host fishes, habitats, threats to mussels in general, and threats to the seven mussels in particular. This information includes our own site-specific species and habitat data; unpublished survey reports; notes and communications with other qualified biologists or experts; peer-reviewed scientific publications; the final listing rule for the seven mussels; and our final recovery plan for the seven mussels.

Our principal sources of information for identifying the specific areas within the occupied range of the seven mussels on which are found those features essential to their conservation were: the collective database of locality records for the seven mussels, which is tabulated in our 2003 final recovery plan and has been supplemented with surveys completed since then, and the peer-reviewed scientific literature on mussels' life history and habitat requirements. Our 1998 final listing rule relied extensively upon data obtained in a rangewide status survey of the seven mussels commissioned by the Service and conducted in 1991 and 1992 (cited as Butler (1993, p. 1–30) in the final listing). Most of these data were taken in the ACF basin and have since been published by Brim Box and Williams (2000, p. 3). Although mussel surveys have been conducted since publication of the final listing rule at various locations in the four river basins that encompass their known range, the 1991–1992 status survey still provides a majority of the most recent distributional records for these seven mussels. For purposes of this proposed rule, the Service considers the most recent post-1990 survey data at a particular location as representing a species' current presence or absence at that location, and we consider pre-1990 survey data as representing historical distribution. We must extend the definition of current distribution back to 1990 because mussels are sedentary, long-lived animals, some species attaining maximum life spans of 100 to 200 years (Neves and Moyer 1988, p. 185; Bauer 1992, p. 425; Mutvei *et al.* 1994, p. 163–186). It was rare in the 1991–1992 survey, and is still rare, to find juveniles of the seven mussels.

We relied on a variety of information sources for identifying occupied areas in which the features essential to the conservation of the seven mussels may require special management considerations or protection, including land and water management plans of State and regional government agencies, surveys of stream channel condition, water quality assessments, and distributional information for host fishes. We used the sources cited in our final recovery plan's summary of known threats to the seven mussels to identify which essential features may be most vulnerable in certain portions of the occupied range.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider within areas occupied by the species at the time of listing those physical and biological features that are essential to the conservation of the species (PCEs), and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs essential for the seven mussels are derived from their biological needs as described in the Background section of this proposal. Space for individual and population growth and normal behavior, and sites for reproduction and development of offspring are provided for the seven mussels on and within the streambed of stable channels with a suitable substrate, which we have captured in the PCEs regarding channel stability, substrate quality, and flow regime. Because the seven mussels are dependent on fish to complete their larval life stage, the PCE regarding fish hosts is a further requirement for successful reproduction. Various nutritional and physiological requirements are captured in the PCEs regarding flow regime and water quality. These PCEs are explained in additional detail below.

Channel Stability

Unstable channels do not favor mussels in part because adults and juveniles are relatively sedentary animals. They are unable to move quickly or across great distances from unsuitable to suitable microhabitats on and in the stream bed. Several researchers have reported direct adverse effects to mussels in aggrading (filling) and degrading (scouring) channels (Vannote and Minshall 1982, p. 4106; Kanehl and Lyons 1992, p. 7; Hartfield 1993, p. 133; Brim Box and Mossa 1999, p. 99–117). In degrading channels, mussels lose the substrate sediment in which they anchor themselves against the current. Mussels have been extirpated from streams experiencing a ''headcut'' (stream bed degradation progressing in an upstream direction) and from degrading reaches immediately downstream of dams. In aggrading channels or in channels with

actively eroding stream banks, excess sediment fouls the gills of mussels, which reduces feeding and respiratory efficiency, disrupts metabolic processes, reduces growth rates, and physically smothers mussels (Ellis 1936, p. 39; Stansbery and Stein 1971, p. 2178; Marking and Bills 1979, p. 209–210; Kat 1982, p. 123; Vannote and Minshall 1982, p. 4105–4106; Aldridge *et al.* 1987, p. 18; Waters 1995, p. 173–176; Brim Box 1999, p. 65).

In addition to the direct effects above, channel instability indirectly affects mussels and their fish hosts in several ways. Channels becoming wider and shallower via bank erosion develop more extreme daily and seasonal temperature regimes, which affects DO levels and many other temperature-regulated physical and biological processes. Mussels in wider and shallower channels are likely more susceptible to predation. Erosive channels lose the habitat complexity provided by mature bankside vegetation, which reduces diversity and abundance of fish species. Fewer fish means lower probability of mussel recruitment (see ''Fish Hosts''). The many direct and indirect adverse effects of channel instability on mussels and their fish hosts strongly suggest that channel stability is a habitat feature essential to their conservation.

Substrate Quality

Adult unionid mussels are generally found in localized patches (beds) almost completely burrowed in the substrate with only the area around their siphons exposed (Balfour and Smock 1995, p. 255–268). The composition and abundance of adult mussels have been linked to bed sediment distributions (Neves and Widlak 1987, p. 5; Leff *et al.* 1990, p. 415). Substrate texture (particle size distribution) affects the ability of mussels to burrow in the substrate and anchor themselves against stream currents (Lewis and Riebel 1984, p. 2025). Texture and other aspects of substrate composition, including bulk density (ratio of mass to volume), porosity (ratio of void space to volume), and sediment sorting may also influence mussel densities (Brim Box 1999, p. 1–86; Brim Box and Mossa 1999, p. 99–117). Although several studies have reported adult habitat selection by substrate composition, most species are found in a relatively broad range of substrate types (Tevesz and McCall 1979, p. 114; Strayer 1981, p. 411; Hove and Neves 1994, p. 36; Strayer and Ralley 1993, p. 255), with few exceptions (Stansbery 1966, p. 29–30). The seven mussels for which we are proposing critical habitat in this proposed rule are found in a variety of substrates, ranging from pockets of sand on bedrock to sandy mud, but not in substrates composed of predominantly fine materials (more than 50 percent silt or clay by dry weight) (Brim Box and Williams 2000, p. 1–143; Blalock-Herod 2000, p. 1–72).

Interstitial spaces (pores) in coarse stream substrates may become clogged when fine sediment input to streams is excessive (Gordon *et al.* 1992, p. 1–444). Reduced pore space and pore flow rates reduce habitat for juvenile mussels, which tend to burrow entirely beneath the substrate surface, and for some adult mussels as well (Brim Box and Mossa 1999, p. 99–117). At least some species of juvenile unionids feed primarily on particles associated with sediments and pore water during their early development (Yeager *et al.* 1994, p. 221). Fine sediments act as vectors in delivering contaminants such as nutrients, heavy metals, and pesticides to streams (Salomons *et al.* 1987, p. 13). Most toxicity data for freshwater mussels is from tests with water-only exposures, despite reports that contaminated sediments have contributed to mussel declines (Newton 2003, p. 2543; Wilson *et al.* 1995, p. 213–218).

Because the juveniles and adults of the seven mussels live in relatively coarse and not predominantly fine-grained substrates, and the introduction of fine-grained sediments and various pollutants is likely detrimental to one or more of their life stages, we have determined that substrate quality is a habitat feature essential to their conservation.

Flow Regime

The species that are the subject of this proposed rule are all riverine unionid mussels and are not found in natural or manmade ponds and lakes. One known exception is a single large (and presumably old) purple bankclimber found in Goat Rock Reservoir on the Chattahoochee River by malacologist C. Stringfellow (Columbus State University) in 2000 (pers. comm. 2000). Otherwise, none of the seven mussels tolerate impounded conditions or persist in intermittent streams (Brim Box and Williams 2000, p. 1–141); therefore, continuously flowing water is a habitat feature associated with all potentially viable populations. Flowing water transports food items to the sedentary juvenile and adult life stages and provides oxygen for mussel respiration at depths that would be anoxic in a pond setting. At least three of the seven mussels are known to attract host fishes visually by apparently disguising their glochidia as potential prey items (O'Brien and Brim Box 1999, p. 135–136; O'Brien and Williams 2002, p. 154), and some of these mechanisms appear to require flowing water to function effectively as lures. For example, flowing water is required to suspend the several-feet-long superconglutinate of the shinyrayed pocketbook in the water column so that the glochidia packet at the end of it, which resembles a small fish, is visible to fish (O'Brien and Brim Box 1999, p. 135, 138).

Quantifying the amount of flowing water that is essential to the conservation of the seven mussels is complicated by the broad size range of streams they inhabit, from small tributaries near watershed headwaters to the Apalachicola River, which is the world's 82nd-largest river by discharge (Leopold 1994, p. 101). These seven mussels are often found near the toe of stable stream banks associated with roots and other instream cover or structure. A flow sufficient to inundate the stream bed from bank toe to bank toe with adequately oxygenated water deep enough to deter terrestrial predators is several orders of magnitude greater at a site on the lower Apalachicola River compared to a site on a tributary stream in the upper Ochlockonee River.

Quantifying the amount of flowing water that is essential to the conservation of the seven mussels is also complicated by their dependency on various species of fishes to serve as hosts for their glochidia. Mussel population viability is likely dependent on features of the flow regime that influence fish host population density as well as features that directly affect adult and juvenile mussel survival. For example, the largemouth bass, which is a lab-verified host for the fat threeridge and shinyrayed pocketbook (O'Brien and Brim Box 1999, p. 136; O'Brien and Williams 2002, p. 150), is known to utilize seasonally inundated floodplain habitats for spawning and rearing (Kilgore and Baker 1996, p. 291–294), habitats which do not support adult or juvenile mussels because they are dry for several months of most years. Year class strength of largemouth bass has been positively correlated with flows in several river systems due to the additional habitat available in high-flow years (Raibley *et al.* 1997, p. 852–853), and fish host density is a factor in mussel recruitment (see ''Fish Hosts'' discussion below). Year class strength is abundance of a cohort (born in a particular year) relative to other cohorts. A strong year class is represented in much greater numbers than a weak year class, presumably because the strong

year class experienced more favorable conditions for recruitment.

Riverine ecologists have recognized that variable flow creates variable physical and chemical conditions that limit the distribution and abundance of riverine species (Power *et al.* 1995, p. 166; Resh *et al.* 1988, p. 443). Altering natural long-term patterns of flow changes the structure, composition, and function of riverine communities (Bain *et al.* 1988, p. 382–392; Hill *et al.* 1991, p. 198–210; Sparks 1995, p. 172–173; Scheidegger and Bain 1995, p. 134). Poff *et al.* (1997, p. 770) and Richter *et al.* (1997b, p. 243) concluded that the accumulated research on the relationship between hydrologic variability and riverine ecological integrity overwhelmingly supported a ''natural flow paradigm,'' that is, the patterns of variability in a river's natural flow regime are critical in sustaining its ecological integrity. Richter *et al.* (1996, p. 1165, 1997b, p. 236) proposed a set of parameters collectively termed ''indicators of hydrologic alteration'' (IHA) for characterizing ecologically relevant features of a flow regime.

The Service and USEPA adapted a subset of the IHA parameters as instream flow guidelines for protecting riverine ecosystems under a possible interstate water allocation formula between Alabama, Florida, and Georgia for the ACF Basin (USFWS and USEPA 1999, p. 1). Although the three States failed to agree upon an allocation formula and the ACF Compact authorizing their negotiations expired, the Service has applied the instream flow guidelines in consultations with Federal agencies on actions affecting the species addressed in this proposed rule. The Service–USEPA guidelines are definitions of measures of flow magnitude, duration, frequency, and seasonality that may serve as thresholds for ''may affect'' determinations for proposed Federal actions that would alter a flow regime (for example, water withdrawals and dam operations). The thresholds are computed from long-term flow records appropriate to the proposed action, such as daily flow records from a stream gage in the action area. The Service–USEPA guidelines are designed as a tool for site-specific analyses and such efforts as this proposed rule.

Water Quality

The ranges of several standard physical and chemical water quality parameters (such as temperature, DO, pH, conductivity) that define suitable habitat conditions for the seven mussels have not been specifically investigated. As sedentary animals, mussels must tolerate the full range of these parameters to persist in that stream. Quantifying water quality tolerances for the seven mussels is further complicated by the dependency of mussels on fish hosts, which may exhibit different tolerances.

Most mussels are considered sensitive to low DO levels and high temperatures (Fuller 1974, p. 245). Johnson (2001, p. 8–11) monitored water quality and mussel mortality during a drought year in the lower Flint River Basin. Low DO levels, which occurred during low flow periods, were associated with high weekly mussel mortality. Species-specific mortality varied considerably. The shinyrayed pocketbook and Gulf moccasinshell were among the species with the highest mortality rates when exposed to DO concentrations less than 5 milligrams per liter (mg/L). The oval pigtoe demonstrated moderate, but significantly higher than average, mortality when DO was less than 5 mg/L.

Juvenile mussels may spend their first few years buried in the sediments of the stream bed. Interstitial water (pore water) in sediments is generally less oxygenated than flowing water in the stream above (Sparks and Strayer 1998, p. 129). Sparks and Strayer (1998, p. 132) observed marked differences in behavior between juvenile Eastern elliptio (*Elliptio complanata*), congener of the Chipola slabshell, that were exposed to DO levels of 2 mg/L and 4 mg/L, and most juveniles of this species that were exposed to 1.3 mg/L for a week died. In general, juveniles are sensitive to low DO levels. Interstitial DO levels in streams of the eastern United States are usually less than 4 mg/L in the summer and may fall below 1 mg/L (Sparks and Strayer 1998, p. 132).

Water temperature affects the amount of oxygen that can be dissolved in water and the toxicity of various pollutants. The toxic effects of ammonia are more pronounced at higher temperatures and at higher pH (Mummert *et al.* 2003, p. 2545, 2550; Newton 2003, p. 2543). High temperatures or decreasing pH may increase the toxicity of metals to unionids (Havlik and Marking 1987, p. 14). Watters and O'Dee (2000, p. 136) suggested that the release of glochidia is regulated by water temperature. In Texas, exceptionally warm temperatures appeared to prompt early initiation of mussel reproductive activity, and cool temperatures appeared to delay activity (Howells 2000, p. 40). Temperature may affect immune system response in fish. Some fish species that reject infections by mussel glochidia at higher temperatures are infected at lower temperatures (Roberts and Barnhart 1999, p. 484).

Various contaminants in point- and non-point-source discharges can degrade water and substrate quality and adversely affect mussel populations (Horne and McIntosh 1979, p. 119–133; Neves and Zale 1982, p. 53; McCann and Neves 1992, p. 77–81; Havlik and Marking 1987, p. 1–20). Naimo (1995, p. 341) suggested that chronic, low-level contamination of streams may explain the widespread decreases in mussel density and diversity. Mussels appear to be among the organisms most sensitive to heavy metals (Keller and Zam 1991, p. 539), several of which are lethal at relatively low levels (Havlik and Marking 1987, p. 3). Cadmium appears to be the most toxic (Havlik and Marking 1987, p. 3), although copper, mercury, chromium, and zinc may also impair physiological processes (Jacobson *et al.* 1993, p. 879; Naimo 1995, p. 353–355; Keller and Zam 1991, p. 539–546; Keller and Lydy 1997, p. 3). Metals stored in mussel tissues indicate recent or current exposure (Havlik and Marking 1987, p. 12), while concentrations in shell material indicate past exposure (Imlay 1982, p. 7; Mutvei *et al.* 1994, p. 163–186). Highly acidic pollutants such as metals may contribute to mussel mortality by dissolving shells (Stansbery 1995, p. 2–3). Low levels of some metals may inhibit glochidial attachment (Huebner and Pynnönen 1992, p. 2349). Mussel recruitment may be reduced in habitats with low but chronic heavy metal and other toxicant inputs (Yeager *et al.* 1994, p. 221; Naimo 1995, p. 341; Ahlstedt and Tuberville 1997, p. 72–77).

Water pollutants associated with agricultural activity may adversely affect mussels. Arsenic trioxide, which is used in the poultry industry as a feed additive, is lethal to adult mussels at concentrations of 16.0 parts per million (ppm), and ammonia is lethal at concentrations of 5.0 ppm (Havlik and Marking 1987, p. 3, 13). Ammonia is associated with animal feedlots, nitrogenous fertilizers, and the effluents of older municipal wastewater treatment plants. Ammonia causes a shift in glucose metabolism (Chetty and Indira 1995, p. 84) and alters the utilization of lipids, phospholipids, and cholesterol (Chetty and Indira 1994, p. 693). Stream ecosystems are altered when nutrients are added at concentrations that cannot be assimilated (Stansbery 1995, p. 2–3). Excessive nutrients promote the growth of filamentous algae in streams, which may render substrates unsuitable for mussels of all life stages and degrade water quality by consuming oxygen during night-time respiration and

during decay to levels that mussels cannot tolerate. Several studies have described adverse effects of pesticides on mussels (Fuller 1974, p. 215–257; Havlik and Marking 1987, p. 13; Moulton *et al.* 1996, p. 131). Commonly used pesticides were cited as the likely cause of a mussel die-off in a North Carolina stream (Fleming *et al.* 1995, p. 877–879).

Gourdreau *et al.* (1993, p. 211–230) examined mussel populations relative to the discharges of two municipal wastewater treatment plants on the Clinch River in Tazewell County, Virginia. Mussels were absent or present in low numbers immediately downstream of these discharges, but occurred in greater diversity and abundance immediately upstream and farther downstream. The investigators hypothesized that, in addition to chemicals of known toxicity to glochidia, the bacteria and protozoans associated with wastewater discharges may also adversely affect mussel reproduction. Glochidia are vulnerable to attack by bacteria and protozoans before and after they are released from the adult female mussel (Fuller 1974, p. 219; Goudreau *et al.* 1993, p. 221).

Adults of some mussel species may tolerate short-term exposure to various contaminants by closing their valves (Keller 1993, p. 701). Juveniles and glochidia appear more sensitive than adults to heavy metals (McCann and Neves, 1992, p. 77–81) and to ammonia (Goudreau *et al.* 1993, p. 224). Ammonia is lethal to juveniles at concentrations as low as 0.7 ppm total ammonia nitrogen, normalized to pH 8, and lethal to glochidia at concentrations as low as 2.4 ppm (Augspurger *et al.* 2003, p. 2569–2575). In streams, ammonia may occur at highest concentrations in substrate interstitial spaces where juvenile mussels live and feed (Whiteman *et al* 1996, p. 794; Hickey and Martin 1999, p. 38; Augspurger *et al.* 2003, p. 2569–2575).

In general, we believe the numeric standards for pollutants and water quality parameters (for example, heavy metals and DO) that are adopted by the States under the Federal Clean Water Act (CWA) represent levels that are essential to the conservation of the seven mussels. However, some State standards may not adequately protect mussels, such as the standard for ammonia (Augspurger *et al.* 2003, p. 2571; Newton *et al.* 2003, p. 2559). USEPA and FWS and National Marine Fisheries Service (the Services) agreed to a national consultation on the CWA Section 304(a) aquatic life criteria as part of a Memorandum of Agreement regarding interagency coordination under the CWA and the Act (66 FR 11202, February 22, 2001). The criteria for some pollutants, such as ammonia, are presently under review. Although the State standards adopted consistent with the USEPA criteria generally represent levels that are safe for the seven mussels, these standards are sometimes violated in some streams within their current range. Rather than specify the ranges of dozens of water quality parameters for the seven mussels, it is more practical to deal with cases where the national criteria are not protective of these and other listed species under the national consultations with USEPA. For purposes of this proposed rule, the evidence for the dependency of the seven mussels on good water quality supports identifying water quality generally as a habitat feature that is essential to their conservation.

