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WHEN: Tuesday, August 8, 2006
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RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8038 of July 27, 2006

50th Anniversary of Our National Motto, ''In God We Trust,'' 2006

By the President of the United States of America

A Proclamation

On the 50th anniversary of our national motto, ''In God We Trust,'' we reflect on these words that guide millions of Americans, recognize the blessings of the Creator, and offer our thanks for His great gift of liberty.

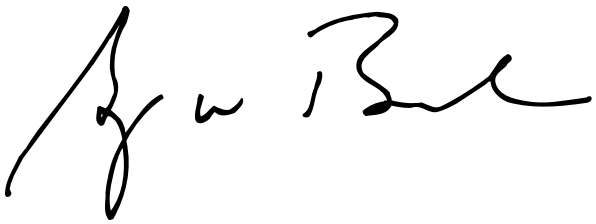
From its earliest days, the United States has been a Nation of faith. During the War of 1812, as the morning light revealed that the battle-torn American flag still flew above Fort McHenry, Francis Scott Key penned, ''And this be our motto: 'In God is our trust!' '' His poem became our National Anthem, reminding generations of Americans to ''Praise the Power that hath made and preserved us a nation.'' On July 30, 1956, President Dwight Eisenhower signed the law officially establishing ''In God We Trust'' as our national motto.

Today, our country stands strong as a beacon of religious freedom. Our citizens, whatever their faith or background, worship freely and millions answer the universal call to love their neighbor and serve a cause greater than self.

As we commemorate the 50th anniversary of our national motto and remember with thanksgiving God's mercies throughout our history, we recognize a divine plan that stands above all human plans and continue to seek His will.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 30, 2006, as the 50th Anniversary of our National Motto, ''In God We Trust.'' I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of July, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.



[FR Doc. 06–6643
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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1001

RIN 3206 AJ69

OPM Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a plain language rewrite of its regulations regarding the standards that govern OPM employee responsibilities and conduct as part of a review of certain OPM regulations. The purpose of the revisions is to make the regulations more readable.

DATES: *Effective Date:* August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Wade Plunkett, by telephone at 202–606–1700; by FAX at 202–606–0082; or by e-mail at *wmplunke@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is revising part 1001, which deals with OPM employee responsibilities and conduct, as part of a review of certain OPM regulations for plain language purposes. On November 20, 2002, OPM issued a proposed rule (67 FR 70029). Since no comments were received, we are publishing the proposed rule as final with one minor clarifying modification. The purpose of this revision to part 1001 is not to make substantive changes, but rather to make part 1001 more readable, and to convert the regulation to a question-and-answer format.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 1001

Conflict of interests.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is revising subchapter C consisting of part 1001 as follows:

Subchapter C—Regulations Governing Employees of the Office of Personnel Management

PART 1001—OPM EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.
1001.101 In addition to this part, what other rules of conduct apply to Office of Personnel Management employees?
1001.102 What are the Privacy Act rules of conduct?

Authority: 5 U.S.C. 552a, 7301.

PART 1001—OPM EMPLOYEE RESPONSIBILITIES AND CONDUCT

§ 1001.101 In addition to this part, what other rules of conduct apply to Office of Personnel Management employees?

In addition to the regulations contained in this part, employees of the Office of Personnel Management should refer to:

(a) The Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations at 5 CFR part 2634;

(b) The Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635;

(c) The Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees regulations at 5 CFR part 2636;

(d) Regulations Concerning Post Employment Conflict of Interest at 5 CFR part 2637;

(e) Post-employment Conflict of Interest Restrictions regulations at 5 CFR part 2641;

(f) The Supplemental Standards of Ethical Conduct for Employees of the Office of Personnel Management at 5 CFR part 4501;

(g) The Employee Responsibilities and Conduct regulations at 5 CFR part 735;

(h) The restrictions upon use of political referrals in employment matters at 5 U.S.C. 3303.

§ 1001.102 What are the Privacy Act rules of conduct?

(a) An employee shall avoid any action that results in the appearance of using public office to collect or gain access to personal data about individuals beyond that required by or authorized for the performance of duties.

(b) An employee shall not use any personal data about individuals for any purpose other than as is required and authorized in the performance of assigned duties. An employee shall not disclose any such information to other agencies or persons not expressly authorized to receive or have access to such information. An employee shall make any authorized disclosures in accordance with established regulations and procedures.

(c) Each employee who has access to or is engaged in any way in the handling of information subject to the Privacy Act, 5 U.S.C. 552a, shall be familiar with the regulations of this subsection as well as the pertinent provisions of the Privacy Act relating to the treatment of such information.

[FR Doc. E6–12370 Filed 7–31–06; 8:45 am]
BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0114]

RIN 0579–AC07

Citrus Canker; Quarantine of the State of Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations to list the entire State of Florida as a quarantined area for citrus canker and to amend the requirements for the movement of regulated articles from Florida now that the eradication of citrus canker in Florida is no longer being carried out as

an objective. We are also amending the regulations to allow regulated articles that would not otherwise be eligible for interstate movement to be moved to a port for immediate export. These changes are necessary in light of the Department's determination that the established eradication program was no longer a scientifically feasible option to address citrus canker.