Fish Hosts

Most unionid mussels, including the seven species, parasitize fish during the larval life stage (see ''Background''), depending on fish hosts not only for the physiological transformation from larval to juvenile form (Isom and Hudson 1982, p. 147–151), but also for spatial dispersal (Neves 1993, p. 4). The distribution and diversity of unionids is strongly related to the distribution and diversity of fish species (Watters 1992, p. 488; Haag and Warren 1998, p. 298). Bogan (1993, p. 600) identified the dependency of mussels on fish hosts, which are affected by exploitation and a variety of common habitat alterations, as one of several contributing causes in the extinction of several unionid species worldwide. Haag and Warren (1998, p. 303) identified host fish availability and density as significant factors influencing where certain mussel populations can persist.

Although female mussels may produce 75,000 to 3.5 million glochidia (Surber 1912, p. 3–10; Coker *et al.* 1921, p. 144; Yeager and Neves 1986, p. 333), contact of the glochidia with a suitable host fish is a low-probability event (Neves *et al.* 1997, p. 60). Contact is dependent on many factors, including the timely presence of the host fish, the feeding and respiratory behaviors of the fish (Dartnall and Walkey 1979, p. 36; Neves *et al.* 1985, p. 17–18), and for some species, the behavior of the mussel when the fish is present (Davenport and Warmuth 1965, p. R77; Kraemer 1970, p. 225–282). Contact between glochidia and host fish does not ensure successful larval development to the juvenile form, because some fish species have natural immunity to glochidial infestation and others acquire immunity following infestation (Watters and O'Dee 1996, p. 387). Glochidia that contact a host with natural immunity are rejected and die, usually within 11 days (Neves *et al.* 1985, p. 15, 17; Yeager and Neves 1986, p. 338; Waller and Mitchell 1989, p. 86). In the case of acquired immunity, glochidia experience decreased transformation rates with subsequent infections of an initially suitable host fish (Arey 1932, p. 372; Bauer and Vogel 1987, p. 393; Luo 1993, p. 26). The number of exposures associated with glochidial sloughing is variable (Watters and O'Dee 1996, p. 385, 387).

As few as 1 to as many as 25 fish species are known to serve as suitable hosts for particular species of mussels (Fuller 1974, p. 238; Trdan and Hoeh 1982, p. 386; Gordon and Layzer 1989, p. 1–98; Hoggarth 1992, p. 3). Some mussels are host-fish specialists that parasitize a few fish species (Zale and Neves 1982, p. 2540; Yeager and Saylor 1995, p. 4; Neves *et al.* 1985, p. 13, 17), and others are generalists that parasitize a great variety of host fishes (Trdan and Hoeh 1982, p. 386). Generally, mussels that are known host-fish specialists tend to release glochidia in conglutinates (multiple glochidia in a packet versus a stream of single glochidia) or use various means of attracting a fish host before releasing multiple glochidia (Watters 1997, p. 45). Because fish that are not naturally immune to glochidial infection develop some immunity after infection, securing a host fish is to some degree a ''first come, first served'' situation. Some researchers have hypothesized that mussels may compete for fish hosts (Watters 1997, p. 57; Trdan and Hoeh 1982, p. 384–385).

Watters (1997, p. 45–62) developed individual-based models of mussel—fish interactions to simulate unionid reproductive strategies, showing specialists tended to have lower population sizes and were less sensitive to fluctuating host fish density than generalists, which attained much higher population sizes when host fish density was high and declined when host fishdensity declined.

Haag and Warren (1998, p. 297–306) examined patterns of fish and mussel community composition in two north Alabama drainages. They found that densities of host-generalist mussels and of host-specialist mussels with elaborate host-attracting mechanisms were independent of host-fish densities, and were present throughout the two drainages. Densities of host-specialist mussels without elaborate host-attracting mechanisms were positively correlated with host-fish densities and were absent or rare near the drainages' headwaters.

Host-fish specificity has been examined in laboratory tests for five of the seven mussels: the fat threeridge, Gulf moccasinshell, oval pigtoe, purple bankclimber (O'Brien and Williams 2002, p. 151), and shiny-rayed pocketbook (O'Brien and Brim Box 1999, 136). The fat threeridge lacks mantle modifications or other morphological specializations that would serve to attract host fishes and appears to be a host-fish generalist that may infect fishes of at least three different fish families. Glochidia transformed to juveniles under laboratory conditions on five of seven fish species tested: Weed shiner (*Notropis texanus*), bluegill (*Lepomis macrochirus*), redear sunfish (*L. microlophus*), largemouth bass (*Micropterus salmoides*), and blackbanded darter (*Percina nigrofasciata*) (O'Brien and Williams 2002, p. 152).

The elaborate superconglutinate of the shiny-rayed pocketbook (see ''Background'') suggests it is a host-fish specialist that targets sight-feeding piscivorous fishes, such as bass. O'Brien and Brim Box (1999, p. 136) confirmed that largemouth bass and spotted bass (*Micropterus punctulatus*) are likely primary hosts (all fishes infected produced juvenile mussels) among 11 species tested. Low transformation rates were associated with fish such as the eastern mosquitofish (*Gambusia holbrooki*) and bluegill.

The Gulf moccasinshell is probably a host-fish specialist that primarily parasitizes darters. It visually lures host fish by undulating its dark mantle flaps against swollen white gills (O'Brien and Williams 2002, p. 154). O'Brien and Williams (2002, p. 152) lab-tested eight fish species for suitability as hosts, finding that all black-banded darters and brown darters (*Etheostoma edwini*) exposed to infection transformed glochidia to juveniles. Other fishes, including the eastern mosquitofish, also transformed glochidia, but at lower percentage rates.

The extreme rarity of the Ochlockonee moccasinshell has precluded any opportunities to explore its life history. We assume its reproductive biology is similar to its congener, the Gulf moccasinshell, which uses darters as host fish.

The oval pigtoe releases rigid white to pinkish conglutinates, which passively drift in the current and may resemble the food organisms of small-bodied fishes. O'Brien and Williams (2002, p. 152) tested 11 fish species as hosts, finding that glochidia transformed on the gills of fish such as the sailfin shiner (*Pteronotropis hypselopterus*) and eastern mosquitofish. They considered only the sailfin shiner as a primary host, as it was the only species upon which the transformation rate exceeded 50 percent.

We are aware of no studies of the reproductive biology of the Chipola slabshell. It is likely that the species expels glochidia in a conglutinate, as do several other members of the genus Elliptio that occur in the ACF Basin (Brim Box and Williams 2000, p. 34–47). Keller and Ruessler (1997, p. 402–407) identified centrarchids (sunfishes) as host fishes of other southeastern *Elliptio.*

O'Brien and Williams (2002, p. 153) observed in the laboratory that purple bankclimber conglutinates readily disintegrated when they contained mature glochidia, and these were easily suspended in the water by the aerators in their holding tanks. They speculated that the species may rely on stream currents to carry glochidia to host fish, which is typical of host-fish generalist species. Of the 14 fish species they tested as potential hosts, only a few species transformed glochidia, including the eastern mosquitofish and blackbanded darter. Only the mosquito fish was 100 percent effective (all fish tested transformed glochidia), but it is an unlikely primary host fish. The mosquito fish occupies backwater areas and stream margins with little or no current (Lee *et al.* 1980, p. 1–854), while the bankclimber is found mostly in the main channels of larger streams and rivers. The primary host fishes of the purple bankclimber are still unknown.

Data that might suggest densities of the various primary host fish species named above that are sufficient to support normal mussel recruitment and dispersal rates are not available. Stochastic simulations of fish'mussel interactions indicate that mussel populations are extirpated if a threshold host fish density is not exceeded (Watters 1997, p. 60). Further studies of fish and mussel population dynamics are necessary to quantify species-specific thresholds; however, we recognize that the presence of host fish is a biological habitat feature essential to the conservation of the seven mussels.

Primary Constituent Elements for Five Endangered and Two Threatened Mussels

Based on our current knowledge of the life history, biology, and ecology of the seven mussels, and of the habitat features necessary to support their essential life history functions in areas occupied at the time of listing, summarized above, we have determined that the PCEs are:

(1) A geomorphically stable stream channel (a channel that maintains its lateral dimensions, longitudinal profile, and spatial pattern over time without an aggrading or degrading bed elevation);

(2) A predominantly sand, gravel, and/or cobble stream substrate;

(3) Permanently flowing water;

(4) Water quality (including temperature, turbidity, dissolved oxygen, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387); and

(5) Fish hosts (such as largemouth bass, sailfin shiner, brown darter) that support the larval life stages of the seven mussels.

Criteria Used To Identify Critical Habitat

We are proposing to designate as critical habitat areas that were occupied at the time of listing by one or more of the seven mussels and that contain one or more of the PCEs to support life history functions essential to the conservation of the species. This section describes how we identified those streams and delineated the upstream and downstream boundaries of 11 proposed critical habitat units.

We began our analysis by examining the full extent of each species' historical and current range. As discussed under ''Summary of Threats to Surviving Populations'' above, the declining range and abundance of the seven mussels is due mostly to changes in their riverine habitats resulting from dams, dredging, mining, channelization, pollution, sedimentation, and water withdrawals. The Econfina, ACF, Ochlockonee, and Suwannee drainages contain about 54,000 km (33,500 mi) of perennial streams (USGS 1:100,000 National Hydrography Data). From mussel survey records, the historical range of the seven mussels collectively spanned about 3,300 km (2,050 mi), or 6 percent, of the river and stream channels in these drainages, but no one species accounts for more than about 2,300 km (1,445 mi) of that total (USFWS 2003, p. 78–80). We estimate that the five species listed as endangered are each extirpated from over half of their historical range, and the two threatened species are extirpated from about one-third of theirs, but none are extirpated entirely from the four major drainages in which they each occurred historically. All seven mussels were more widespread and more abundant within each of the four drainages historically.

The largest single portion of the historical range lost to the seven mussels is the mainstem of the Chattahoochee River. The

Chattahoochee comprised over 700 km (435 mi), or almost one-quarter, of the 3,300-km (2,050-mi) collective historical range, and supported the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber. It is now impounded by several major dams for much of its length and no longer supports the listed mussels. With the exception of a single live animal found in Goat Rock Reservoir in 2000, the purple bankclimber appears extirpated from the entire Chattahoochee Basin, but at least one of the other three species persist in three of its tributaries: Uchee Creek, Sawhatchee Creek, and Kirkland Creek. Elsewhere in the four major drainages, the pattern of extirpation is more variable, with one or more of the seven species persisting in portions of a drainage where others have disappeared. The collective range of the seven species now spans about 1,900 km (1,180 mi) of river and stream channels. Within this collective range, the species presently occur in as little as 55 km (34 mi) (the Ochlockonee moccasinshell) to as much as 785 km (488 mi) (the shinyrayed pocketbook) (USFWS 2003, p. 78–80).

To identify the specific areas that were occupied at the time of listing by each of the seven mussels and that contain one or more of the PCEs, we used post-1990 mussel survey results. Because mussels are sedentary and long-lived animals, occupancy is strong evidence that some or all of the PCEs are present, except where it is apparent that one or a few adult individuals remain at a location with little or no possibility of reproducing due to substantial habitat alteration (such as the single purple bankclimber found in Goat Rock Reservoir). It is not feasible to survey all potential habitat for the seven species; therefore, to delineate a species' occupied range in the larger stream network, it is necessary to extrapolate from the available survey data. Most of the tributary streams in the four basins that may support one or more of the seven species have never been surveyed, and we do not propose any unsurveyed streams as critical habitat. We used USGS 1:100,000 digital stream maps to delineate the probable upstream and downstream limits to the seven species' distribution in streams surveyed since 1990, according to the criteria listed below. These limits form the boundaries of proposed critical habitat units as explained below.

(a) The lateral boundaries of a unit are the ordinary high-water marks on each bank of currently occupied streams. We recognize the dynamic nature of riverine systems and that floodplains and riparian areas are integral parts of those systems. Processes that occur and habitat characteristics that are found outside the stream banks are important in maintaining channel morphology, providing energy and nutrients, and protecting the instream environment from pollutants and excessive sediments. Similarly, floodplain and backwater habitats may be important in the life cycle of fish that serve as hosts for mussel larvae. Although factors affecting the PCEs may occur outside the channel, the PCEs themselves occur within the channel.

(b) The upstream boundary of a unit in an occupied stream is the first perennial tributary confluence or first permanent barrier to fish passage (such as a dam) upstream of the upstream-most current occurrence record. Many of the mussel survey sites are located near watershed headwaters. In these areas, the confluence of a tributary typically marks a significant change in the size of the stream and is a logical and recognizable upstream boundary for habitat conditions that are similar to the upstream-most occurrence record. Likewise, a dam or other barrier to fish passage marks the upstream extent to which mussels at the upstream-most occurrence may disperse via their fish hosts. Therefore, proposed segments encapsulate habitat containing essential features used by host fish and the seven mussels for successful natural reproductive process. Habitat above these boundaries does not contain features essential to the conservation of the species.

(c) The downstream boundary of a unit in an occupied stream is the mouth of the stream, the upstream extent of tidal influence, or the upstream extent of an impoundment, whichever comes first, downstream of the downstream-most occurrence record. Many survey sites are located near the mouths of streams, the upstream extent of impoundments, or the upstream extent of tidal influence. Survey locations are typically at road crossings, because that is where surveyors can most easily gain access to the stream. These road crossings do not typically represent a meaningful ecological boundary for longitudinal stream habitat conditions. Mussels are dispersed via host fish, and because these host fish traverse freely in the area between the upstream most occurrence and any existing downstream restriction to fish passage, larvae drop off their host fish at random points along the stream flow segments traversed by fish. Further, the sperm of all seven species and the conglutinates (glochidia packets) of some of the seven may be carried downstream by currents and are viable for several hours to several days unless they reach unsuitable habitat conditions, such as intolerable salinity or still water, in which either would sink to the bottom and be smothered in the sediments. Therefore, we are proposing stream segments that have mussel point locations from the upstream limit as defined in (b) above to the downstream location where the PCEs are no longer present.

The application of these criteria resulted in the identification of 11 units occupied by one or more of the seven mussels and that contain one or more of the PCEs as indicated by the presence and persistence of one or more of the listed mussels (see ''Proposed Critical Habitat Designation''). Based on fish distributional records (Lee *et al.* 1980, p. 1–854) and our experience sampling fish in these drainages, these areas also support shiners, darters, and other fishes that have been identified as hosts or potential hosts for one or more of the seven mussels. Further, on the basis of a review of the information available, we have determined that areas not currently known to be occupied by the seven mussels do not appear to be essential to their conservation. As such, we have not included any areas not known to be occupied by these mussel species in this proposed designation.

When determining the boundaries of proposed critical habitat for the seven mussels, we made every effort to avoid manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings and roads. Any such structures inadvertently left inside the critical habitat boundaries have been excluded by the text in this proposed rule and are not proposed for designation.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and containing the PCEs may require special management considerations or protections. Activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the PCEs that are found in the unit. These activities include, but are not limited to, those listed in the Adverse Modification Standard section as activities that may destroy or adversely modify critical habitat. We find that the features essential to each of the seven mussel species contained within the areas proposed for designation may require special management considerations or protections due to known or probable

threats from these activities. We summarize here the nature of the threats and the resulting conservation needs for both the mussels and their host fish across the range of the seven mussels.

Sedimentation is an almost ubiquitous threat in the range of the seven mussels. A wide variety of activities, such as livestock grazing, road and bridge construction, clear-cut logging, and off-road vehicle use, that are common in all 11 units may increase erosion rates, either in the banks of the stream channel itself or elsewhere in the watershed, and cause the accumulation of fine sediments on the stream bed. Management considerations to deal with this threat include protecting streams from sedimentation through application of agricultural and forestry best management practices, avoiding soil- and vegetation-disturbing activity in the riparian zone, restoring unstable stream channels and other erosive areas, and other practices that prevent or reduce erosion.

Urbanization, road and bridge construction, and other large-scale alterations of land cover that substantially alter the runoff characteristics of the watershed may threaten channel stability in units near the major urban areas of Dothan, Alabama (unit 2); Panama City and Tallahassee, Florida (units 1 and 10); Albany, Atlanta, and Columbus, Georgia (units 3, 5, 6, and 7); and other cities. Management considerations to deal with the threat of channel instability include avoiding soil- and vegetation-disturbing activity in the riparian zone, limiting impervious surface area, and other urban storm water runoff control methods. Sand and gravel mining (unit 3), dredging and channelization (unit 8), and dam construction (unit 5) may also affect channel stability.

The construction and operation of dams, water withdrawals, and water diversions may alter features of the flow regime important to the mussels and their host fishes. This threat is present to some degree in all 11 proposed units, but is greatest in units 5, 6, 7, 8, and 10, which are downstream of the major mainstem dams or in areas of relatively high municipal, industrial, or agricultural water use. Measures to deal with this threat include water conservation and operational strategies that manage water storage capacity and water demands in combination to minimize departures from the natural flow regime.

Water pollution, especially from non-point (dispersed release) sources, is another almost ubiquitous threat in all 11 units. Water quality is reported as impaired or potentially impaired in some portions of all four river basins within the current range of the seven mussels, according to the water quality agencies of the three States in their periodic assessments under Section 305(b) of the Clean Water Act (CWA) (see ''Summary of Threats to Surviving Populations''). Streams that receive a high proportion of their flow from the discharge of springs are vulnerable to nutrient enrichment from fertilizers and to other pollutants applied in the recharge areas of those springs (units 1, 2, and 7), which may extend far from the streams themselves. Management considerations to deal with the threat of pollution include applying agricultural and forestry best management practices, preserving native vegetation in riparian zones, maintaining septic systems, and taking other measures to minimize pollutant-laden runoff to streams.

Proposed Critical Habitat Designation

We are proposing 11 groups of river and stream segments (units) as critical habitat for the seven mussels. The river and stream segments comprising each unit are contiguous to allow for the movement of fish hosts dispersing the larval life stages of the seven mussels within the unit. Barriers to the movement of fish hosts (dams and salt water) separate the units from each other. The critical habitat units described below constitute our best assessment at this time of areas that were occupied by one or more of the seven mussels at the time of listing (1998) and which contain the physical and biological features essential to the each of the mussel species. Each unit is designated only for those species that currently occupy it. Each unit contains one or more of the PCEs, and may require special management considerations or protection to address the threats noted above. The 11 units, and the States in which they occur, are: (1) Econfina Creek (FL), (2) Chipola River (AL, FL), (3) Uchee Creek (AL), (4) Sawhatchee Creek and Kirkland Creek (GA), (5) Upper Flint River (GA), (6) Middle Flint River (GA), (7) Lower Flint River (GA), (8) Apalachicola River (FL), (9) Upper Ochlockonee River (FL, GA), (10) Lower Ochlockonee River (FL), and (11) Santa Fe River and New River (FL). Collectively, the total length of the river and stream segments of all of the areas (units) proposed is approximately 1,864 km (1,158 mi). Table 1 shows the approximate length of rivers and streams proposed as occupied critical habitat for each of the seven mussels in the 11 units.

Species, critical habitat unit, and state(s)	Currently occupied	
	Kilometers	Miles
Fat threeridge		
2. Chipola River, AL, FL	190.0	118.1
8. Apalachicola River, FL	155.4	96.6
Total	345.4	214.7
Shinyrayed pocketbook		
2. Chipola River, AL, FL	190.0	118.1
3. Uchee Creek, AL	34.2	21.2
4. Sawhatchee Creek and Kirkland Creek, GA	37.8	23.5
5. Upper Flint River, GA	380.4	236.4
6. Middle Flint River, GA	302.3	187.8
7. Lower Flint River, GA	396.7	246.5
9. Upper Ochlockonee River, FL, GA	177.3	110.2
Total	1518.7	943.7
Gulf moccasinshell		
1. Econfina Creek, FL	31.4	19.5
2. Chipola River, AL, FL	190.0	118.1

Species, critical habitat unit, and state(s)	Currently occupied	
	Kilometers	Miles
4. Sawhatchee Creek and Kirkland Creek, GA	37.8	23.5
5. Upper Flint River, GA	380.4	236.4
6. Middle Flint River, GA	302.3	187.8
7. Lower Flint River, GA	396.7	246.5
Total	1338.3	831.8
Ochlockonee moccasinshell		
9. Upper Ochlockonee River, FL, GA	177.3	110.2
Total	177.3	110.2
Oval pigtoe		
1. Econfina Creek, FL	31.4	19.5
2. Chipola River, AL, FL	190.0	118.1
4. Sawhatchee Creek and Kirkland Creek, GA	37.8	23.5
5. Upper Flint River, GA	380.4	236.4
6. Middle Flint River, GA	302.3	187.8
7. Lower Flint River, GA	396.7	246.5
9. Upper Ochlockonee River, FL, GA	177.3	110.2
11. Santa Fe and New Rivers, FL	83.1	51.6
Total	1598.7	993.6
Chipola slabshell		
2. Chipola River, AL, FL	190.0	118.1
Total	190.0	118.1
Purple bankclimber		
5. Upper Flint River, GA	380.4	236.4
6. Middle Flint River, GA	302.3	187.8
7. Lower Flint River, GA	396.7	246.5
8. Apalachicola River, FL	155.4	96.6
9. Upper Ochlockonee River, FL, GA	177.3	110.2
10. Lower Ochlockonee River, FL	75.4	46.9
Total	1487.2	924.4
Total Proposed for All 11 Units (All Species)	1864.0	1158.3

Brief descriptions of each unit follow, listing the rivers and streams included, the upstream and downstream extent of the unit in those rivers and streams, and which of the seven mussels were present at the time of listing. Each critical habitat unit includes the channels of the rivers and streams listed between the ordinary high water mark on each bank, which is defined in 33 CFR 329.11 as ''the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.'' In the unit descriptions, distances between landmarks marking the upstream or downstream extent of a particular stream in the unit are given in kilometers (km) and equivalent miles (mi), as measured tracing the course of the stream, not straight-line distance.

Unit 1: Econfina Creek, Florida

Unit 1 includes the main stem of Econfina Creek and one of its tributaries in Bay and Washington counties, Florida, encompassing a total stream length of 31.4 km (19.5 mi). The main stem of Econfina Creek as proposed extends from its confluence with Deer Point Lake at the powerline crossing located 3.8 km (2.3 miles) downstream of Bay County Highway 388, Bay County, Florida, upstream 28.6 km (17.8 mi) to Tenmile Creek in Washington County, Florida. Unit 1 also includes the tributary stream Moccasin Creek from its confluence with Econfina Creek upstream 2.8 km (1.7 mi) to Ellis Branch in Bay County. Unit 1 is designated for the Gulf moccasinshell and oval pigtoe (Blalock-Herod unpub. data 2002–03; Brim Box unpub. data 1996; Williams unpub. data 1993).

Unit 2: Chipola River, Alabama and Florida

Unit 2 includes the main stem of the Chipola River (including the reach known as Dead Lake) and six of its tributaries, encompassing a total stream length of 190.0 km (118.1 mi) in Houston County, Alabama; and in Calhoun, Gulf, and Jackson counties, Florida. The main stem of the Chipola River as proposed extends from its confluence with the Apalachicola River in Gulf County, Florida, upstream 144.9 km (90.0 mi) to the confluence of Marshall and Cowarts creeks in Jackson County, Florida. A short segment of the Chipola River that flows underground within the boundaries of Florida Caverns State Park in Jackson County, Florida, is not included in Unit 2. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The tributaries of the Chipola River included in Unit 2 are: Dry Creek,

from the Chipola River upstream 7.6 km (4.7 mi) to Ditch Branch in Jackson County, Florida; Rocky Creek, from the Chipola River upstream 7.1 km (4.4 mi) to Little Rocky Creek in Jackson County, Florida; Waddells Mill Creek, from the Chipola River upstream 3.7 km (2.3 mi) to Russ Mill Creek in Jackson County, Florida; Baker Creek, from Waddells Mill Creek upstream 5.3 km (3.3 mi) to the confluence with Tanner Springs in Jackson County, Florida; Marshall Creek, from the Chipola River upstream 13.7 km (8.5 mi) to the Alabama-Florida State line in Jackson County, Florida (this creek is known as Big Creek in Alabama); and Big Creek, from the Alabama-Florida State line upstream 7.8 km (4.9 mi) to Double Bridges Creek in Houston County, Alabama.

This unit is designated for the fat threeridge (Brim Box and Williams 2000, p. 92–93; Miller 1998, p. 54), shinyrayed pocketbook (Williams unpub. data 2002; Brim Box and Williams 2000, p. 109–110; Smith unpub. data 2001; Blalock-Herod unpub. data 2000, 2003; Butler unpub. data 1993, 1994, 1999, 2000); Gulf moccasinshell (Butler unpub. data 1999, 2002; Brim Box and Williams 2000, p. 113–114; D.N. Shelton pers. comm. 1998); oval pigtoe (Butler unpub. data 1993, 1999, 2002; Brim Box and Williams 2000, p. 116–117; Williams unpub. data 2000); and Chipola slabshell (Butler unpub. data 1993, 2000; Brim Box and Williams 2000, p. 95–96).

Unit 3: Uchee Creek, Alabama

Unit 3 encompasses 34.2 km (21.2 mi) of the main stem of Uchee Creek from its confluence with the Chattahoochee River upstream to Island Creek in Russell County, Alabama. This unit is designated for the shinyrayed pocketbook (Brim Box and Williams 2000, p. 109–110; Gangloff unpublished data 2005).

Unit 4: Sawhatchee Creek and Kirkland Creek, Georgia

Unit 4 includes the main stems of Sawhatchee Creek and Kirkland Creek and one tributary of Sawhatchee Creek, encompassing a total stream length of 37.8 km (23.5 mi) in Early County, GA. The main stem of Sawhatchee Creek as proposed extends from its confluence with the Chattahoochee River upstream 28.6 km (17.8 mi) to the powerline crossing located 1.4 km (0.87 mi) upstream of County Road 15, Early County, GA. The main stem of Kirkland Creek extends from its confluence with the Chattahoochee River upstream 6.1 km (3.8 mi) to Dry Creek, Early County, GA. The tributary, Sheffield Mill Creek, is included from its confluence with Sawhatchee Creek upstream 3.1 km (1.9 mi) to the powerline crossing located 2.3 km (1.4 mi) upstream of Sowhatchee Road, Early County, GA. Unit 4 is designated for the shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe (Brim Box and Williams 2000, p. 109–110, 113–114, 116–117; Abbott pers. comm. 2005; Stringfellow pers. comm. 2003).

Unit 5: Upper Flint River, Georgia

Unit 5 includes the main stem of the Flint River and eight of its tributaries upstream of Lake Blackshear, plus two tributaries that flow into Lake Blackshear, encompassing a total stream length of 380.4 km (236.4 mi) in Coweta, Crawford, Crisp, Dooly, Fayette, Macon, Meriwether, Peach, Pike, Spalding, Sumter, Talbot , Taylor, Upson, and Worth counties, Georgia. The main stem of the Flint River in proposed Unit 5 extends from the State Highway 27 bridge (Vienna Road) in Dooly and Sumter counties, Georgia (the river is the county boundary), upstream 247.4 km (153.7 mi) to Horton Creek in Fayette and Spalding counties, Georgia (the river is the county boundary). The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The nine tributary streams in Unit 5 are: Swift Creek, from Lake Blackshear upstream 11.3 km (7 mi) to Rattlesnake Branch in Crisp and Worth counties, Georgia (the creek is the county boundary); Limestone Creek, from Lake Blackshear in Crisp County, Georgia, upstream 8.8 km (5.5 mi) to County Road 89 in Dooly County, Georgia; Turkey Creek, from the Flint River upstream 21.7 km (13.5 mi) to Rogers Branch in Dooly County, Georgia; Pennahatchee Creek, from Turkey Creek upstream 4.8 km (3 mi) to Little Pennahatchee Creek in Dooly County, Georgia; Little Pennahatchee Creek, from Pennahatchee Creek upstream 5.8 km (3.6 mi) to Rock Hill Creek in Dooly County, Georgia; Hogcrawl Creek, from the Flint River upstream 21.6 km (13.4 mi) to Little Creek in Dooly and Macon counties, Georgia (the creek is the county boundary); Red Oak Creek, from the Flint River upstream 21.7 km (13.5 mi) to Brittens Creek in Meriwether County, Georgia; Line Creek, from the Flint River upstream 15.8 km (9.8 mi) to Whitewater Creek in Coweta and Fayette counties, Georgia (the creek is the county boundary); and Whitewater Creek, from Line Creek upstream 21.5 km (13.4 mi) to Ginger Cake Creek in Fayette County, Georgia.

Unit 5 is designated for the shinyrayed pocketbook (Dinkins pers. comm. 1999, 2003; P.D. Johnson pers. comm. 2003; Brim Box and Williams 2000, p. 109–110; Roe 2000; L. Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997; Butler and Brim Box 1995, p. 3); Gulf moccasinshell (Edwards Pittman Environmental 2004; McCafferty pers. comm. 2003; Dinkins pers. comm. 2002; Brim Box and Williams 2000, p. 113–114; Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997; Butler and Brim Box 1995, p. 3); oval pigtoe (Edwards Pittman Environmental 2004; McCafferty pers. comm. 2003; Dinkins pers. comm. 2002, 2003; Stringfellow pers. comm. 2000, 2003; Abbott pers. comm. 2001; Brim Box and Williams 2000, p. 116–117; Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997); and purple bankclimber (Winterringer CCR pers. comm. 2003; Dinkins pers. comm. 2003; P.D. Johnson pers. comm. 2003; Albanese pers. comm. 2003 regarding unpub. data from De Genachete and CCR; Brim Box and Williams 2000, p. 105–106; E. Van De Genachete pers. comm. 1999).

Unit 5 is divided into two maps in the Proposed Regulation Promulgation section of this proposed rule, one for the southern part and one for the northern part of the unit. The ''match line'' for joining these two maps is where the county boundary between Crawford and Upson counties, Georgia, meets the Flint River.

Unit 6: Middle Flint River, Georgia

Unit 6 includes the main stem of the Flint River between Lake Worth (impounded by the Flint River Dam near Albany) and the Warwick Dam (which impounds Lake Blackshear), and nine tributaries, encompassing a total stream length of 302.3 km (187.8 mi) in Dougherty, Lee, Marion, Schley, Sumter, Terrell, Webster, and Worth counties, Georgia. The main stem of the Flint River in Unit 6 extends from Piney Woods Creek in Dougherty County, Georgia (the approximate upstream extent of Lake Worth), upstream 39.9 km (24.8 mi) to the Warwick Dam in Lee and Worth counties, Georgia. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The nine tributaries of the Middle Flint River in Unit 6 are: Kinchafoonee Creek, from the Lee-Dougherty county line (the approximate upstream extent of Lake Worth) upstream 107.6 km (66.8 mi) to Dry Creek in Webster County, Georgia; Lanahassee Creek, from Kinchafoonee

Creek upstream 9.3 km (5.8 mi) to West Fork Lanahassee Creek in Webster County, Georgia; Muckalee Creek, from the Lee'Dougherty county line (the approximate upstream extent of Lake Worth) upstream 104.5 km (64.9 mi) to County Road 114 in Marion County, Georgia; Little Muckalee Creek, from Muckalee Creek in Sumter County, Georgia, upstream 7.2 km (4.5 mi) to Galey Creek in Schley County, Georgia; Mill Creek, from the Flint River upstream 3.2 km (2 mi) to Mercer Millpond Creek in Worth County, Georgia; Mercer Millpond Creek, from Mill Creek upstream 0.45 km (0.28 mi) to Mercer Millpond in Worth County, Georgia; Abrams Creek, from the Flint River upstream 15.9 km (9.9 mi) to County Road 123 in Worth County, Georgia; Jones Creek, from the Flint River upstream 3.8 km (2.4 mi) to County Road 123 in Worth County, Georgia; and Chokee Creek, from the Flint River upstream 10.5 km (6.5 mi) to Dry Branch Creek in Lee County, Georgia.

Unit 6 is designated for the shinyrayed pocketbook (Crow CCR pers. comm. 2004; Edwards Pittman Environmental 2004; Albanese pers. comm. 2003 regarding unpub. data from CCR; DeGarmo unpub. data 2002; McCafferty pers. comm. 2000, 2001; Golladay unpub. data 2001, 2002; P. Johnson unpub. data 1999; Blalock-Herod unpub. data 1997; Dinkins pers. comm. 1995; Brim Box and Williams 2000, p. 109–110), Gulf moccasinshell (Wisnewski unpub. data 2005; DeGarmo unpub. data 2002; Albanese pers. comm. 2003 regarding unpub. data from D. Shelton; P. Johnson unpub. data 1999; Brim Box and Williams 2000, p. 113–114; Weston 1995), oval pigtoe (Wisnewski unpub. data 2005; Crow CCR pers. comm. 2004; Albanese pers. comm. 2003 regarding unpub. data from CCR; DeGarmo unpub. data 2002; Stringfellow unpub. data 2002; Golladay unpub. data 2001, 2002; Brim Box and Williams 2000, p. 116–117; P. Johnson unpub. data 1999; Blalock-Herod unpub. data 1997; Weston 1995), and purple bankclimber (Tarbell 2004; Brim Box and Williams 2000, p. 105–106).

Unit 6 is divided into two maps in the Proposed Regulation Promulgation section of this proposed rule, one for the western part and one for the eastern part of the unit. The ''match line'' for joining these two maps is Lake Worth in Dougherty County, Georgia.

Unit 7: Lower Flint River, Georgia

Unit 7 includes the main stem of the Flint River between Lake Seminole (impounded by the Jim Woodruff Lock and Dam) and the Flint River Dam (which impounds Lake Worth), and nine tributaries, encompassing a total stream length of 396.7 km (246.5 mi) in Baker, Calhoun, Decatur, Dougherty, Early, Miller, Mitchell, and Terrell counties, GA. The main stem of the Flint River in Unit 7 extends from its confluence with Big Slough in Decatur County, GA (the approximate upstream extent of Lake Seminole) upstream 116.4 km (72.3 mi) to the Flint River Dam in Dougherty County, GA. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The nine tributaries of the Lower Flint River in Unit 7 are: Spring Creek, from Smith Landing in Decatur County, Georgia (the approximate upstream extent of Lake Seminole), upstream 74.2 km (46.1 mi) to County Road 35 in Early County, Georgia; Aycocks Creek, from Spring Creek upstream 15.9 km (9.9 mi) to Cypress Creek in Miller County, Georgia; Dry Creek, from Spring Creek upstream 9.9 km (6.1 mi) to Wamble Creek in Early County, Georgia; Ichawaynochaway Creek, from the Flint River in Baker County, Georgia, upstream 68.6 km (42.6 mi) to Merrett Creek in Calhoun County, Georgia; Mill Creek, from Ichawaynochaway Creek upstream 7.4 km (4.6 mi) to County Road 163 in Baker County, Georgia; Pachitla Creek, from Ichawaynochaway Creek upstream 18.9 km (11.8 mi) to Little Pachitla Creek in Calhoun County, Georgia; Little Pachitla Creek, from Pachitla Creek upstream 5.8 km (3.6 mi) to Bear Branch in Calhoun County, Georgia; Chickasawhatchee Creek, from Ichawaynochaway Creek in Baker County, GA, upstream 64.5 km (40.1 mi) to U.S. Highway 82 in Terrell County, Georgia; and Cooleewahee Creek, from the Flint River upstream 15.1 km (9.4 mi) to Piney Woods Branch in Baker County, Georgia.

Unit 7 is designated for the shinyrayed pocketbook (Gangloff 2005; McCafferty pers. comm. 2004; Stringfellow unpub. data 2003; Dinkins pers. comm. 2001, 2003; Golladay unpub. data 2001, 2002; P. Johnson unpub. data 1999; Albanese pers. comm. 2003 regarding unpub. data from CCR; Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997; Brim Box and Williams 2000, p. 109–110; Butler unpub. data 1993), Gulf moccasinshell (Abbott pers. comm. 2005; Golladay unpub. data 2001, 2002; P. Johnson unpub. data 1999; Brim Box and Williams 2000, p. 113–114; Butler unpub. data 1998; Blalock-Herod unpub. data 1997), oval pigtoe (Dinkins pers. comm. 2001; Golladay unpub. data 2001, 2002; Andrews pers. comm. 2000; Brim Box and Williams 2000, p. 116–117; P. Johnson unpub. data 1999; Butler unpub. data 1998; Blalock-Herod unpub. data 1997), and purple bankclimber (S. Carlson unpub. data 2002; Brim Box and Williams 2000, p. 105–106).

Unit 7 is divided into two maps in the Proposed Regulation Promulgation section of this proposed rule, one for the western part and one for the eastern part of the unit. The western part (Map 10) depicts the Spring Creek system and the eastern part (Map 11) depicts the lower Flint River system.

Unit 8: Apalachicola River, Florida

Unit 8 includes the main stem of the Apalachicola River and two distributaries (channels flowing out of the main stem), encompassing a total stream length of 155.4 km (96.6 mi) in Calhoun, Franklin, Gadsden, Gulf, Jackson, and Liberty counties, Florida. The main channel of the Apalachicola River in Unit 8 extends from the downstream end of Bloody Bluff Island (river mile 15.3 on U.S. Army Corps of Engineers Navigation Charts) in Franklin County, Florida, upstream to the Jim Woodruff Lock and Dam in Gadsden and Jackson counties, Florida (the river is the county boundary). The upstream extent of each distributary within the unit is its point of departure from the main channel of the Apalachicola River, and the downstream extent is the landmark listed. The two distributaries of the Apalachicola River in Unit 6 are: Chipola Cutoff, from the Apalachicola River in Gulf County, Florida, downstream 4.5 km (2.8 mi) to its confluence with the Chipola River in Gulf County, Florida; and Swift Slough, from the Apalachicola River in Liberty County, Florida, downstream 3.6 km (2.2 mi) to its confluence with the River Styx in Liberty County, Florida.