DATES: This interim rule is effective August 1, 2006. We will consider all comments that we receive on or before October 2, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0114 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0114, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0114.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, EDP, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in §§ 301.75–1 through 301.75–14 of ''Subpart—Citrus Canker'' in Title 7 of the Code of Federal Regulations. These regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. These regulations are promulgated pursuant to the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

The regulations in §§ 301.75–15 through 301.75–17 of ''Subpart—Citrus Canker'' provide for the payment of compensation for losses due to citrus canker eradication activities under certain conditions. For commercial citrus groves, § 301.75–15 addresses compensation for commercial citrus trees and § 301.75–16 focuses on compensation for the recovery of lost production income. For citrus nurseries, § 301.75–17 addresses compensation for certified nursery stock. These compensation regulations were promulgated to implement several appropriations statutes enacted beginning in 2000.

The regulations governing the movement of regulated articles were first promulgated in 1984, at a time when citrus canker had very limited distribution within Florida. Although the regulations have been amended several times since then, the approach of the regulations has remained the same, i.e. to quarantine those areas where the disease was found and promote eradication efforts while allowing the normal movement of regulated fruit and other articles from those areas where the disease was not present.

The exceptionally active hurricane seasons in 2004 and 2005 were devastating to the citrus canker eradication program. Recent surveys show that citrus canker has become so widespread within Florida that approximately 75 percent of commercial groves in the State are now located within 5 miles of a location where the disease has been detected, which is well within the range that the disease could be spread by future hurricanes or other tropical storms. With a significant portion of the commercial citrus acreage in the State now either infected with citrus canker or at high risk of becoming infected, it became apparent that it would no longer be possible to identify and quarantine infected citrus acreage quickly enough to prevent further spread of the disease. Because of this situation, on January 10, 2006, the U.S. Department of Agriculture (USDA) announced that it had determined that the established eradication program was no longer a scientifically feasible option to address citrus canker.

In response to the widespread establishment of citrus canker in Florida, as well as other challenges to the citrus industry, key stakeholders in citrus protection and production discussed various options from which came the concept of a Citrus Health Response Program. This approach concentrates on the development and implementation of minimum standards for citrus inspection, regulatory oversight, disease management and education and training.

At the same time, there is an immediate need to amend the regulations pertaining to citrus canker. The regulations currently include certain provisions that are necessary for the regulatory program when eradication is its goal but, in the case of Florida, they are no longer appropriate as the program shifts its efforts to enabling the commercial citrus industry to produce, harvest, process, and ship healthy fruit in the presence of citrus canker. Our specific amendments are described in the following paragraphs. One result of these changes is that fruit produced in Florida is no longer eligible for movement into commercial citrus-producing areas listed in § 301.75–5.

The regulations in § 301.75–4(a) have listed portions of 12 Florida counties as quarantined areas. Because eradication is no longer being pursued in Florida, the level of survey activity has dropped below the level necessary to maintain accurate and up-to-date quarantine boundaries. Therefore, we are amending § 301.75–4(a) by removing the individual quarantined area descriptions and replacing them with an entry designating the entire State of Florida as a quarantined area for citrus canker.

Paragraph (d) of § 310.75–4 spells out the conditions that must be met in order for less than an entire State to be designated as a quarantined area. With our designation of the entire State of Florida as a quarantined area for citrus canker, those conditions will no longer apply to the movement of fruit and other regulated articles within that State. However, given that quarantining less than an entire State is compatible with an eradication-focused regulatory program, we will retain the provisions of § 301.75–4(d) so that they will be available in the future if needed (*e.g.*, in the event that circumstances change in Florida again or citrus canker appears in another commercial citrus-producing State). As noted previously, the regulations have also included certain other provisions that were necessary for the regulatory program when eradication was its goal; in this document, we have taken those provisions out of the requirements that generally apply to quarantined areas and have moved them into § 301.75–4(d) so that they, like the other provisions of that paragraph, will be available in the future if needed.

Specifically, the regulations in § 301.75–6 spell out the conditions that must be met in order for any regulated articles to be moved interstate from a quarantined area. Paragraph (a)(1) of that section has required that every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, be inspected for citrus canker at least once a year, between May 1 and December 31. In addition, paragraph (a)(2) of that section has required that every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees in the quarantined area be inspected for citrus canker by an inspector at intervals of no more than 45 days. This level of inspection is necessary for a regulatory program focused on eradication but it is no longer appropriate in all cases given the current circumstances. Therefore, we are moving those requirements from § 301.75–6 to § 301.75–4(d).

Similarly, we are moving paragraph (c) of § 301.75–6, which requires a State issued order of destruction and compliance with that order, within 45 days, of regulated plants or regulated trees found to be infected, to § 301.75–4(d). Tree removal is a necessary component of an eradication program, but may not be appropriate in every case under the current circumstances.

Paragraph (b) of § 301.75–6 requires that all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated upon leaving a grove or premises in a quarantined area, as must all personnel who provide those services. We believe it is appropriate to continue to require the treatment of equipment and personnel involved in inspection, maintenance, harvesting, and related activities in all groves, so we will retain those provisions in § 301.75–6. However, we believe the requirements regarding landscaping services are necessary for a regulatory program focused on eradication, but it is no longer appropriate in all cases given the current circumstances, so we are moving those specific provisions to § 301.75–4(d).

Section 301.75–7 spells out the requirements that must be met in order for regulated fruit to be moved from a quarantined area. Paragraph (a)(2) of that section requires that the grove producing the regulated fruit must have been free of citrus canker for the previous 2 years, and that any exposed plants in the grove at high risk for developing citrus canker have been destroyed. The paragraph also describes the circumstances under which the exposed plants would be considered to be at high risk for developing citrus canker. These provisions are necessary for a regulatory program focused on eradication but are no longer appropriate in all cases given the current circumstances. Therefore, we are moving them to § 301.75–4(d).