Unit 8 is designated for the fat threeridge (Brim Box and Williams 2000, p. 92–93; Williams unpub. data 2000; Miller 1998, p. 54, 2000; Richardson and Yokley 1996, p. 137; Flakes 2001) and purple bankclimber (Brim Box and Williams 2000, p. 105–106; Miller 1998, p. 55, 2000; Richardson and Yokley 1996, p. 137; Butler unpub. data 1993; Flakes 2001).

Unit 9: Upper Ochlockonee River, Florida, Georgia

Unit 9 includes the main stem of the Ochlockonee River upstream of Lake Talquin (impounded by the Jackson Bluff Dam) and three tributaries, encompassing a total stream length of 177.3 km (110.2 mi) in Gadsden and

Leon counties, Florida, and Grady and Thomas counties, Georgia. The main stem of the Ochlockonee River in Unit 9 extends from its confluence with Gulley Branch (the approximate upstream extent of Lake Talquin) in Gadsden and Leon counties, Florida (the river is the county boundary), upstream to Bee Line Road/County Road 306 in Thomas County, Georgia. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The three tributary streams in Unit 9 are: Barnetts Creek, from the Ochlockonee River upstream 20 km (12.4 mi) to Grady County Road 170/ Thomas County Road 74 in Grady and Thomas counties, Georgia (the creek is the county boundary); West Barnetts Creek, from Barnetts Creek upstream 10 km (6.2 mi) to GA Highway 111 in Grady County, Georgia; and Little Ochlockonee River, from the Ochlockonee River upstream 13.3 km (8.3 mi) to Roup Road/County Road 33 in Thomas County, Georgia.

Unit 9 is designated for the shinyrayed pocketbook (Blalock-Herod 2003, p. 1; McCafferty pers. comm. 2003; Williams unpub. data 1993), Ochlockonee moccasinshell (Brim Box and Williams 2000, p. 60; Williams and Butler 1994, p. 64), oval pigtoe (Edwards Pittman Environmental 2004; Blalock-Herod unpub. data 2003; Blalock-Herod 2003, p. 1; Williams unpub. data 1993), and purple bankclimber (Blalock-Herod unpub. data 2003; Blalock-Herod 2002, p. 1; Smith FDOT unpub. data 2001; Williams unpub. data 1993).

Unit 10: Lower Ochlockonee River, Florida

Unit 10 encompasses 75.4 km (46.9 mi) of the main stem of the Ochlockonee River from its confluence with Syfrett Creek in Wakulla County, Florida, upstream to the Jackson Bluff Dam (which impounds Lake Talquin) in Leon and Liberty counties, Florida. Unit 10 is designated for the purple bankclimber (Blalock-Herod unpub. data 2003; Williams unpub. data 1993).

Unit 11: Santa Fe River and New River, Florida

Unit 11 includes the main stem of the Santa Fe River and its tributary the New River, encompassing a total stream length of 83.1 km (51.6 mi) in Alachua, Bradford, Columbia, and Union counties, Florida. The main stem of the Santa Fe River as proposed extends from where the river goes underground in O'Leno State Park in Alachua and Columbia counties, Florida (the river is the county boundary) upstream 60.2 km (37.4 mi) to the powerline crossing located 1.9 km (1.2 mi) downstream of U.S. Highway 301 in Alachua and Bradford counties, Florida (the river is the county boundary). The New River in proposed Unit 11 extends from its confluence with the Santa Fe River at the junction of Alachua, Bradford, and Union counties, Florida, upstream 22.9 km (14.2 mi) to McKinney Branch in Bradford and Union counties, Florida (the river is the county boundary). Unit 11 is designated for the oval pigtoe (Blalock-Herod and Williams 2001, p. 5; Blalock-Herod 2000, p. 1–72; Williams unpub. data 1993, 1996–98).

Existing Critical Habitat

Of the proposed critical habitat for the seven mussels, 147.3 km (91.5 mi) are already designated critical habitat for the Gulf sturgeon (Acipenser oxyrinchus desotoi) (68 FR 13370; March 19, 2003), which was listed as a threatened species under the Act on September 30, 1991 (56 FR 49653). The area in common between the proposed mussels' habitat and the designated sturgeon habitat is entirely within Unit 8, the Apalachicola River.

Land Ownership

States were granted ownership of lands beneath navigable waters up to the ordinary high water mark upon achieving statehood (*Pollard* v. *Hagan,* 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties that included lands below the ordinary high water mark of some navigable waters that are included in this proposal. We believe that most, if not all, lands beneath the navigable waters included in this proposed rule are owned by the States of Alabama, Florida, and Georgia. The lands beneath most nonnavigable waters and most riparian lands along the navigable and nonnavigable waters included in this proposed rule are in private ownership. Table 2 lists the parcels of publicly owned lands within or adjacent to each proposed critical habitat unit. Units not listed do not contain publicly owned lands.

TABLE 2.—PUBLIC LANDS WITHIN OR ADJACENT TO PROPOSED CRITICAL HABITAT UNITS

Critical habitat unit	Public lands
1. Econfina Creek	Econfina Creek WtrMA.
2. Chipola River	Upper Chipola River WtrMA, South Marianna Trail and Canoe Launch, Apalachicola River WtrMA, Apalachicola River WEA, Chipola River GW, Florida Caverns SP, Judges Cave WEA, Marianna GW.
5. Upper Flint	Joe Kurz WMA, Sprewell Bluff SP and WMA, Big Lazer WMA, Montezuma NA, Flint River WMA.
7. Lower Flint	Flint River GW, Radium Springs Tract, Chickasawhatchee Flint WMA, Elmodel WMA, Lake Seminole WMA.
8. Apalachicola River	Angus Gholson Jr. Nature Park of Chattahoochee, Apalachicola River WtrMA, Apalachicola River WEA, Fort Gadsden HS, Torreya SP, Apalachicola NF.
9. Upper Ochlockonee	Joe Budd WMA, Lake Talquin SF.
10. Lower Ochlockonee	Lake Talquin SP, Lake Talquin SF, Tate's Hell SF, Apalachicola NF.
11. Santa Fe River and New River	Santa Fe River Ranch, O'Leno SP, River Rise Preserve SP, Graham CA, Palatka-Lake Butler ST.

Abbreviations: CA = Conservation Area, GW = Greenway, HS = Historic Site, NA = Natural Area, NF = National Forest, SF = State Forest, SP = State Park, ST = State Trail, WEA = Wildlife and Environmental Area, WMA = Wildlife Management Area, WtrMA = Water Management Area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and*

Wildlife Service et al., 245 F.3d 434, 442F (5th Cir 2001). Also see discussion on Role of Critical Habitat above) have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects on the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects on proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). Any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect any of the seven species or their designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the USACE under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Seven Mussels and Their Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for jeopardy analyses of the seven mussels that relies heavily on the importance of core area populations to the mussels' survival and recovery. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the seven mussels in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete

section 7(a)(2) analyses for Federal actions affecting the seven mussels' critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of the seven mussels' critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the seven mussels is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the seven mussels include, but are not limited to:

(1) Actions that would induce channel instability or significantly alter channel morphology. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, destruction of riparian vegetation, and changes in land cover, such as urbanization and clear-cut logging, that substantially alter the runoff characteristics of the watershed. These activities may alter sediment and water discharge in the channel, which results in smothering the stream bed with, or eroding it to, materials that are unsuitable substrates for the normal behavior, growth, and survival of the adult and juvenile life stages. These activities may initiate or accelerate bank erosion, which results in wider and shallower channels, more extreme temperatures, and chemical properties that are unsuitable for the normal behavior, growth, and survival of one or more life stages.

(2) Actions that would significantly decrease the proportion of coarse sediments (sand, gravel, cobble) in the stream bed. Such activities could include, but are not limited to, sedimentation from livestock grazing, road and bridge construction, mining, dredging, timber harvest, off-road vehicle use, and other activities that increase erosion rates in the channel or the watershed and deposition of fine sediments. These activities could reduce or eliminate the coarse substrates that provide for the normal behavior, growth, and survival of all life stages, and could increase the exposure of the juvenile and adult life stages to harmful contaminants that adhere to fine sediments.

(3) Actions that would significantly alter the flow regime. Such activities could include, but are not limited to, the construction and operation of dams, water withdrawals, water diversions, and changes in land cover that substantially alter the runoff characteristics of the watershed, such as urbanization and clear-cut logging. These activities could alter the spatial distribution, timing, and duration of depths and velocities in the channel that provide for the normal behavior, growth, and survival of one or more mussel life stages.

(4) Actions that would significantly alter physical and chemical water conditions. Such activities could include, but are not limited to, the release of chemicals, nutrients, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions that provide for the normal behavior, growth, and survival of one or more mussel life stages. These activities could promote the excessive growth of filamentous algae and other organisms that preclude the normal behavior, growth, and survival of one or more mussel life stages.

(5) Actions that would significantly reduce the density of host fishes. Such activities could include, but are not limited to, channelization, impoundment, mining, and dredging. These activities could alter the composition of the fish community such that the rate of host fish infection and completion of the larval life stage is too low to sustain a stable or increasing mussel population and normal rates of dispersal and genetic exchange with other areas.

We consider all of the units proposed as critical habitat to contain features essential to the conservation of the seven mussels. All of the units are within the geographic range of the seven species, were occupied at the time of listing (based on surveys completed 1990 to 1998), and are likely occupied currently (based on additional surveys between 1998 and the present, and on the longevity and relative immobility of mussels). Federal agencies already consult with us on actions in areas currently occupied by and that may affect the seven mussels to ensure that these actions do not jeopardize the mussels' continued existence.

Application of Section 3(5)(a) and Exclusions Under Section 4(b)(2) of the Act

The 11 units we propose as critical habitat satisfy the definition of critical habitat under section 3(5)(A) of the Act in that each is a specific area within the geographical area occupied by one or more of the seven mussels at the time of listing within which are found those physical and biological features that are essential to their conservation and that may require special management considerations or protection (see ''Primary Constituent Elements'', ''Criteria Used to Delineate Critical Habitat'', and ''Special Management Considerations or Protection''). We considered whether conservation activity on publicly or privately managed lands within a proposed unit might remove the need for special management considerations or protection from all or part of a unit.

Several stream reaches within the proposed critical habitat units run through or adjacent to public lands that are managed wholly or partially for conservation purposes (see ''Land Ownership''). None of the management plans for these areas provide assurance of effective conservation for the mussels or features essential to their conservation, because all of the areas are affected to some degree by threats upstream and outside of their boundaries that may degrade one or more of the PCEs within their boundaries. We describe PCE- and unit-specific threats under ''Special Management Considerations or Protection.'' At this time, the Service has not received applications for or issued incidental take permits that would require an HCP for one or more of the seven mussels. Further, we do not foresee not including particular areas in this proposal that are occupied and contain the PCEs but do not require special management or protection.

Under section 4(b)(2) of the Act, we must consider the economic impact, impact on national security, and any other relevant impact of designating areas as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of inclusion.

Benefits of Inclusion

The most direct benefit of critical habitat is that actions taken, authorized, or funded by the Federal government

require consultation under section 7 of the Act to ensure that these actions are not likely to destroy or adversely modify critical habitat (see ''Effects of Critical Habitat Designation—Section 7 Consultation''). This regulatory benefit has two principal limitations. First, it applies only to Federal actions and not to other actions that may destroy or adversely modify critical habitat. Second, it ensures only that designated areas are not destroyed or adversely modified and does not require specific steps toward recovery.

Another benefit of critical habitat is that its designation serves to educate landowners, State and local governments, and the general public. By clearly delineating areas of high conservation value, designation may help focus and promote conservation efforts for the seven mussels. Designation informs State agencies and local governments about areas that they may consider for protection or conservation under State laws or local ordinances.

Benefits of Exclusion

Because the regulatory effect of critical habitat is limited to Federal actions, the non-economic impacts of critical habitat are generally limited to Federal lands, partnerships, and trust resources. We have determined that the streams within the proposed critical habitat units for the seven mussels are not owned or managed by the Department of Defense, there are currently no HCPs for the seven mussels, and the proposed designation does not include any Tribal lands. We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation as proposed.

Based on the best available information, we believe that the benefits of designating each of the 11 units we propose as critical habitat outweigh the non-economic benefits of excluding any specific areas within those units. We will evaluate potential economic benefits of exclusion in a separate notice (see ''Economic Analysis'').

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the seven mussels is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/panamacity/* or by contacting the Panama City, Florida, Fish and Wildlife Office directly (see **ADDRESSES** section). For further explanation, see the ''Regulatory Flexibility Act'' and ''Regulatory Planning and Review'' discussions below.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We intend to schedule public hearings once the draft economic analysis is available so that we can take public comment on the proposed designation and the economic analysis simultaneously. However, we can schedule public hearings on this proposal prior to that time, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at *http://www.fws.gov/panamacity/* or by contacting the Panama City, Florida, Fish and Wildlife Service office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of

economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the seven mussels is a significant rule under Executive Order 12866 in that it may raise novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the proposed units are streams, unauthorized take of the seven mussels within and outside the units is already prohibited, and critical habitat provides no incremental restrictions. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alabama, Florida, and Georgia. The designation of critical habitat in areas currently occupied by the seven mussels, we believe, imposes little to no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local

governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the seven mussels.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands with features essential to the conservation of the seven mussels. Therefore, critical habitat for the seven mussels has not been designated on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Panama City Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this package is the Panama City Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entries for ''Bankclimber, purple (mussel),'' ''Moccasinshell, Gulf,'' ''Moccasinshell, Ochlockonee,'' ''Pigtoe, oval,'' ''Pocketbook, shinyrayed,'' ''Slabshell, Chipola,'' and ''Threeridge, fat (mussel),'' listed in alphabetical order under ''CLAMS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Bankclimber, purple (mussel).	*Elliptoideus sloatianus.*	U.S.A. (AL, FL, GA)	NA	T	633	17.95(f)	NA
*	*	*	*	*	*		*
Moccasinshell, Gulf	*Medionidus penicillatus.*	U.S.A. (AL, FL, GA)	NA	E	633	17.95(f)	NA
*	*	*	*	*	*		*
Moccasinshell, Ochlockonee.	*Medionidus simpsonianus.*	U.S.A. (FL, GA)	NA	E	633	17.95(f)	NA
*	*	*	*	*	*		*
Pigtoe, oval	*Pleurobema pyriforme.*	U.S.A. (AL, FL, GA)	NA	E	633	17.95(f)	NA
*	*	*	*	*	*		*
Pocketbook, shinyrayed.	*Lampsilis subangulata.*	U.S.A. (AL, FL, GA)	NA	E	633	17.95(f)	NA
*	*	*	*	*	*		*
Slabshell, Chipola	*Elliptio chipolaensis*	U.S.A. (AL, FL)	NA	T	633	17.95(f)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Threeridge, fat (mussel).	*Amblema neislerii* ...	U.S.A. (FL, GA)	NA	E	633	17.95(f)	NA
*	*	*	*	*	*		*

3. In § 17.95, at the end of paragraph (f), add an entry for seven mussel species (in four northeast Gulf of Mexico drainages) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

* * * * *

Seven mussel species (in four northeast Gulf of Mexico drainages): purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*).

(1) Critical habitat units are depicted on the maps below for the following counties:

(i) *Alabama:* Houston and Russell;

(ii) *Florida:* Alachua, Bay, Bradford, Calhoun, Columbia, Franklin, Gadsden, Gulf, Jackson, Leon, Liberty, Union, Wakulla, and Washington; and

(iii) *Georgia:* Baker, Calhoun, Clayton, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Grady, Lee, Macon, Marion, Meriwether, Miller, Mitchell, Peach, Pike, Schley, Spalding, Sumter, Talbot, Taylor, Terrell, Thomas, Upson, Webster, and Worth.

(2) The primary constituent elements of critical habitat for the purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*) are:

(i) A geomorphically stable stream channel (a channel that maintains its lateral dimensions, longitudinal profile, and spatial pattern over time without an aggrading or degrading bed elevation);

(ii) A predominantly sand, gravel, and/or cobble stream substrate;

(iii) Permanently flowing water;

(iv) Water quality (including temperature, turbidity, dissolved oxygen, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387); and

(v) Fish hosts (such as largemouth bass, sailfin shiner, brown darter) that support the larval life stages of the seven mussels.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas, and the land on which such structures are located) existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat unit maps. Data layers defining map units were created with USGS National Hydrography Dataset (NHD) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. The following data sources were referenced to identify upstream and downstream extents of critical habitat units: USGS 7.5′ quadrangles; Georgia Department of Transportation county highway maps; U.S. Census Bureau 1:100,000 TIGER line road data; 1993 Georgia digital orthographic quarter quads (DOQQs); 2004 Florida DOQQs; and DeLorme Atlas and Gazetteers for Alabama, Florida, and Georgia. The projection used in mapping all units was Universal Transverse Mercator (UTM), NAD 83, Zone 16 North.

(5) **Note:** Index map (Map 1) showing critical habitat units in the States of Alabama, Florida, and Georgia for the seven mussels follows:

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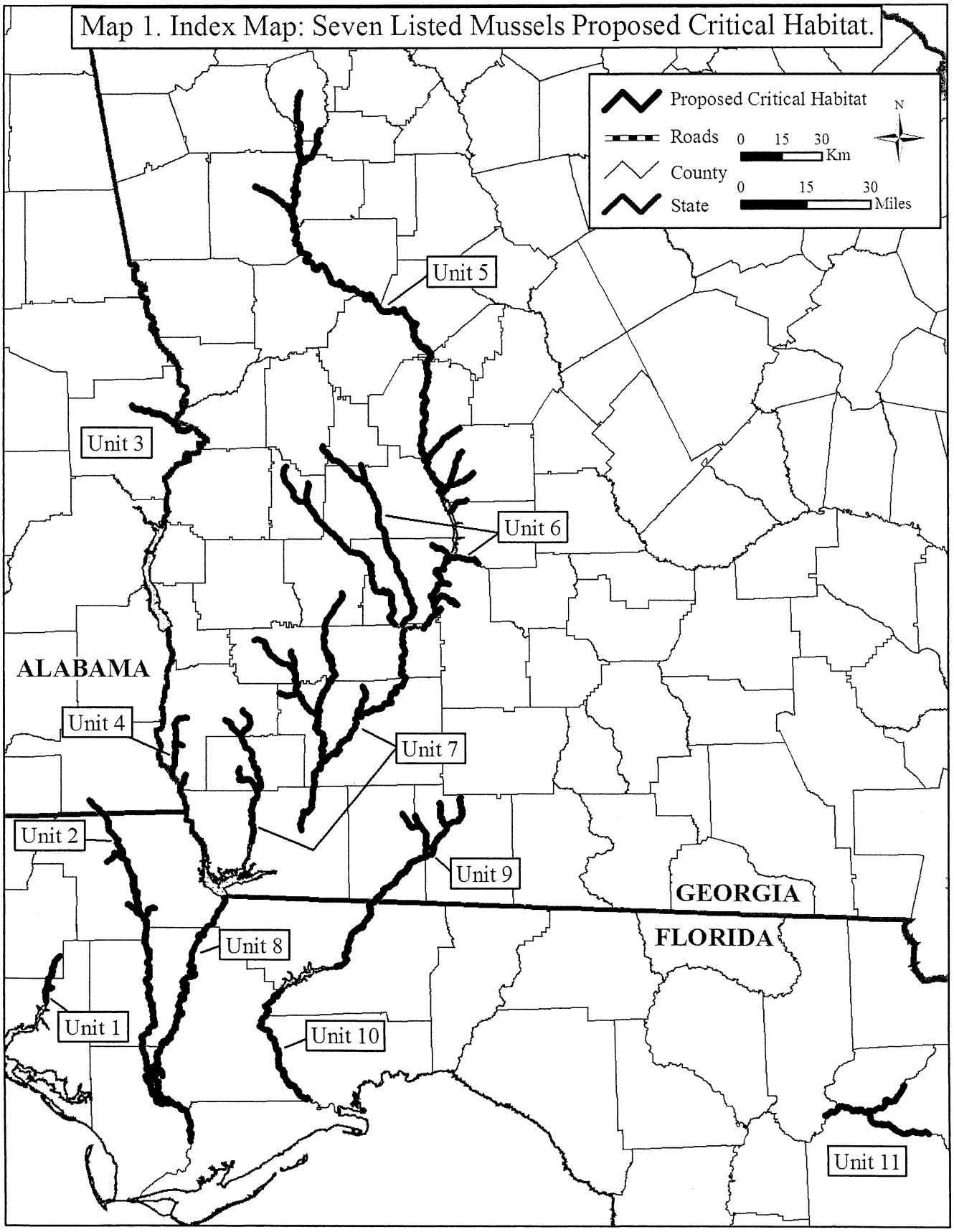


(6) Table of listed species and critical habitat units. A table showing the listed species, their respective critical habitat units, and the States that contain those habitat units follows. Detailed critical habitat unit descriptions and maps

appear below in paragraphs (7) through (17).

TABLE OF SEVEN MUSSEL SPECIES, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS

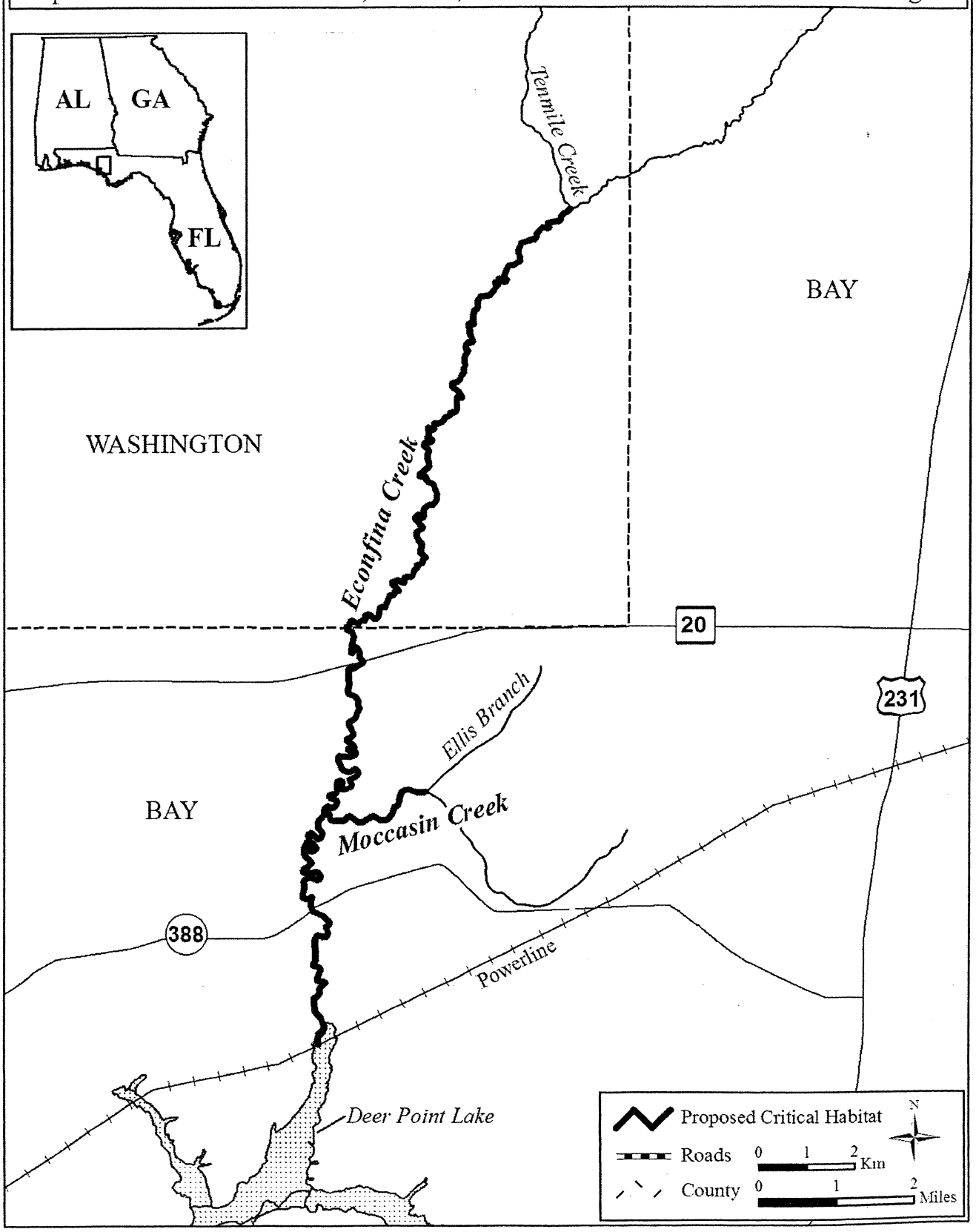
Species	Critical habitat units	States
Purple bankclimber (*Elliptoideus sloatianus*)	Units 5, 6, 7, 8, 9, 10	AL, FL, GA.
Gulf moccasinshell (*Medionidus penicillatus*)	Units 1, 2, 4, 5, 6, 7	AL, FL, GA.
Ochlockonee moccasinshell (*Medionidus simpsonianus*)	Unit 9	FL, GA.
Oval pigtoe (*Pleurobema pyriforme*)	Units 1, 2, 4, 5, 6, 7, 9, 11	AL, FL, GA.
Shinyrayed pocketbook (*Lampsilis subangulata*)	Units 2, 3, 4, 5, 6, 7, 9	AL, FL, GA.
Chipola slabshell (*Elliptio chipolaensis*)	Unit 2	AL, FL.
Fat threeridge (*mussel*) (*Amblema neislerii*)	Units 2, 8	AL, FL, GA.

(7) Unit 1. Econfina and Moccasin creeks, Bay and Washington Counties, Florida. This is a critical habitat unit for the Gulf moccasinshell and oval pigtoe.

(i) *General Description:* Unit 1 includes the main stem of Econfina Creek and one of its tributaries, Moccasin Creek, encompassing a total stream length of 31.4 kilometers (km) (19.5 miles (mi)). The main stem of Econfina Creek extends from its confluence with Deer Point Lake at the powerline crossing located 3.8 km (2.3 mi) downstream of Bay County Highway 388 (−85.56 longitude 30.36 latitude), Bay County, Florida, upstream 28.6 km (17.8 mi) to Tenmile Creek (−85.50 longitude, 30.51 latitude), Washington County, Florida; and Moccasin Creek from its confluence with Econfina Creek upstream 2.8 km (1.7 mi) to Ellis Branch (−85.53 longitude, 30.41 latitude), Bay County, Florida.

(ii) **Note:** Unit 1 map (Map 2) follows:

Map 2. Unit 1: Econfina Creek, Florida, for the Gulf Moccasinshell and Oval Pigtoe.

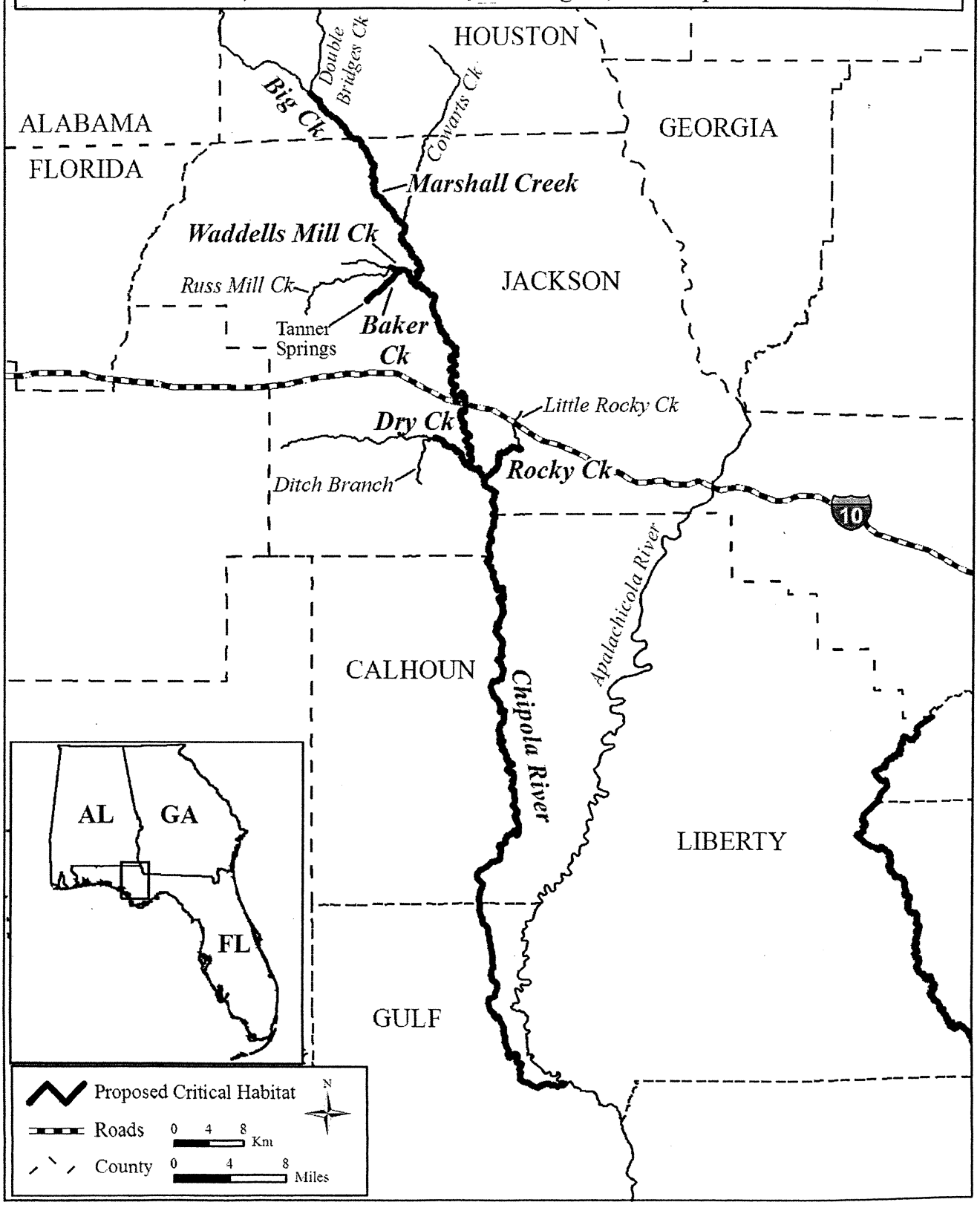


(8) Unit 2. Chipola River and Dry, Rocky, Waddells Mill, Baker, Marshall, and Big Creeks; Houston County, Alabama; and Calhoun, Gulf, and Jackson counties, Florida. This is a critical habitat unit for the fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and Chipola slabshell.

(i) *General Description:* Unit 2 includes the main stem of the Chipola River and six of its tributaries, encompassing a total stream length of 190.0 km (118.1 mi). The main stem of the Chipola River extends from its confluence with the Apalachicola River (−85.09 longitude, 30.01 latitude) in Gulf County, Florida, upstream 144.9 km (90.0 mi), including the reach known as Dead Lake, to the confluence of Marshall and Cowarts creeks (−85.27 longitude, 30.91 latitude) in Jackson County, Florida; Dry Creek from the Chipola River upstream 7.6 km (4.7 mi) to Ditch Branch (−85.53 longitude, 30.41 latitude), Jackson County, Florida; Rocky Creek from the Chipola River upstream 7.1 km (4.4 mi) to Little Rocky Creek (−85.13 longitude, 30.68 latitude), Jackson County, Florida; Waddells Mill Creek from the Chipola River upstream 3.7 km (2.3 mi) to Russ Mill Creek (−85.29 longitude, 30.87 latitude), Jackson County, Florida; Baker Creek from Waddells Mill Creek upstream 5.3 km (3.3 mi) to Tanner Springs (−85.32 longitude, 30.83 latitude), Jackson County, Florida; Marshall Creek from the Chipola River upstream 13.7 km (8.5 mi) to the Alabama-Florida State line (−85.33 longitude, 31.00 latitude), Jackson County, Florida; and Big Creek from the Alabama-Florida State line upstream 7.8 km (4.9 mi) to Double Bridges Creek (−85.38 longitude, 31.05 latitude), Houston County, Alabama. The short segment of the Chipola River that flows underground within the boundaries of Florida Caverns State Park is not included within this unit.

(ii) **Note:** Unit 2 map (Map 3) follows:

Map 3. Unit 2: Chipola River, Alabama and Florida, for the Fat Threeridge, Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Chipola Slabshell.

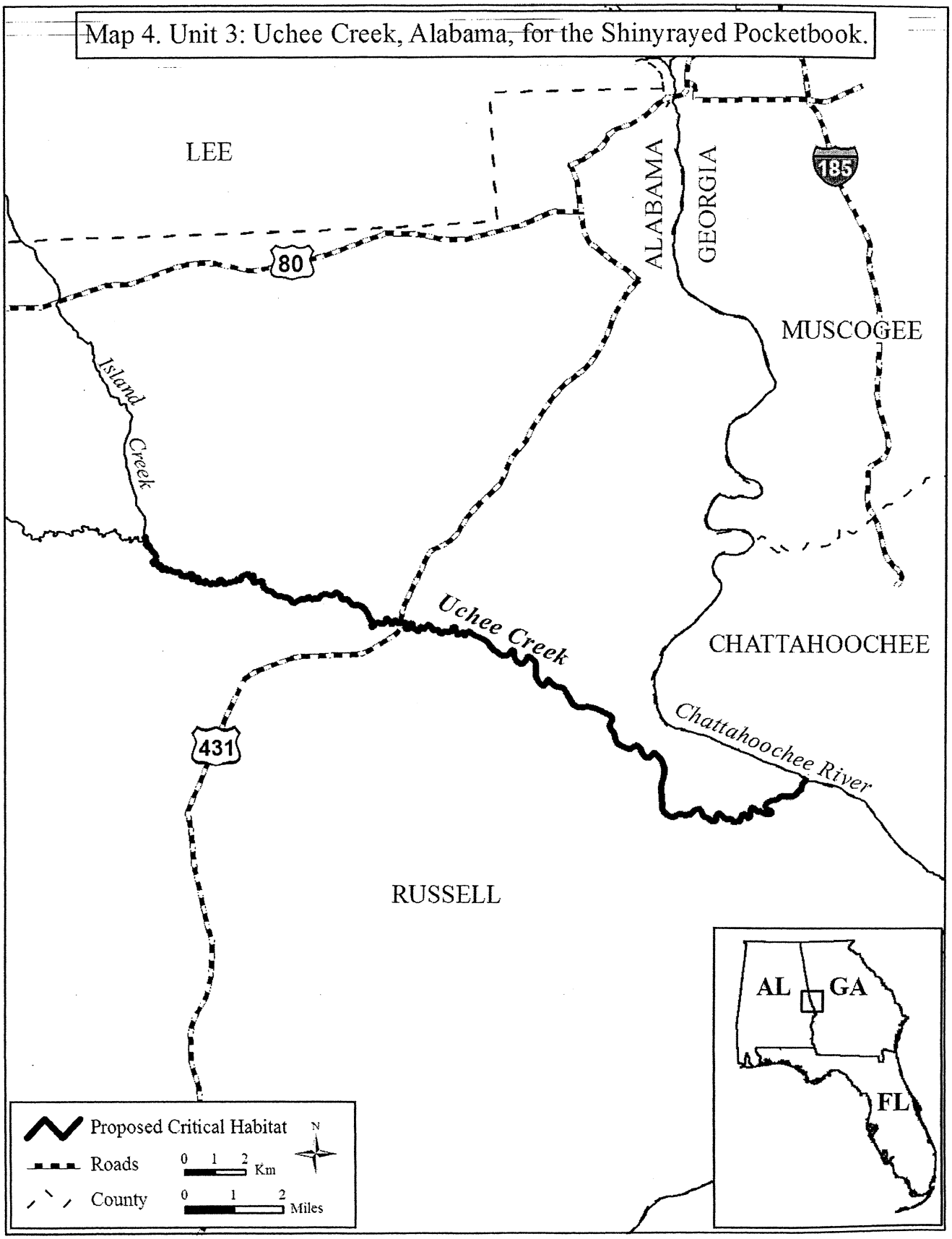


(9) Unit 3. Uchee Creek, Russell County, Alabama. This is a critical habitat unit for the shinyrayed pocketbook.

(i) *General Description:* Unit 3 includes the main stem of Uchee Creek

from its confluence with the Chattahoochee River upstream 34.2 km (21.2 mi) to Island Creek (−85.18 longitude, 32.38 latitude), Russell County, Alabama, encompassing a total stream length of 34.2 km (21.2 mi).