The regulations in §§ 301.75–6 and 301.75–7 refer in several places to inspections conducted on foot or by walking through the grove. In this document, we have removed those references in order to allow inspections to be conducted by other means, such as by motorized 4-wheel drive vehicles. Surveys conducted while walking could still be conducted. Quality evaluations have shown that inspection by motorized 4-wheel drive vehicles is as accurate in detecting citrus canker as inspections by walking.

As stated above, one result of quarantining the entire State of Florida is that fruit produced in that State is no longer eligible for movement into commercial citrus-producing areas listed in § 301.75–5. In order to make this clear, we are adding a requirement to § 301.75–7(a)(5) that boxes or other containers in which the fruit is packaged must be clearly marked with the statement ''Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States.''

In addition to the changes described above, we are also adding provisions to § 301.75–7 that will allow regulated fruit that is not otherwise eligible for movement in the United States to be moved interstate from Florida directly to a port for export. The regulated fruit will have to be accompanied by a limited permit issued in accordance with § 301.75–12 and moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

Similarly, we have added provisions to § 301.75–6 to allow regulated plants produced in a nursery located in a quarantined area that do not meet the conditions for movement in § 301.75–6(a) to be moved interstate for immediate export. The regulated plants must be accompanied by a limited permit issued in accordance with § 301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

These provisions are necessary to provide regulatory relief to growers, packers, and others who are adversely affected by new and existing restrictions on the movement of citrus due to citrus canker, while still continuing to protect against the spread of citrus canker to noninfested areas of the United States.

Immediate Action

Immediate action is necessary to quarantine the entire State of Florida because citrus canker has become widespread in the State and eradication is no longer scientifically feasible. Immediate action is also warranted to amend certain requirements that are no longer applicable now that the eradication of citrus canker in Florida is no longer being undertaken as an objective and to provide for the movement of regulated fruit from Florida to certain ports for immediate export. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This interim rule amends the citrus canker regulations to list the entire State of Florida as a quarantined area and to amend the requirements for the movement of regulated articles from Florida now that the eradication of citrus canker in Florida is no longer being carried out as an objective. This interim rule also amends the regulations to allow regulated articles that would not otherwise be eligible for interstate movement to be moved to a port for immediate export. These changes are necessary in light of the Department's determination that the established eradication program was no longer a scientifically feasible option to address citrus canker.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and includes an initial regulatory flexibility analysis examining the potential economic effects of this rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Section 301.75–5 of the regulations lists the designated commercial citrus-producing areas as American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands. Of these 11 citrus-producing U.S. States and territories, only five States received fresh citrus shipments from Florida during the 2003–04 and 2004–05 seasons: Arizona, California, Florida, Louisiana, and Texas. In the economic analysis, U.S. citrus-producing areas other than Florida are referred to as other citrus-producing States.

The overall objective of this interim rule is to prevent the spread of citrus canker to other citrus-producing States, effectively mitigating the costs associated with control or eradication of the disease and compensation of citrus producers for loss of trees and income. The likely results of the rule will be positive net benefits. Citrus produced in California, Texas, Arizona, and Louisiana is largely intended for the fresh market. These States would risk a reduction in the production of fruit intended for the fresh market with the establishment of citrus canker due to lesions on the fruit resulting from citrus canker infestation. In addition, citrus producers in these States could face increased costs of production, and producers and packers would be subject to the same trade requirements of other countries as Florida citrus producers and packers. Additional inspections for citrus canker in these States would result in increased public costs. Costs forgone by preventing the introduction of citrus canker to other citrus-producing States are expected to outweigh costs of the statewide quarantine for Florida's citrus industry.

U.S. Citrus Production

The major citrus varieties produced in Florida are early, mid, and late season orange varieties, red and white seedless grapefruit, navels, early tangerines, honey tangerines, temples, and tangelos. Although approximately 89 percent of all Florida citrus is processed, utilization of production is highly dependent upon the variety. Approximately 95 percent of all Florida orange production is intended for the processing sector, whereas nearly 75 percent of Florida tangerine production is utilized on the fresh market. During the 2004–05 season, nearly 58 percent of Florida grapefruit production was utilized on the fresh market. During previous seasons, approximately 40 percent had been sold as fresh fruit, suggesting that Florida grapefruit normally intended for the processing sector was diverted to the fresh market in response to the post-hurricane higher prices.

The major citrus varieties produced in California are navel and Valencia oranges, grapefruit, tangerines, and lemons. Approximately 78 percent of California citrus was utilized on the fresh market during the 2004–05 season. Over 79 percent of all oranges produced in California in the 2004–05 season were produced for the fresh market. Additionally, almost 90 percent of grapefruit, 86 percent of tangerines, and 71 percent of lemons were produced for the fresh market. Clearly, production in California is primarily for the fresh market.

The citrus varieties produced in Texas during the 2004–05 season were grapefruit, Valencia oranges, and midseason oranges. Fresh production accounted for approximately 52 percent of total production. Valencia and midseason orange production was destined primarily for the fresh market, accounting for 70 percent of total production. However, grapefruit production was mainly destined for the processed market, with 47 percent utilized on the fresh market.