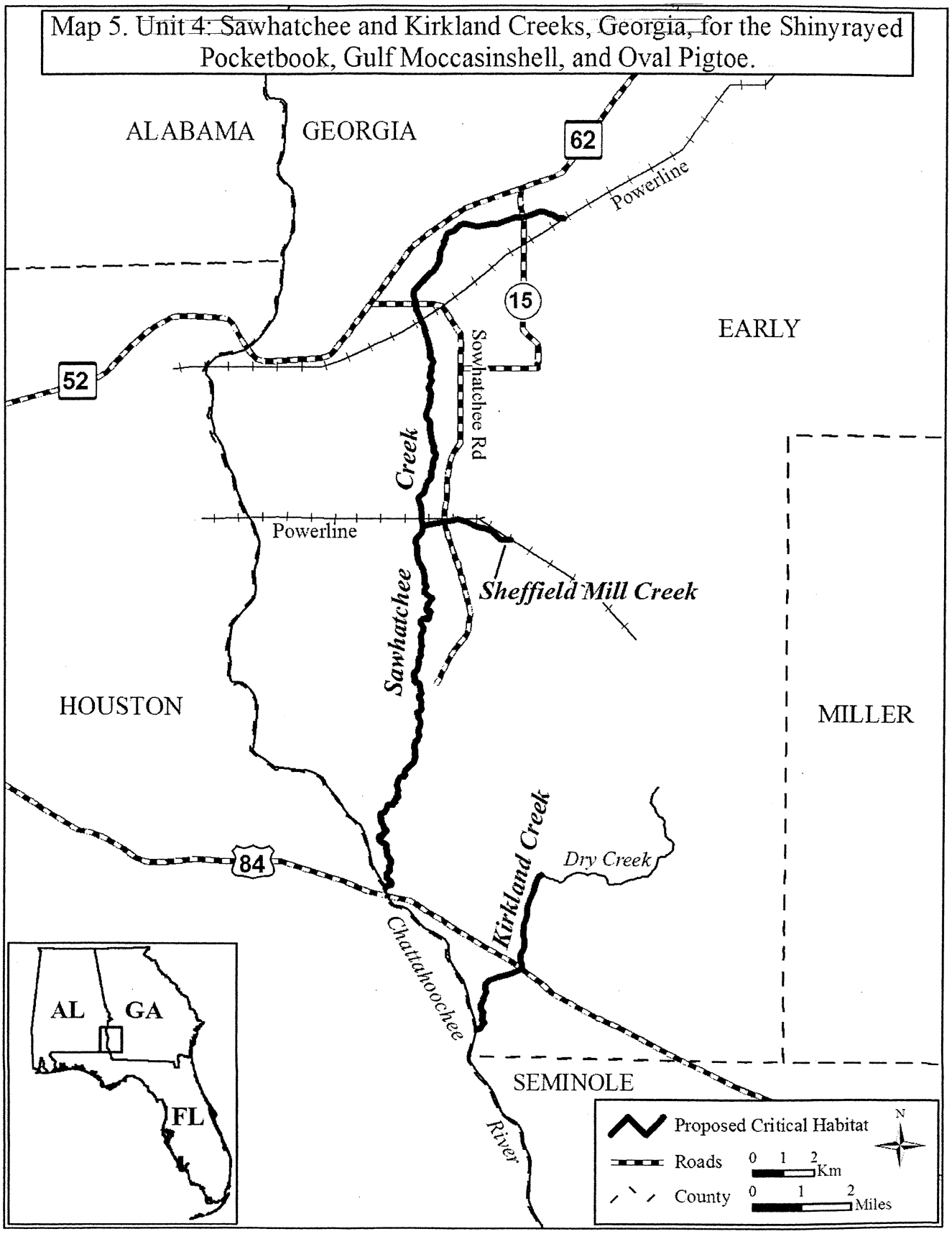
(ii) **Note:** Unit 3 map (Map 4) follows:


Map 4. Unit 3: Uchee Creek, Alabama, for the Shinyrayed Pocketbook.
LEE
ALABAMA
GEORGIA
185
80
MUSCOGEE
Island Creek
Uchee Creek
CHATTAHOOCHEE
Chattahoochee River
431
RUSSELL
AL
GA
FL
Proposed Critical Habitat
Roads
County
N
0 1 2 Km
0 1 2 Miles

(10) Unit 4. Sawhatchee, Sheffield Mill, and Kirkland creeks, Early County, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe.

(i) *General Description:* Unit 4 includes the main stems of Sawhatchee and Kirkland creeks, and one tributary, encompassing a total stream length of 37.8 km (23.5 mi). Sawhatchee Creek from its confluence with the Chattahoochee River upstream 28.6 km (17.8 mi) to the powerline crossing located 1.4 km (0.87 mi) upstream of Early County Road 15 (−84.99 longitude, 31.32 latitude); Sheffield Mill Creek, the tributary, from its confluence with Sawhatchee Creek upstream 3.1 km (1.9 mi) to the powerline crossing located 2.3 km (1.4 mi) upstream of Sowhatchee Road (−85.01 longitude, 31.23 latitude); Kirkland Creek from its confluence with the Chattahoochee River upstream 6.1 km (3.8 mi) to Dry Creek (−85.00 longitude, 31.13 latitude).

Note: Unit 4 map (Map 5) follows:

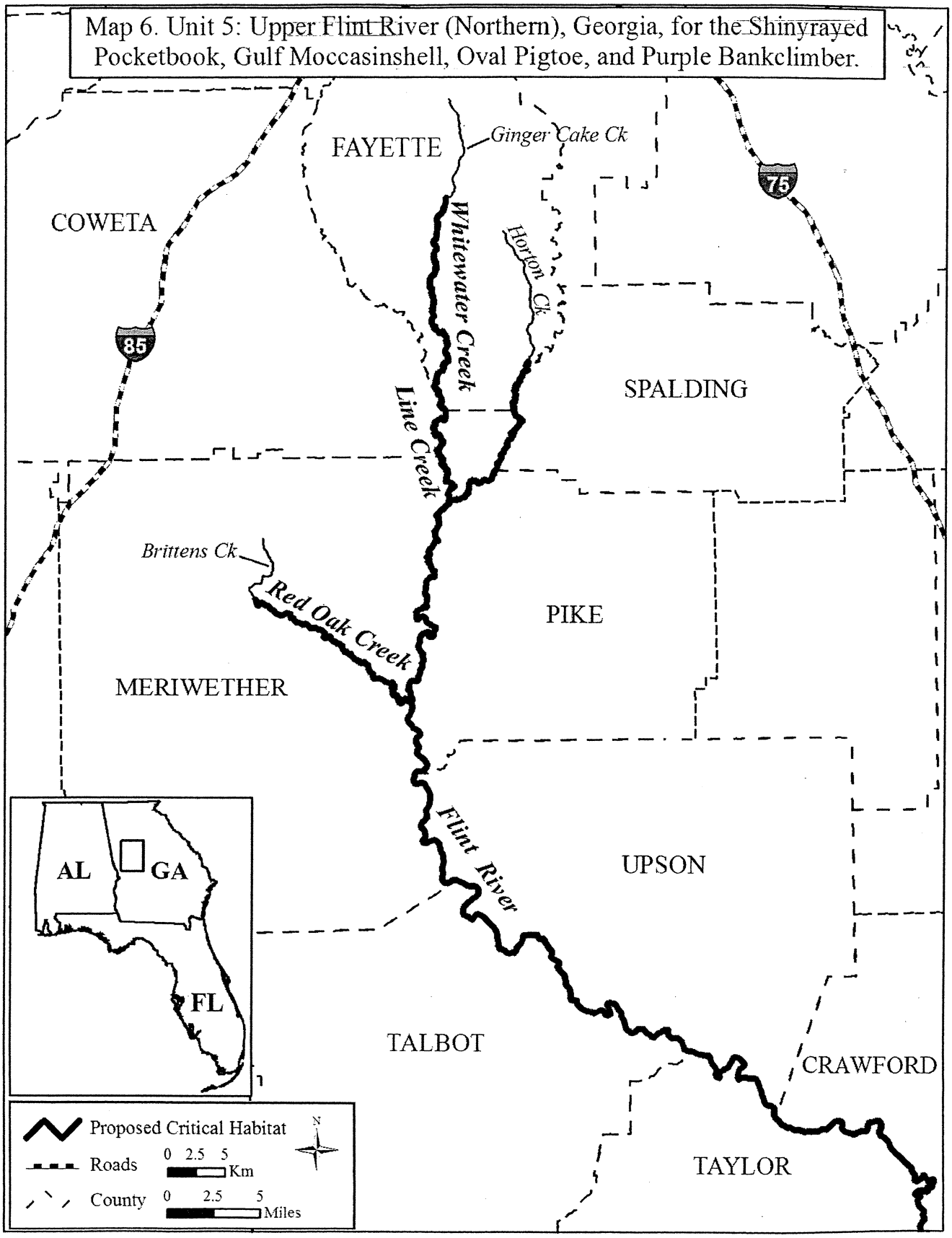


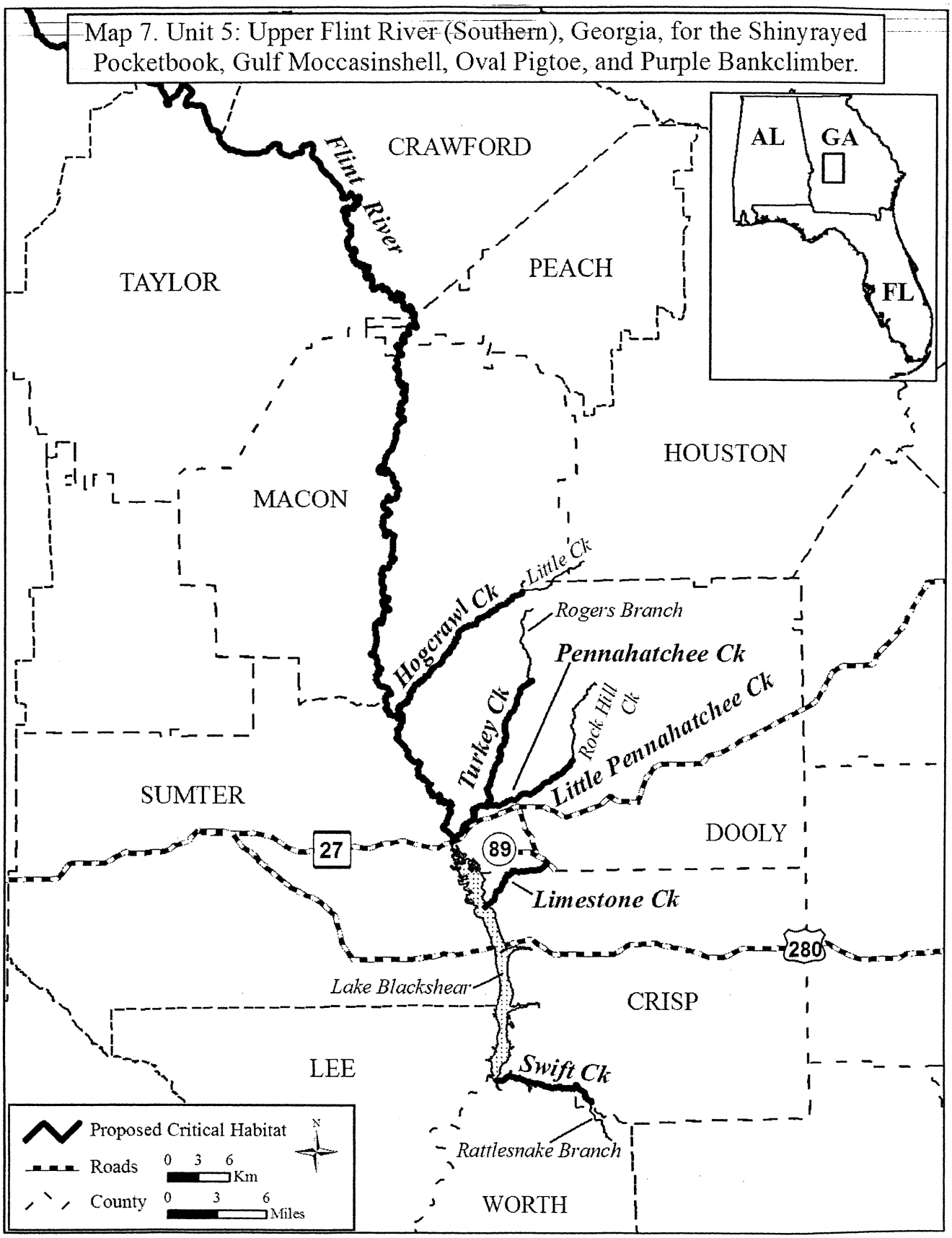
(11) Unit 5. Upper Flint River and Swift, Limestone, Turkey, Pennahatchee, Little Pennahatchee, Hogcrawl, Red Oak, Line, and Whitewater creeks in Coweta, Crawford, Crisp, Dooly, Fayette, Macon,

Meriwether, Peach, Pike, Spalding, Sumter, Talbot, Taylor, Upson, and Worth counties, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 5 encompasses a total stream length of 380.4 km (236.4 mi) and includes the Flint River from the State Highway 27 bridge (Vienna Road) (−83.98 longitude, 32.06 latitude) in Dooly and Sumter counties, Georgia (the river is the county boundary), upstream 247.4 km (153.7 mi) through Macon, Peach, Taylor, Crawford, Talbot, Upson, Pike, Meriwether, and Coweta counties, to Horton Creek (−84.42 longitude, 33.29 latitude) in Fayette and Spalding counties, Georgia (the river is the county boundary); Swift Creek from Lake Blackshear upstream 11.3 km (7 mi) to Rattlesnake Branch (−83.84 longitude, 31.82 latitude), Crisp and Worth counties, Georgia (the creek is the county boundary); Limestone Creek from Lake Blackshear, Crisp County, Georgia, upstream 8.8 km (5.5 mi) to County Road 89 (−83.88 longitude, 32.04 latitude), Dooly County, Georgia; Turkey Creek from the Flint River upstream 21.7 km (13.5 mi) to Rogers Branch (−83.89 longitude, 32.20 latitude), in Dooly County, Georgia; Pennahatchee Creek from Turkey Creek upstream 4.8 km (3 mi) to Little Pennahatchee Creek (−83.89 longitude, 32.10 latitude), Dooly County, Georgia; Little Pennahatchee Creek from Pennahatchee Creek upstream 5.8 km (3.6 mi) to Rock Hill Creek (−83.85 longitude, 32.13 latitude), Dooly County, Georgia; Hogcrawl Creek from the Flint River upstream 21.6 km (13.4 mi) to Little Creek (−83.90 longitude, 32.28 latitude), Dooly and Macon counties, Georgia (the creek is the county boundary); Red Oak Creek from the Flint River upstream 21.7 km (13.5 mi) to Brittens Creek (−84.68 longitude, 33.11 latitude), Meriwether County, Georgia; Line Creek from the Flint River upstream 15.8 km (9.8 mi) to Whitewater Creek (−84.51 longitude, 33.28 latitude), Coweta and Fayette counties, Georgia (the creek is the county boundary); and Whitewater Creek from Line Creek upstream 21.5 km (13.4 mi) to Ginger Cake Creek (−84.49 longitude, 33.42 latitude), Fayette County, Georgia.

(ii) **Note:** Two maps of unit 5 (Map 6, northern part of unit 5; and Map 7, southern part of unit 5) follow:


Map 6. Unit 5: Upper Flint River (Northern), Georgia, for the Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Purple Bankclimber.
FAYETTE
Ginger Cake Ck
COWETA
Whitewater Creek
Horton Ck
SPALDING
Lime Creek
Brittens Ck
Red Oak Creek
PIKE
MERIWETHER
Flint River
UPSON
AL
GA
FL
TALBOT
CRAWFORD
TAYLOR
Proposed Critical Habitat
Roads
County
0 2.5 5 Km
0 2.5 5 Miles
N

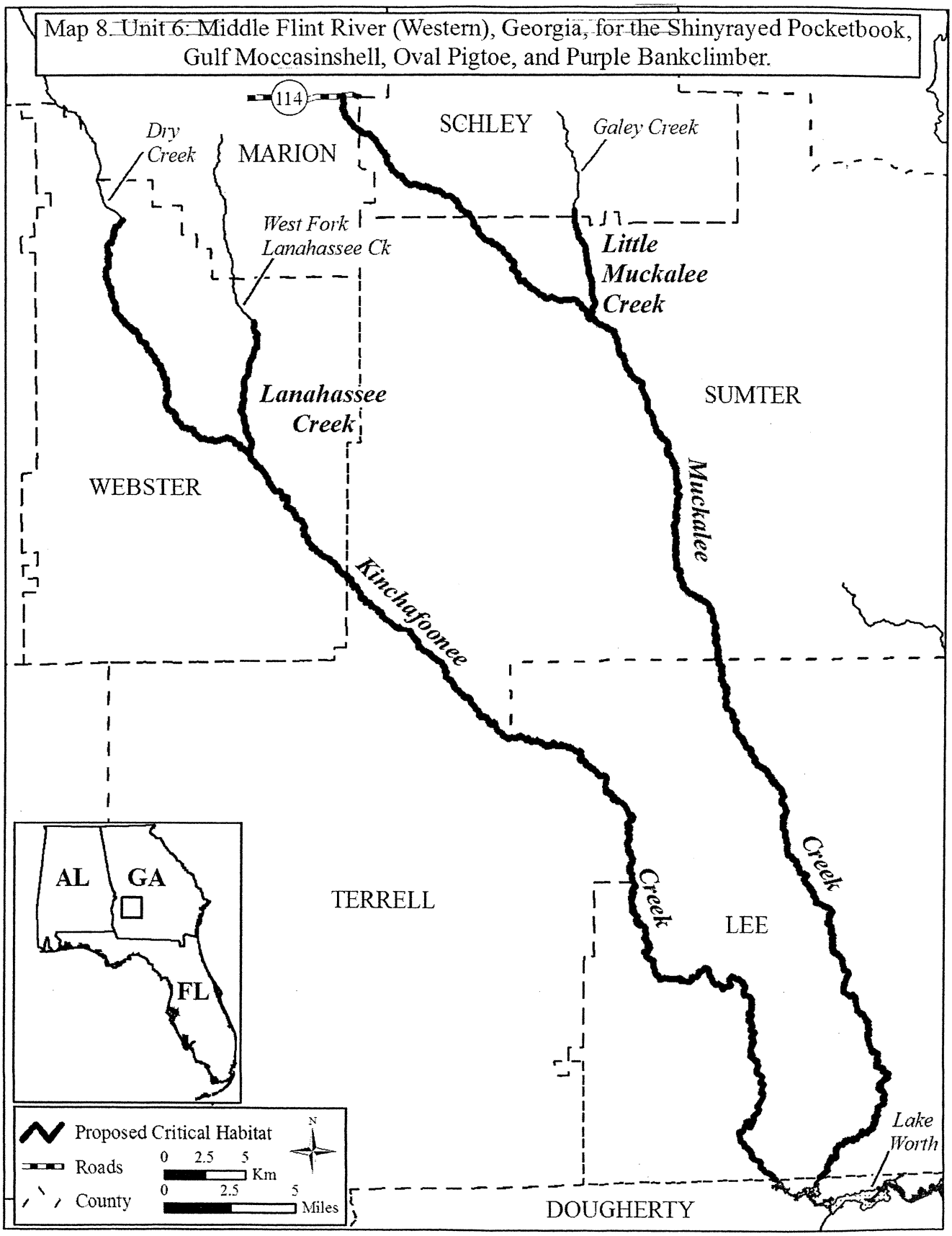


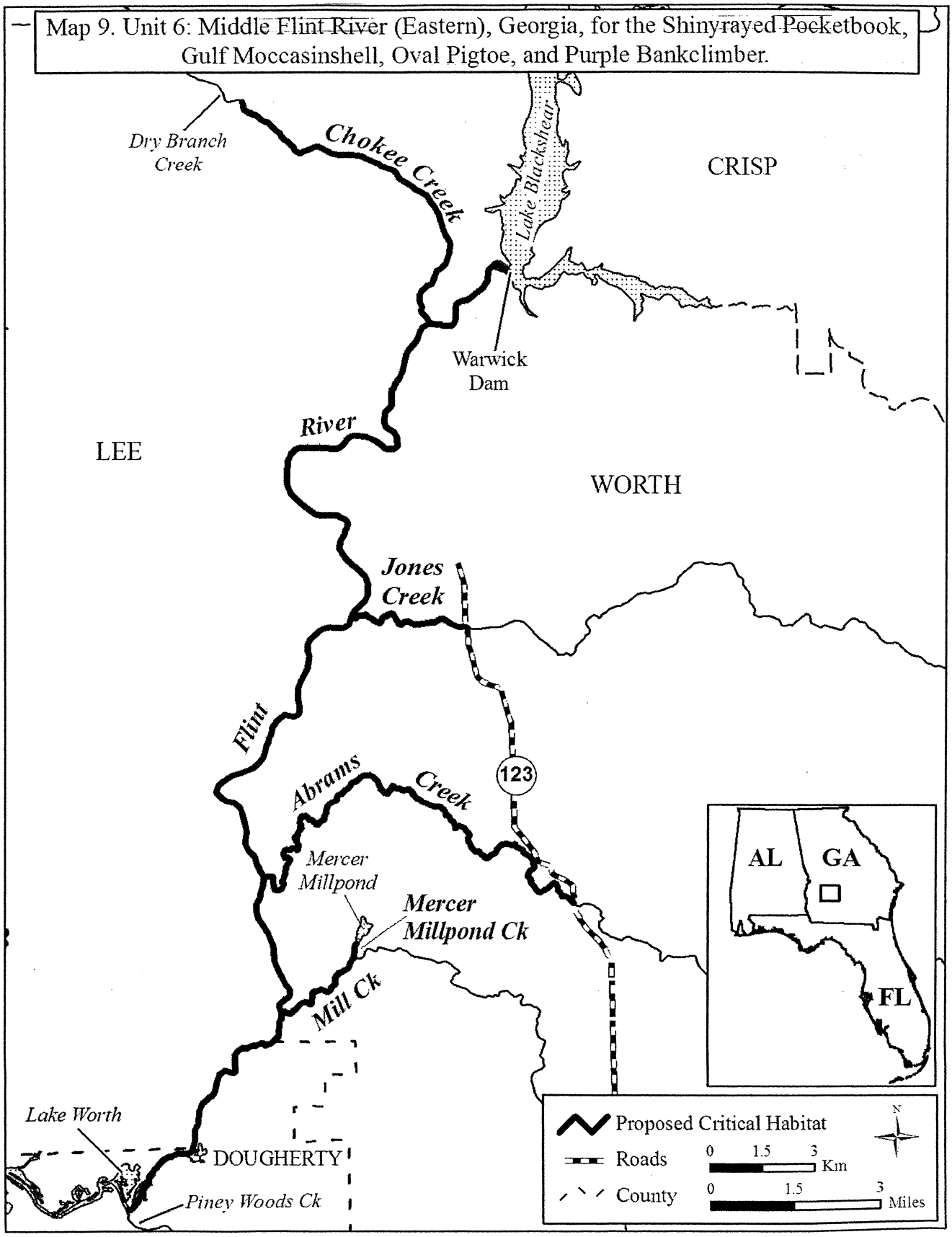
(12) Unit 6. Middle Flint River and Kinchafoonee, Lanahassee, Muckalee, Little Muckalee, Mill, Mercer Mill Pond, Abrams, Jones, and Chokee creeks; Dougherty, Lee, Marion, Schley, Sumter, Terrell, Webster, and Worth counties,

Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 6 encompasses a total stream length of 302.3 km (187.8 mi) and includes the Flint River from Piney Woods Creek (−84.06 longitude, 31.61 latitude) in Dougherty County, Georgia (the upstream extent of Lake Worth), upstream 39.9 km (24.8 mi) to the Warwick Dam (−83.94 longitude, 31.85 latitude), Lee and Worth counties, Georgia; Kinchafoonee Creek from its confluence with Lake Worth at the Lee-Dougherty county line (−84.17 longitude, 31.62 latitude), upstream 107.6 km (66.8 mi) through Terrell and Sumter Counties, Georgia, to Dry Creek (−84.58 longitude, 32.17 latitude), Webster County, Georgia; Lanahassee Creek from Kinchafoonee Creek upstream 9.3 km (5.8 mi) to West Fork Lanahassee Creek (−84.50 longitude, 32.11 latitude), Webster County, Georgia; Muckalee Creek, from its confluence with Lake Worth at the Lee-Dougherty county line (−84.14 longitude, 31.62 latitude), upstream 104.5 km (64.9 mi) to County Road 114 (−84.44 longitude, 32.23 latitude), Marion County, Georgia; Little Muckalee Creek, from Muckalee Creek in Sumter County, Georgia, upstream 7.2 km (4.5 mi) to Galey Creek (−84.29 longitude, 32.17 latitude), Schley County, Georgia; Mill Creek from the Flint River upstream 3.2 km (2 mi) to Mercer Millpond Creek (−83.99 longitude, 31.67 latitude), Worth County, Georgia; Mercer Millpond Creek from Mill Creek upstream 0.45 km (0.28 mi) to Mercer Mill Pond (−83.99 longitude, 31.68 latitude), Worth County, Georgia; Abrams Creek from the Flint River upstream 15.9 km (9.9 mi) to County Road 123 (−83.93 longitude, 31.68 latitude), Worth County, Georgia; Jones Creek from the Flint River upstream 3.8 km (2.4 mi) to County Road 123 (−83.96 longitude, 31.76 latitude), Worth County, Georgia; and Chokee Creek, from the Flint River upstream 10.5 km (6.5 mi) to Dry Branch Creek (−84.02 longitude, 31.89 latitude), Lee County, Georgia.

(ii) **Note:** Two maps of unit 6 (Map 8, western part of unit 6; and Map 9, eastern part of unit 6) follow:


Map 8. Unit 6: Middle Flint River (Western), Georgia, for the Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Purple Bankclimber.
114
SCHLEY
Galey Creek
Dry Creek
MARION
West Fork Lanahassee Ck
Little Muckalee Creek
Lanahassee Creek
SUMTER
WEBSTER
Muckalee
Kinchafoonee
Creek
Creek
TERRELL
LEE
AL
GA
FL
Lake Worth
DOUGHERTY
Proposed Critical Habitat
Roads
County
N
0 2.5 5 Km
0 2.5 5 Miles

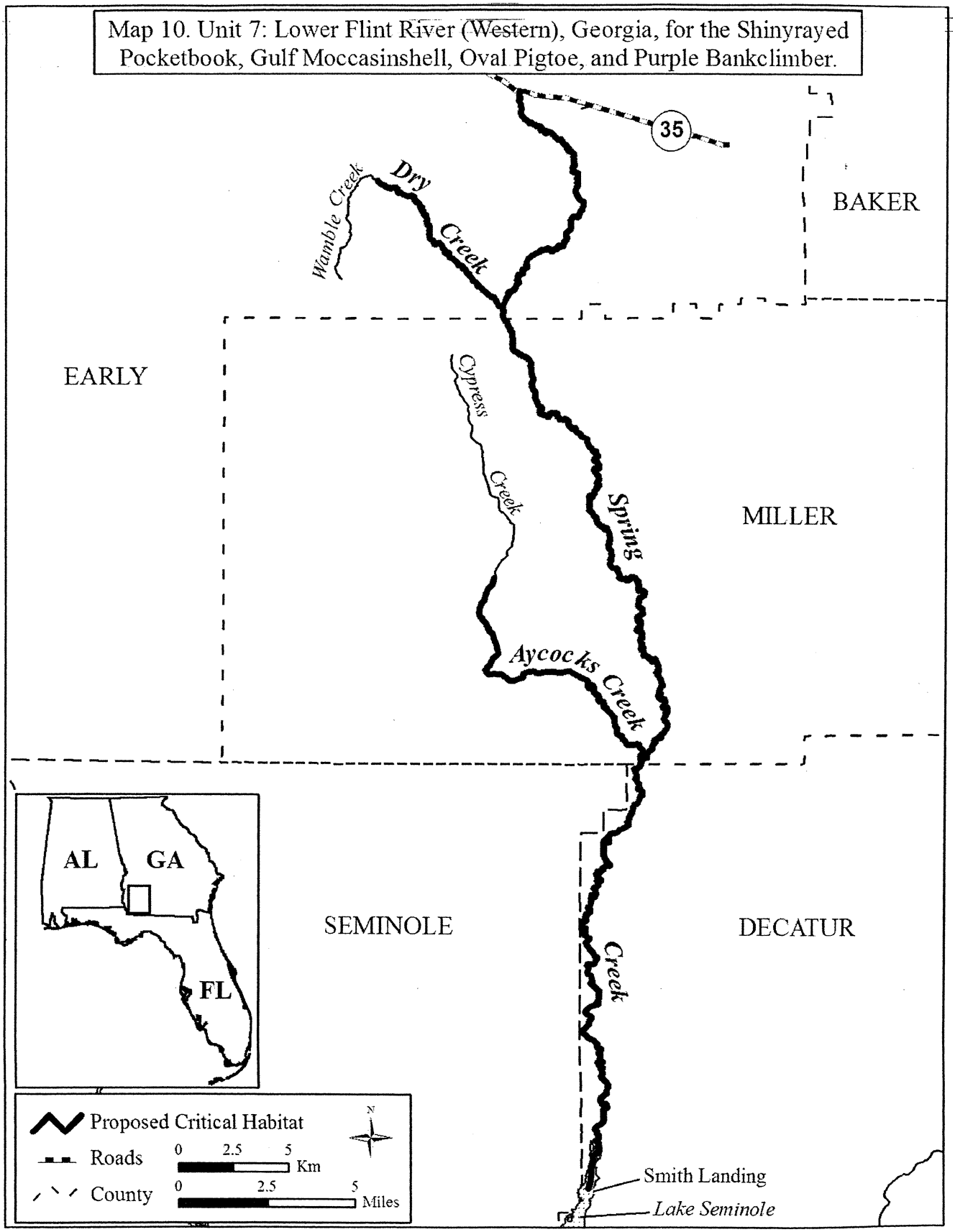


(13) Unit 7. Lower Flint River and Spring, Aycocks, Dry, Ichawaynochaway, Mill, Pachitla, Little Pachitla, Chickasawhatchee, and Cooleewahee creeks in Baker, Calhoun, Decatur, Dougherty, Early, Miller,

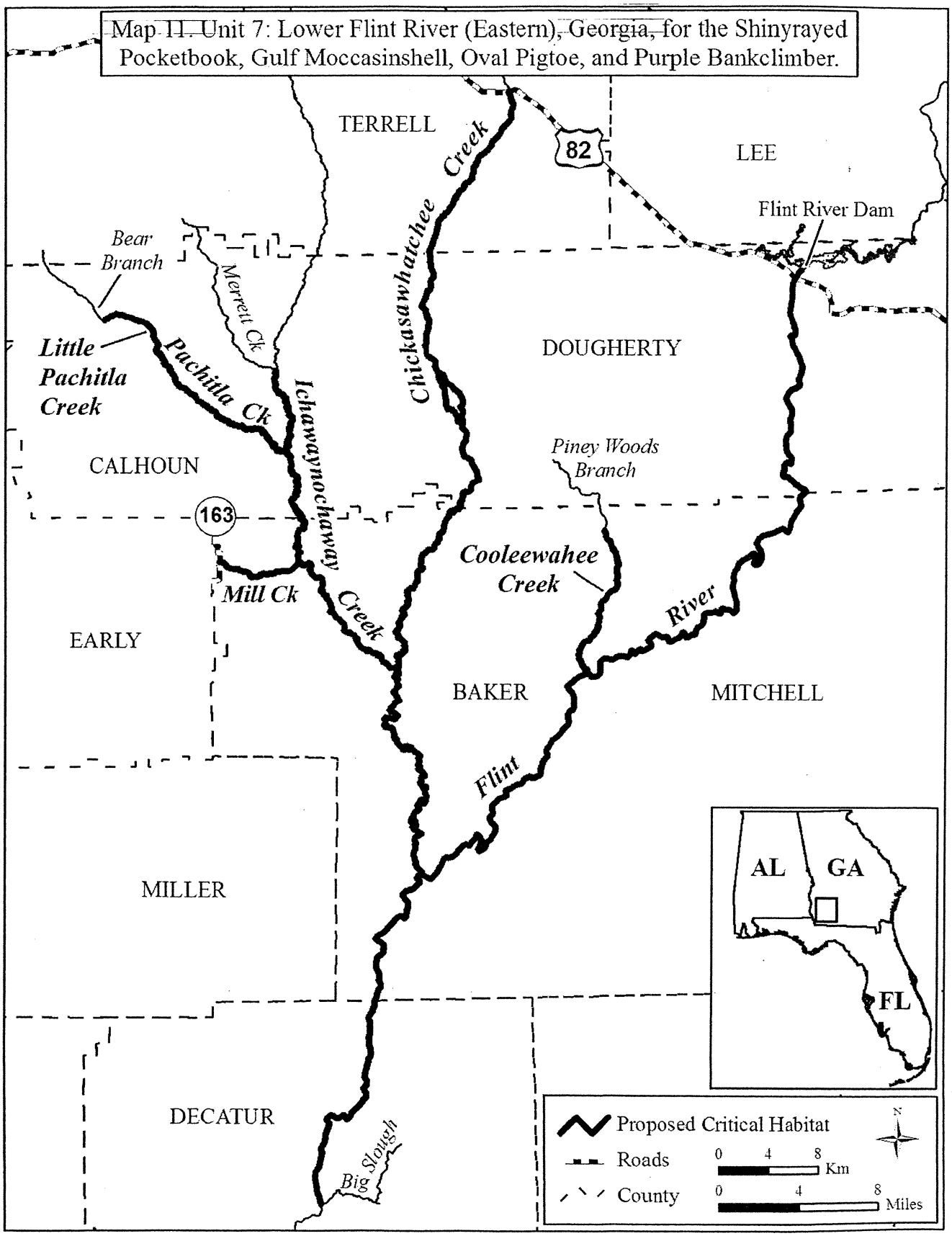
Mitchell, and Terrell counties, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 7 encompasses a total stream length of 396.7 km (246.5 mi) and includes the Flint River from its confluence with Big Slough (−84.56 longitude, 30.93 latitude), Decatur County, Georgia, upstream 116.4 km (72.3 mi) through Baker and Mitchell Counties, Georgia, to the Flint River Dam (which impounds Lake Worth) (−84.14 longitude, 31.60 latitude), Dougherty County, Georgia; Spring Creek, from its confluence with Lake Seminole at Smith Landing (−84.75 longitude, 30.89 latitude), Decatur County, Georgia, upstream 74.2 km (46.1 mi) to County Road 35 (−84.78 longitude, 31.34 latitude), Early County, Georgia; Aycocks Creek from Spring Creek upstream 15.9 km (9.9 mi) to Cypress Creek (−84.79 longitude, 31.15 latitude), Miller County, Georgia; Dry Creek from Spring Creek upstream 9.9 km (6.1 mi) to Wamble Creek (−84.84 longitude, 31.31 latitude), Early County, Georgia; Ichawaynochaway Creek from the Flint River, Baker County, Georgia, upstream 68.6 km (42.6 mi) to Merrett Creek (−84.58 longitude, 31.54 latitude), Calhoun County, Georgia; Mill Creek from Ichawaynochaway Creek upstream 7.4 km (4.6 mi) to County Road 163 (−84.63 longitude, 31.40 latitude), Baker County, Georgia; Pachitla Creek, from Ichawaynochaway Creek upstream 18.9 km (11.8 mi) to Little Pachitla Creek (−84.68 longitude, 31.56 latitude), Calhoun County, Georgia; Little Pachitla Creek from Pachitla Creek upstream 5.8 km (3.6 mi) to Bear Branch (−84.72 longitude, 31.58 latitude), Calhoun County, Georgia; Chickasawhatchee Creek from Ichawaynochaway Creek, Baker County, Georgia, upstream 64.5 km (40.1 mi) to U.S. Highway 82 (−84.38 longitude, 31.74 latitude), Terrell County, Georgia; and Cooleewahee Creek from the Flint River upstream 15.1 km (9.4 mi) to Piney Woods Branch (−84.31 longitude, 31.42 latitude), Baker County, Georgia.

(ii) **Note:** Two maps of unit 7 (Map 10, western part of unit 7; and Map 11, eastern part of unit 7) follow:



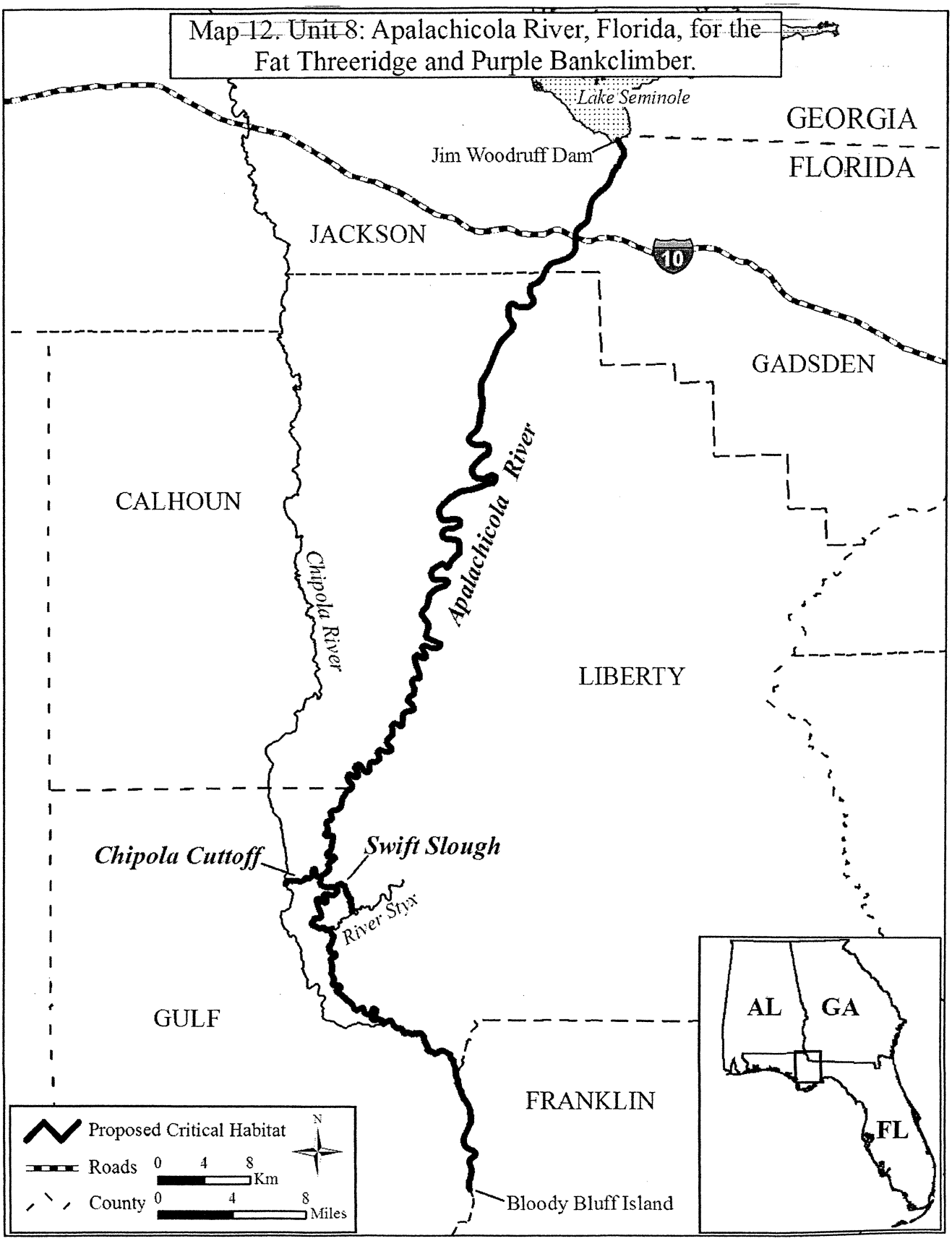
Map 10. Unit 7: Lower Flint River (Western), Georgia, for the Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Purple Bankclimber.