Arizona produces Valencia and navel oranges, grapefruit, tangerines, and lemons. Approximately 62 percent of Arizona citrus was utilized on the fresh market during the 2004–05 season. Of this, approximately 77 percent of oranges were produced for the fresh market. All grapefruit produced in Arizona during the 2004–05 season, 81 percent of tangerine production, and 55 percent of lemon production went to the fresh market.

Total and domestic shipments of Florida fresh citrus declined in the 2004–05 season from the previous season by 42 percent and 29 percent, respectively. Fresh grapefruit had the largest share of total shipments of fresh Florida citrus including exports, while oranges accounted for the State's largest share of total domestic shipments.

Approximately 5.7 percent of Florida domestic fresh fruit shipments (nearly 4 percent, including exports) were transported to other citrus-producing States during the 2004–05 season. California received approximately 3 percent of total Florida fresh citrus shipments during the 2004–05 season. Shipments of tangerines and tangelos to other citrus-producing States represented about 14 percent of Florida's domestic shipments, a much higher percentage than for grapefruit (less than 2 percent) or oranges and temples (4.3 percent).

Florida's Loss of Access to Other Citrus-Producing States

Florida's loss of market access to other citrus-producing States is expected to affect the citrus industries in Florida and in these other States. We use a partial equilibrium model to compute expected impacts on Florida as a result of the State-wide quarantine. For the other citrus-producing States, we qualitatively assess likely impacts using available statistics because baseline and shipment data are not available.

Expected Effects for Florida

Baseline data for Florida as a domestic fresh citrus supplier are shown in table 1, for the three categories of citrus analyzed. Demand is modeled as Florida's consumption of fresh citrus produced within the State. It is based on 2004–05 fresh citrus shipments within Florida. Supply is modeled as Florida's production of fresh citrus for the 2004–05 season, as reported in the 2004–05 Florida Citrus Summary. Grower price

is the fresh on-tree price for Florida citrus, by variety, also reported in the 2004–05 Florida Citrus Summary.

TABLE 1.—BASELINE DEMAND, SUPPLY AND PRICES FOR FLORIDA FRESH CITRUS, BY VARIETY [1]

	Grapefruit	Oranges and temples	Tangerines and tangelos
Demand (kg)	14,783,800	36,250,800	18,161,650
Supply (kg)	286,026,000	309,916,800	163,201,800
Grower price ($/kg)	$0.51	$0.17	$0.35

[1] "Florida Fresh Citrus Shipments 2004–05 Annual Report," Economic and Market Research Department, Florida Department of Citrus, September 2005. and "Citrus Summary 2004–05," Florida Agricultural Statistic Service, USDA, NASS, Florida Field Office.
Note: Demand represents Florida consumption of its own production. Supply represents Florida's total production.

Based on annual data, the economic impacts and welfare effects of the interim rule are summarized in table 2 for the loss of market access of Florida fresh citrus shipments to other citrus-producing States. For each of the three categories of fresh citrus, the decrease in shipments because of the interim rule (loss of markets in the other citrus-producing States) will cause price declines. Florida production will fall and Florida consumption will rise in response to the lower prices.

For fresh grapefruit, the estimated producer welfare losses are estimated at $1.8 million, while consumer welfare gains are expected to reach nearly $93,000, yielding a net welfare loss of about $1.7 million. For fresh oranges and temples, producer losses are estimated at $2.8 million, while consumer surplus gains are expected to reach approximately $336,000, for a net welfare loss of about $2.5 million. For fresh tangerines and tangelos, producer losses are estimated at $8.2 million, while consumer surplus gains are expected to reach $1.2 million, and net welfare losses are estimated at $7.1 million.

TABLE 2.—ESTIMATED ECONOMIC EFFECTS OF A DECLINE IN FLORIDA FRESH CITRUS SHIPMENTS EQUIVALENT TO THE QUANTITIES SHIPPED TO OTHER CITRUS-PRODUCING STATES IN THE 2004–05 SEASON

	Grapefruit	Oranges and temples	Tangerines and tangelos
Decrease in fresh citrus shipments (kg)	1,525,700	4,120,800	20,767,300
Output data:			
Percentage change in price	−1.23	−5.33	−15.00
Change in price (per kg)	($0.01)	($0.01)	($0.05)
Percent change in quantity demanded	0.57	4.53	46.95
Estimated change in quantity demanded	83,571	1,642,611	8,527,006
Percent change in quantity supplied	−0.50	−0.80	−7.50
Estimated change in quantity supplied	(1,441,129)	(2,478,189)	(12,240,294)
Welfare effects:			
Change in consumer surplus	$92,917	$335,965	$1,177,336
Change in producer surplus	($1,788,107)	($2,797,385)	($8,246,894)
Net change in welfare	($1,695,190)	($2,461,420)	($7,069,558)

These welfare effects are likely overstated because we assume that no alternative markets or uses exist. Loss of market access to the other citrus-producing States will motivate packinghouses to find other markets for Florida fresh citrus, whether in non-citrus-producing States, within Florida, or abroad. Alternatively, the fruit may be processed.

In the case of tangerines and tangelos, the estimated net welfare losses are notably higher than for grapefruit and the orange varieties. As discussed earlier, tangerines and tangelos account for the largest percentage share of Florida fresh shipments to other citrus-producing States, particularly California. California provides a niche market for Florida fresh tangerines, especially honey tangerines, as reflected by the premium price received. As with grapefruit and oranges, the likely scenario for fresh tangerine and tangelo shipments will be diversion to other markets. However, diversion of tangerines and tangelos to the processing sector is unlikely to be as economically feasible as the grapefruit and orange processing sectors. Historically, tangerines and tangelos not suitable for the fresh market are greatly discounted, and producers can only, at best, recoup some of their costs by diversion to the processing sector.

In the longer term, the Florida citrus industry will face structural adjustments due to the prevalence of citrus canker. Production costs will increase as citrus canker control practices are incorporated into the cost of planting new groves. Supply is likely to decrease as the industry reduces acreage allocated to the production of fresh citrus, and resources are reallocated to other uses.

The loss of market access to other citrus-producing States by the Florida fresh citrus industry will likely result in relatively small welfare losses to Florida growers and packinghouses.

Federal spending on citrus canker through FY 2006 is estimated to be about $941 million; $536 million for compensation and $405 million for eradication. Clearly, benefits of preventing the spread of citrus canker to other citrus producing states outweigh expected costs associated with Florida's loss of market access to other citrus producing states.

Expected Effects for the Other Citrus-Producing States

Commercial citrus-producing States other than Florida (Arizona, California, Louisiana, and Texas) are also likely to be affected by the interim rule. However, unlike for Florida, there is not sufficient data to model the expected effects of this rule for these States. Although State-level production data

exists, consumption, foreign and domestic imports, and foreign and domestic export data are not readily available. We therefore qualitatively discuss possible effects.

In the short term, producers in these States are likely to benefit from higher prices resulting from the State-wide quarantine of Florida fresh citrus. A certain amount of production within each of these States will be diverted from interstate and export channels to fill some of the void left in the absence of the Florida fresh citrus. The California fresh tangerine sector will likely inherit most of the lucrative fresh tangerine market within that State that has been supplied by Florida.

Imports are also expected to supply a portion of the excess demand in these citrus-producing States. It is possible that additional oranges will be sourced from South Africa, Australia, and Mexico, tangerines from Mexico, and grapefruit from the Bahamas and Mexico based on historical import data.

Producers in the other citrus-producing States may expand production slightly in the medium term in response to higher prices. Given the biological process associated with citrus production, production expansion would not be possible in the short term. The degree to which prices are affected by the quarantine of Florida will govern the response by other producers. However, given the expected effects in Florida as outlined above, we expect at most small expansions in production in Arizona, California, Louisiana, and Texas.

Long-term effects of the interim rule for the other citrus-producing States are uncertain. If acreage devoted to citrus production in Florida contracts due to continued spread of citrus canker, farmers in the other citrus-producing States may expand their operations. However, numerous other factors will influence these decisions, including competing land use demands and imports.

The objective of the interim rule is to contain the spread of citrus canker within Florida and not allow it to spread to other citrus-producing States. As stated previously, while citrus canker affects the outward appearance of the fruit so that it may not be sold on the fresh market, the fruit may be used in the processing sector to make juice. In the case of oranges, Florida differs significantly from the other citrus-producing States in that approximately 95 percent of orange production is targeted for the processing sector. In other citrus-producing States, the majority of citrus produced enters the fresh market.

In California, for example, approximately 78 percent of citrus production was utilized in the fresh market during the 2004–05 season. If citrus canker were introduced into any of the other citrus-producing States, the economic effects could be much worse than in Florida, at least in the case of oranges, because of the larger share of production that is sold as fresh fruit. Citrus destined for the fresh market is a higher value product that is produced at a greater expense. Producers would likely not recoup all of the costs associated with growing the oranges if they had to be diverted to the processing sector.

Alternatives

The State-wide quarantine of Florida was one of three options considered for this interim rule. The Agency also considered maintaining the current quarantine zones. However, due to the pervasive spread of the disease, Agency officials determined that the quarantine and eradication procedures were ineffective at containing the spread of the disease and feared that the disease could spread to other citrus producing areas without additional action. APHIS thus determined that this option was not viable.

APHIS also considered allowing interstate movement of Florida citrus fruit to any domestic location, including citrus-producing States, if inspection of approved groves for signs of citrus canker 60 days prior to shipping found no symptoms of the disease. Such requirements would be similar to those imposed by the European Union for imports of Florida citrus fruit. However, pending a final determination by the Agency that citrus canker is unlikely to be introduced by asymptomatic citrus fruit, [1] Agency officials do not have sufficient information on which to base such a change.

The State-wide quarantine of Florida, which prohibits the shipment of Florida citrus to other citrus-producing States, would allow Florida to ship to all other States within the United States under certain conditions while preventing the spread of citrus canker to other citrus-producing states. APHIS determined this option to be the most effective and reasonable alternative.

[1] APHIS has considered the available scientific and other evidence associated with the question of asymptomatic citrus fruit as a pathway for the introduction of citrus canker. A risk evaluation has been made available for public comment and submitted for peer review but has not been finalized.

Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of proposed rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. In this section, we address these IRFA requirements for this interim rule.