(14) Unit 8. Apalachicola River and the Chipola Cutoff and Swift Slough in Calhoun, Franklin, Gadsden, Gulf, Jackson, and Liberty counties, Florida. This is a critical habitat unit for the fat threeridge and purple bankclimber.

(i) *General Description:* Unit 8 includes the main stem of the Apalachicola River and two of its distributaries, Chipola Cutoff and Swift Slough, encompassing a total stream length of 155.4 km (96.6 mi). The main stem of the Apalachicola River extends from the downstream end of Bloody Bluff Island (river mile 15.3 on U.S. Army Corps of Engineers Navigation Charts) (−85.01 longitude, 29.88 latitude), Franklin County, Florida, through Calhoun and Liberty Counties, Florida, upstream to the Jim Woodruff Lock and Dam (which impounds Lake Seminole) (−84.86 longitude, 30.71 latitude), Gadsden and Jackson counties, Florida; Chipola Cutoff from the Apalachicola River in Gulf County, Florida, downstream 4.5 km (2.8 mi) to its confluence with the Chipola River, Gulf County, Florida; Swift Slough from the Apalachicola River, Liberty County, Florida, downstream 3.6 km (2.2 mi) to its confluence with the River Styx (−85.12 longitude, 30.10 latitude), Liberty County, Florida.

(ii) **Note:** Unit 8 map (Map 12) follows:

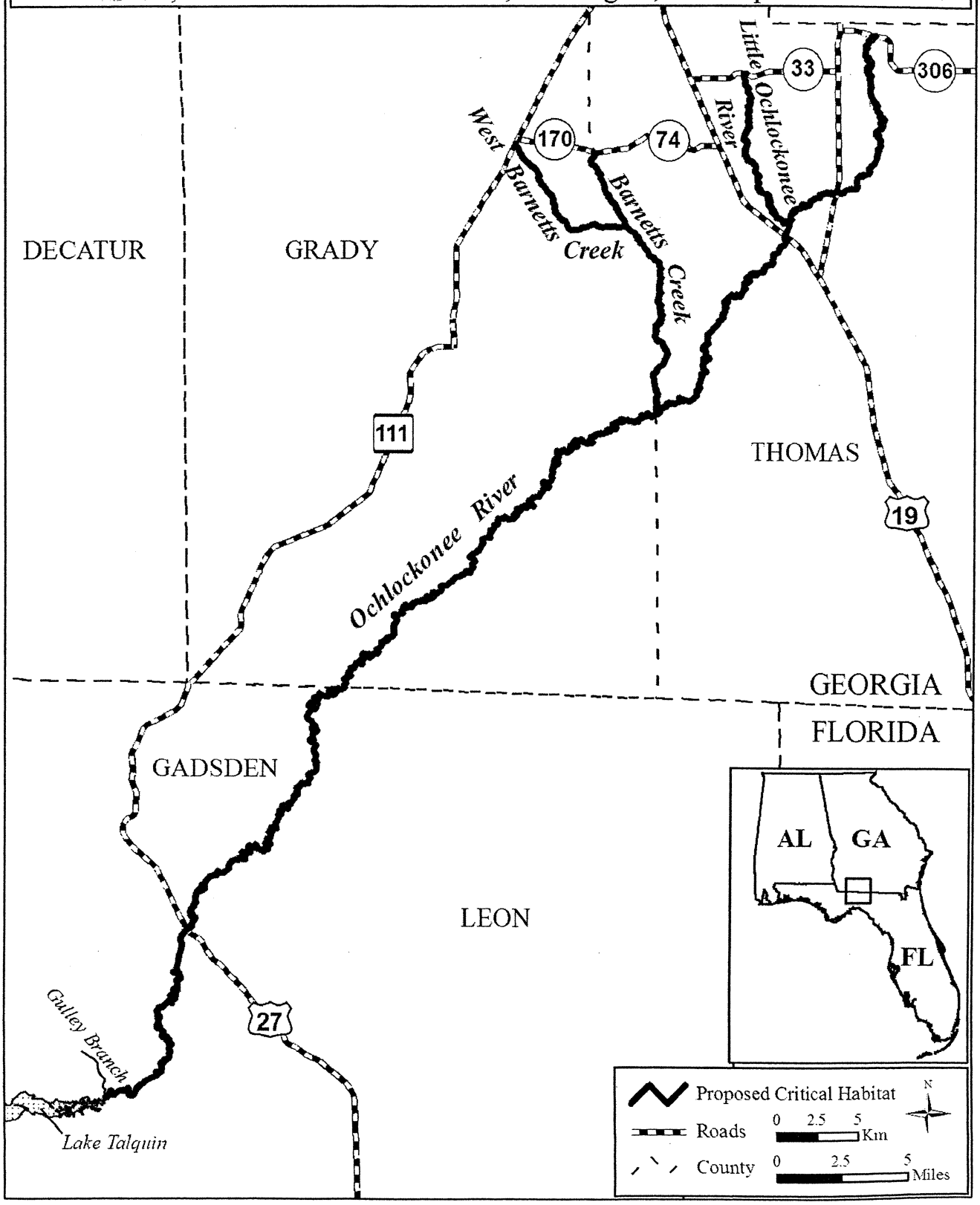

Map 12. Unit 8: Apalachicola River, Florida, for the Fat Threeridge and Purple Bankclimber.
Lake Seminole
GEORGIA
FLORIDA
Jim Woodruff Dam
JACKSON
10
GADSDEN
CALHOUN
Apalachicola River
Chipola River
LIBERTY
Chipola Cuttoff
Swift Slough
River Styx
GULF
FRANKLIN
Bloody Bluff Island
AL
GA
FL
Proposed Critical Habitat
Roads
County
N
0 4 8 Km
0 4 8 Miles

(15) Unit 9. Upper Ochlockonee River and Barnetts and West Barnetts creeks, and the Little Ochlockonee River in Gadsden and Leon counties, Florida, and Grady and Thomas counties, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Ochlockonee moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 9 includes the main stem of the Ochlockonee River upstream of Lake Talquin and three tributaries encompassing a total stream length of 177.3 km (110.2 mi). The main stem of the Ochlockonee River extends from its confluence with Gulley Branch (the approximate upstream extent of Lake Talquin) (−84.44 longitude, 30.46 latitude), Gadsden and Leon counties, Florida, upstream 134.0 km (83.3 mi) to Bee Line Road/County Road 306 (−83.94 longitude, 31.03 latitude), Thomas County, Georgia; Barnetts Creek from the Ochlockonee River upstream 20 km (12.4 mi) to Grady County Road 170/Thomas County Road 74 (−84.12 longitude, 30.98 latitude), Grady and Thomas counties, Georgia; West Barnetts Creek from Barnetts Creek upstream 10 km (6.2 mi) to Georgia Highway 111 (−84.17 longitude, 30.98 latitude), Grady County, Georgia; and the Little Ochlockonee River from the Ochlockonee River upstream 13.3 km (8.3 mi) to Roup Road/County Road 33 (−84.02 longitude, 31.02 latitude), Thomas County, Georgia.

(ii) **Note:** Unit 9 map (Map 13) follows:

Map 13. Unit 9: Upper Ochlockonee River, Georgia and Florida, for the Shinyrayed Pocketbook, Ochlockonee Moccasinshell, Oval Pigtoe, and Purple Bankclimber.



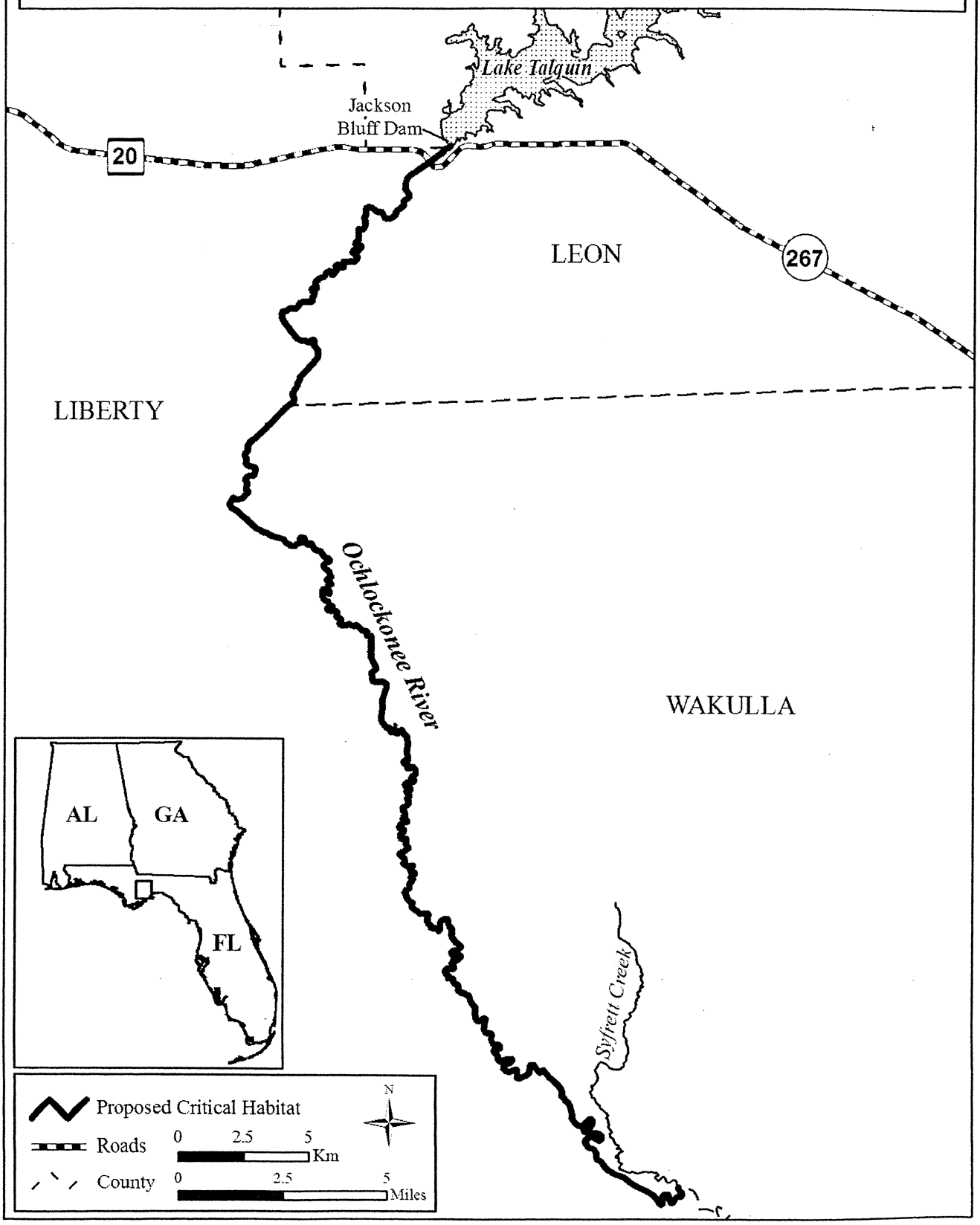
(16) Unit 10. Lower Ochlockonee River in Leon, Liberty, and Wakulla counties, Florida. This is a critical habitat unit for the purple bankclimber.

(i) *General Description:* Unit 10 encompasses a total stream length of

75.4 km (46.9 mi) and includes the main stem of the Ochlockonee River from its confluence with Syfrett Creek (−84.56 longitude, 30.02 latitude), Wakulla County, Florida, upstream 75.4 km (46.9 mi) to the Jackson Bluff Dam (which impounds Lake Talquin) (−84.65 longitude, 30.39 latitude), Leon and Liberty counties, Florida.

(ii) **Note:** Unit 10 map (Map 14) follows:

Map 14. Unit 10: Lower Ochlockonee River, Florida, for the Purple Bankclimber.

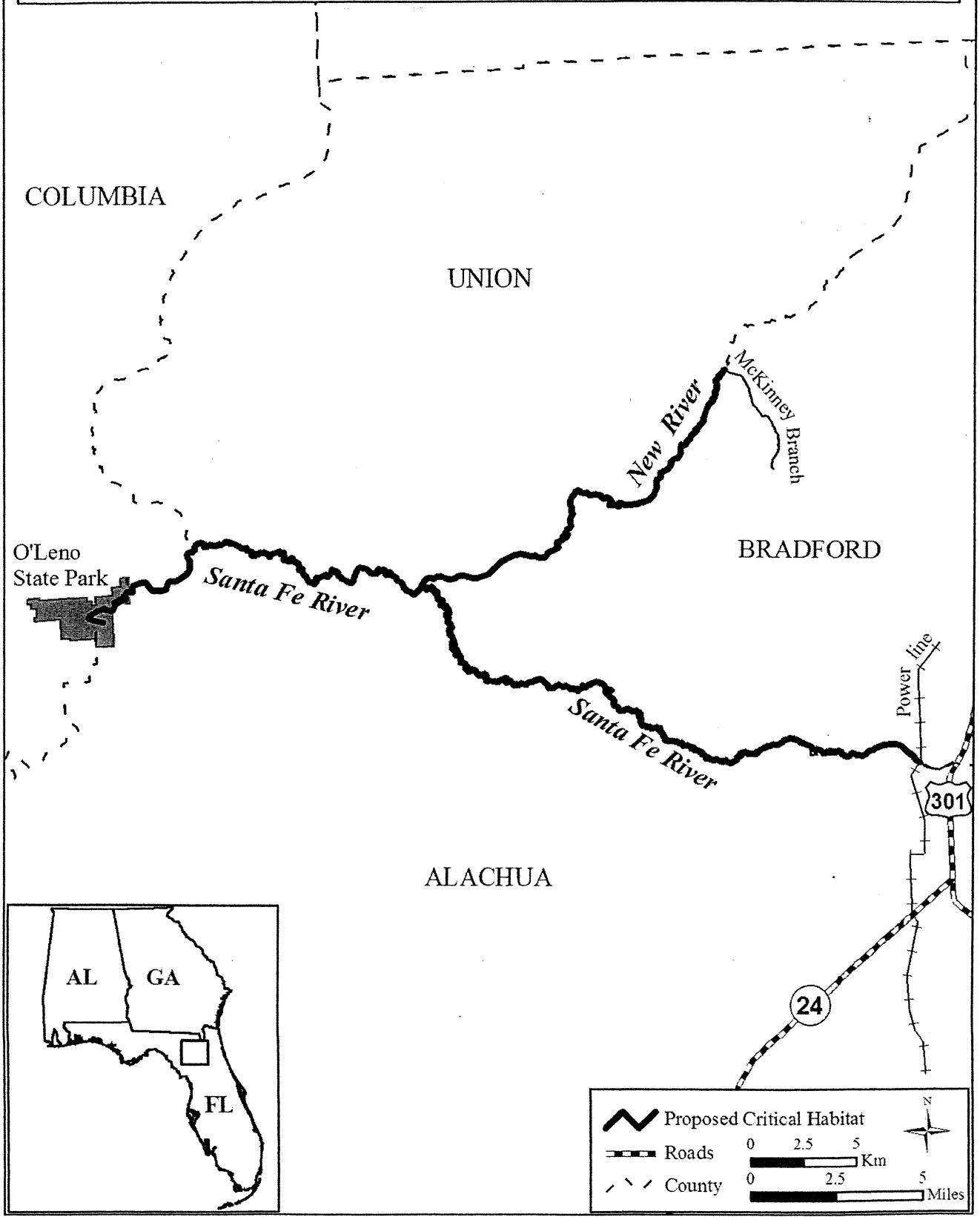


(17) Unit 11. Santa Fe River and New River in Alachua, Bradford, Columbia, and Union counties, Florida. This is a critical habitat unit for the oval pigtoe.

(i) *General Description:* Unit 11 includes the main stem of the Santa Fe River and its tributary the New River encompassing a total stream length of 83.1 km (51.6 mi). The main channel of the Santa Fe River extends from where the river goes underground in O'Leno State Park (−82.57 longitude, 29.91 latitude), Alachua and Columbia counties, Florida, upstream 60.2 km (37.4 mi) to the powerline crossing located 1.9 km (1.2 mi) downstream from the U.S. Highway 301 bridge (−82.18 longitude, 29.84 latitude) in Alachua and Bradford counties, Florida; and the New River from its confluence with the Santa Fe River at the junction of Alachua, Bradford, and Union counties, Florida, upstream 22.9 km (14.2 mi) to McKinney Branch (−82.27 longitude, 30.01 latitude) in Bradford and Union counties, Florida.

(ii) **Note:** Unit 11 map (Map 15) follows:

Map 15. Unit 11: Santa Fe River and New River, Florida for the Oval Pigtoe.



* * * * *

Dated: May 30, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–5075 Filed 6–5–06; 8:45 am]

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Federal Register

Tuesday,
June 6, 2006

Part IV

The President

Proclamation 8026—National Child's Day, 2006

Federal Register
Vol. 71, No. 108
Tuesday, June 6, 2006

Presidential Documents

Title 3—

The President

Proclamation 8026 of June 1, 2006

National Child's Day, 2006

By the President of the United States of America

A Proclamation

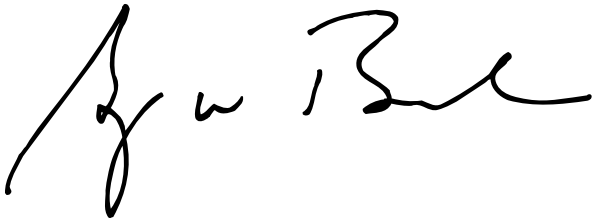
A hopeful society ensures that its children are provided with the knowledge, skills, and opportunities to succeed. On National Child's Day, we reaffirm our commitment to America's children and recognize the power that each of us has to make a difference in a young person's life.

The character of a child is formed in the earliest years through the love and guidance of family members and other caring individuals. A parent, teacher, or mentor can help improve a child's academic achievement, encourage right choices, and help them to understand the importance of serving a cause greater than self.

Through USA Freedom Corps, my Administration is providing opportunities for volunteers to work with children in schools, after-school programs, and through community groups and organizations. By volunteering, these adults set an example of service and good citizenship for our young people and provide youth with the stability and encouragement they need to achieve their dreams. My Administration has also launched the *Community Guide to Helping America's Youth* at helpingamericasyouth.gov. This web-based tool is part of the Helping America's Youth initiative, led by First Lady Laura Bush, and assists communities in identifying ways to lend a hand to children in need. In addition, my Administration is working through No Child Left Behind and the American Competitiveness Initiative to ensure every child has a quality education and the opportunity to succeed. By investing in the lives of our young people, we can help develop their personal character, teach them to be responsible citizens, and enable them to realize their full potential.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 4, 2006, as National Child's Day. I call upon citizens to observe this day with appropriate ceremonies and activities. I also urge all the people of the United States to take an active role in helping nurture the minds and character of our Nation's children.

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



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