The interim rule may affect producers of fresh citrus in Florida and other citrus-producing States, as well as firms responsible for packing and shipping these commodities to domestic and foreign markets. Affected Florida citrus producers are expected to be small businesses based on 2002 Census of Agriculture data and Small Business Administration (SBA) guidelines for entities classified within the farm categories Orange Groves (North American Industry Classification System [NAICS] 111310) and Citrus (except Orange) Groves (NAICS 111320). SBA classifies producers in these categories with total annual sales of not more than $750,000 as small entities. APHIS does not have information on the size distribution of the relevant producers, but according to 2002 Census data, there were a total of 9,335 fruit and tree nut farms in Florida in 2002. Of this number, approximately 95 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small entity threshold of $750,000. It is reasonable to assume that most of the 7,072 orange, 1,861 grapefruit, 485 tangelo, 879 tangerine, and 345 temple farms in Florida that will be affected by this rule qualify as small entities.

In the case of packinghouses, establishments engaged in Postharvest Crop Activities (NAICS 115114) with not more than $6.5 million in total annual sales are considered small businesses by SBA standards. The County Business Patterns report for Florida published by the U.S. Census Bureau states the number of firms by employment size. The number of employees and annual payroll for firms included in NAICS 115114 are reported. However, this publication does not report the value of total annual sales for firms in this category, nor is that information published in the Census of Agriculture or the Economic Census. The Florida Citrus Mutual reports that there are approximately 105 packinghouses in Florida, but that

classification of these establishments by sales volume is not available. Thus, we do not know the number of packinghouses in Florida that would be classified as small entities based on the SBA standard and we welcome information that the public may provide.

Small entities in Florida, particularly farmers, will likely face slightly lower prices for their citrus as a result of the implementation of the interim rule, as indicated in the economic analysis. However, these price declines (one cent per kilogram for grapefruit, oranges and temples; five cents per kilogram for tangerines and tangelos) are likely overstated since the analysis does not take into account opportunities for diversion of the fresh citrus shipments to alternative markets or for processing.

Small entities in other citrus-producing States may be affected by the interim rule. However, APHIS does not believe these impacts are likely to be substantial. There may be minimal price increases for citrus farmers in the other citrus-producing States, as they at least partially replace the supply from Florida. Small entities in these States may benefit, if only marginally, from the changes proposed in the interim rule. APHIS welcomes public comment on these potential benefits to citrus producers in Arizona, California, Louisiana, and Texas.

The State-wide quarantine of Florida was one of three options considered by APHIS for the interim rule. The Agency considered maintaining the current quarantine zones. However, due to the pervasive spread of the disease, Agency officials determined that the quarantine and eradication procedures were ineffective at containing the spread of the disease and feared that the disease could continue to spread to other citrus-producing areas without additional action. APHIS thus determined that this option was not viable. The Agency also considered inspection of approved groves for signs of citrus canker 60 days prior to shipping, similar to the current export requirements. Officials deemed the risk of citrus canker spreading to other citrus-producing States as being too high under this option, and it was abandoned. The State-wide quarantine of Florida, which prohibits the shipment of Florida citrus to other citrus-producing States, would allow Florida to ship to all other States within the United States while minimizing the probability of spreading citrus canker to other citrus-producing States. APHIS determined this option to be the most effective and reasonable alternative.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note); section 301.75–17 issued under Sec. 211, Title II, Public Law 108–7.

■ 2. In § 301.75–4, paragraph (a) is revised and new paragraphs (d)(3) through (d)(6) are added to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas: The State of Florida.

* * * * *

(d) * * *

(3) *Inspections.* (i) In the quarantined area, every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, between May 1 through December 31, by an inspector.

(ii) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(4) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with § 301.75–11(d) of this subpart upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75–11(c) of this subpart upon leaving the grove or premises.

(5) *Destruction of infected plants and trees.* No more than 7 days after a State or Federal laboratory confirms that a regulated plant or regulated tree is infected, the State must provide written notice to the owner of the infected plant or infected tree that the infected plant or infected tree must be destroyed. The owner must have the infected plant or infected tree destroyed within 45 days after receiving the written notice.

(6) *Interstate movement of regulated fruit.* When less than an entire State is designated as a quarantined area, regulated fruit produced in a quarantined area may be moved interstate in accordance with § 301.75–7(a) provided the following additional conditions are met:

(i) During the 2 years before the interstate movement, no plants or plant parts infected with citrus canker were found in the grove producing the regulated fruit and any exposed plants in the grove at high risk for developing citrus canker have been destroyed. Identification of exposed plants at high risk for developing citrus canker will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(A) The stage of maturity of the exposed plant at the time of exposure and the size and degree of infestation to which the plants were exposed,

(B) The proximity of exposed plants to infected plants or contaminated articles at the time of exposure, and

(C) The length of time the plants were exposed.

(ii) [Reserved]

■ 3. Section 301.75–6 is revised to read as follows:

§ 301.75–6 Interstate movement of regulated articles from a quarantined area, general requirements.

Regulated articles may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(a) *Inspections.* (1) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(2) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees must be treated in accordance with § 301.75–11(d) upon leaving the grove. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75–11(c) upon leaving the grove.

(b) Regulated plants and trees produced in a nursery located in a quarantined area that are not eligible for movement under paragraph (a) of this section may be moved interstate only for immediate export. The regulated plants and trees must be accompanied by a limited permit issued in accordance with § 301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

■ 4. Section 301.75–7 is amended as follows:

■ a. By removing paragraph (a)(2).

■ b. By redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(2) through (a)(5), respectively.

■ c. By revising newly redesignated paragraph (a)(2) to read as set forth below.

■ d. By revising newly redesignated paragraph (a)(5) to read as set forth below.

■ e. By redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as set forth below.

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

(a) * * *

(2) No more than 30 days before the beginning of harvest, every tree was inspected by an inspector and the grove was found free of citrus canker. Further, in groves producing limes, every tree was inspected by an inspector and the grove was found free of citrus canker every 120 days or less thereafter for as long as harvest continued.

* * * * *

(5) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75–12. The boxes or other containers in which the fruit is packaged must be clearly marked with the statement ''Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States.''

* * * * *

(b) Regulated fruit produced in a quarantined area that is not eligible for movement under paragraph (a) of this section may be moved interstate only for immediate export. The regulated fruit must be accompanied by a limited permit issued in accordance with § 301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

* * * * *

Done in Washington, DC, this 26th day of July 2006.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E6–12314 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25444; Directorate Identifier 2006–SW–18–AD; Amendment 39–14700; AD 2006–15–19]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This action requires, before further flight, replacing a certain main gearbox (MGB) upper main housing assembly (housing assembly) that has 2700 or more hours time-in-service (TIS) with an airworthy part. This action also requires, before further flight, revising the Airworthiness Limitations section (ALS) of the maintenance manual by establishing a new retirement life for the MGB housing assembly of 2700 hours TIS. This amendment is prompted by testing of the MGB housing assembly that resulted in premature fatigue failure due to a manufacturing process creating an oxide skin defect in the housing. The actions specified in this AD are intended to prevent fatigue failure of the MGB housing, loss of MGB lube oil, loss of main and tail rotor drive, and subsequent loss of control of the helicopter.

DATES: Effective August 16, 2006.

Comments for inclusion in the Rules Docket must be received on or before October 2, 2006.

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

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

Examining the Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Gaulzetti, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the Sikorsky Model S–92A helicopters. This action requires, before further flight, replacing a certain MGB housing assembly that has 2700 or more hours TIS with an airworthy MGB housing assembly with less than 2700 hours TIS. Also, this action requires, before further flight, revising the ALS of the

maintenance manual by establishing a new retirement life for the MGB housing assembly of 2700 or more hours TIS. This amendment is prompted by component fatigue testing of the MGB housing assembly that resulted in premature fatigue failure due to a manufacturing process creating an oxide skin defect in the housing. This condition, if not corrected, could result in fatigue failure of the MGB housing, loss of MGB lube oil, loss of main and tail rotor drive, and subsequent loss of control of the helicopter.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent fatigue failure of the MGB housing, loss of MGB lube oil, loss of main and tail rotor drive, and subsequent loss of control of the helicopter. This AD requires, before further flight, replacing any MGB housing assembly, part number 92351–15110–042, that has 2700 or more hours TIS with an airworthy part. This AD also requires, before further flight, revising the ALS of the maintenance manual by establishing a new retirement life for the MGB housing assembly of 2700 hours TIS.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Some operators may have already exceeded the 2700 hours TIS. Therefore, replacing each MGB housing assembly that has 2700 or more hours TIS with an airworthy MGB housing assembly is required before further flight and this AD must be issued immediately.

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

We estimate that this AD will affect 13 helicopters, and will take about 20 work hours to replace the MGB housing assembly at an average labor rate of $80 per work hour. Required parts will cost about $152,000 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,996,800.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25444; Directorate Identifier 2006–18–SW–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Regulatory Findings

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

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

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2006–15–19 Sikorsky Aircraft Corporation: Amendment 39–14700. Docket No. FAA–2006–25444; Directorate Identifier 2006–SW–18–AD.

Applicability

Model S–92A helicopter, with main gearbox (MGB) upper main housing assembly (housing assembly), part number 92351–15110–042, installed, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To prevent fatigue failure of the MGB housing, loss of MGB lube oil, loss of main and tail rotor drive, and subsequent loss of control of the helicopter, do the following:

(a) Before further flight, replace each MGB housing with 2700 or more hours time-in-service (TIS) with an airworthy MGB housing with less than 2700 hours TIS.

(b) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the MGB housing assembly of 2700 hours TIS.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: Wayne Gaulzetti, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(d) This amendment becomes effective on August 16, 2006.

Issued in Fort Worth, Texas, on July 26, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E6–12305 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23866; Airspace Docket No. 06–ASO–3]

Establishment of Class D and E Airspace, Amendment of Class E Airspace; Leesburg, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E4 airspace and amends Class E5 airspace at Leesburg, FL. A Federal contract tower with a weather reporting system is being constructed at the Leesburg Regional Airport. Therefore, the airport will meet the criteria for establishment of Class D and E4 airspace. Class D surface area airspace and Class E4 airspace desiganted as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action will establish Class D airspace extending upward from the surface to but not including 1,600 feet MSL, within a 4.1-mile radius of the Leesburg Regional Airport and a Class E4 airspace extension that is 4.8 miles wide and extends 7 miles southeast of the airport. This action will also amend Class E5 airspace extending upward from 700 feet Above Ground Level (AGL) needed to contain SIAPs, by decreasing the size from a 7-mile radius of the airport to a 6.6-mile radius of the airport and providing for the procedure turn area. Additionally, a technical amendment will result in a name change from the Leesburg Municipal Airport to the Leesburg Regional Airport, which was effective August 25, 1997.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manaer, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On February 28, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and E4 airspace and amending Class E5 airspace at Leesburg, FL, (71 FR 9982). This action provides adequate Class D and E airspace for IFR operations at Leesburg Regional Airport. Designations for Class D Airspace, Class E Airspace Areas Designated as an Extension to a Class D Surface Area, and Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth are published in paragraphs 5000, 6004 and 6005 respectively, of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace and Class E4 airspace and amends Class E5 airspace at Leesburg, FL.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389; 14 CFR 11.69.

71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Leesburg, FL [NEW]

Leesburg Regional Airport, FL
(Lat. 28°49′23″ N, long. 81°48′31″ W)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.1-mile radius of Leesburg Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ASO FL E4 Leesburg, FL [NEW]

(Lat. 28°49′23″ N, long. 81°48′31″ W)
Leesburg NDB
(Lat. 28°49′06″ N, long. 81°48′26″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Leesburg NDB 111° bearing, extending from the 4.1-mile radius to 7 miles southeast of the NDB. This class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Leesburg, FL [REVISED]

Leesburg Regional Airport, FL
(Lat. 28°49′23″ N, long. 81°48′31″ W)
Leesburg NDB
(Lat. 28°49′06″ N, long. 81°48′26″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Leesburg Regional Airport, and within 4 miles southwest and 8 miles northeast of the 111° bearing from the

Leesburg NDB extending from the 6.6-mile radius to 16 miles southeast of the airport.

* * * * *

Issued in College Park, Georgia, on July 13, 2006.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 06–6593 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24234; Airspace Docket No. 06–AWP–5]

RIN 2120–AA66

Amendment to Class E Airspace; Provo, UT

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Provo, UT. A review of the legal description revealed that it does not reflect the controlled airspace area of the Class D or the current airport reference point (ARP) for Provo Municipal Airport. This action attends the Class E ARP and the airspace area to coincide with the Class D airspace legal description.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Airspace Specialist, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

There is a discrepancy between the Airport Reference Point (ARP) of the Class E2 airspace area at Provo Municipal Airport, UT, and the Class D ARP. The ARP of the Class E2 airspace is amended to correspond with the Class D airspace ARP. In addition, the Class E2 airspace legal description is changed to coincide with the Class D legal description. Class E2 airspace designations are published in paragraph 6002 of FAA Order 7400.90 dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the ARP in the Class E2 airspace legal description of Provo Municipal Airport, UT, and changing it to coincide with the Class D airspace legal description. Accordingly, since this action only involves a change in the airport's legal description of the Provo, UT, Class E2 airspace area, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 533(b) are unnecessary. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.90, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6002 Class E2 Airspace.

* * * * *

ANM UT E2 Provo, UT [Amended]

Provo Municipal Airport, UT
(Lat. 40°13′09″ N, long. 111°42′42″ W)
Spanish Fork-Springville, UT
(Lat. 40°08′30″ N, long. 111°39′41″ W)

That airspace extending upward from the surface to and including 7,000 feet MSL within a 4.3-mile radius of Provo Municipal airport, excluding that airspace within a 2.4 mile radius of the Spanish Fork-Springville Airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on July 18, 2006.

Leonard A. Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06–6592 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24858; Airspace Docket No. 06–ASO–8]

Establishment of Class E Airspace; Mooresville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Mooresville, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Runway (RWY) 14 has been developed for Lake Norman Airpark. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rules (IFR) operations at Lake Norman Airpark. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On June 7, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Mooresville, NC, (71 FR 32876). This action provides adequate Class E airspace for IFR operations at Lake Norman Airpark. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Mooresville, NC.

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Mooresville, NC [NEW]

Lake Norman Airpark, NC
(Lat. 35°36′47″ N, long. 80°53′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-radius of Lake Norman Airpark; excluding that airspace within the Statesville, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on July 13, 2006.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 06–6591 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23709; Airspace Docket No. 06–AAL–02]

Establishment of Class E Airspace; Willow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 30, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Willow, AK (71 FR 30631). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new Standard Instrument Approach Procedures (SIAPs), one new Standard Instrument Departure (SID) and a published departure procedure (DP) for the Willow Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) RWY 13, Original and (2) RNAV (GPS) RWY 31, Original. The SID is named the Big Lake One Departure. The DP is unnamed and will be listed in the front of the U.S. Terminal Procedures publication for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Willow Airport area is established by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. The commenter approved of the proposed action but would like to ''get the Class E down to the surface.'' A surface area had been considered for the Willow Airport, but was deemed too restrictive for the vast majority of local operators. There are 11 airports within the area that would be encompassed by a standard surface area. The pilots at these airports are typically flying exclusively under Visual Flight Rules (VFR). The demand for Instrument Flight Rules (IFR) usage of SIAPs to the Willow Airport is very low. A surface area would require increased visibility and communications requirements, as well as the necessity to obtain ATC clearances for operations to/from these airports, and is not warranted at this time. The SIAP minima will contain IFR traffic in Class E airspace as proposed. The commenter also offered a suggestion to place a VOR in the Willow area to enable VOR SIAP(s). This suggestion will not be adopted due to

the high cost of installation of a VOR and the very low use it would generate. The rule is adopted as proposed.

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

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at the Willow Airport, Alaska. This Class E airspace is created to accommodate aircraft executing two new SIAPs, one SID and one DP, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Willow Airport, Willow, Alaska.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Willow, AK [New]

Willow Airport, AK

(Lat. 61°45′16″ N., long. 150°03′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Willow Airport, and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Willow Airport.

* * * * *

Issued in Anchorage, AK, on July 24, 2006.

Anthony M. Wylie,

Director, Alaska Flight Service Information Office.

[FR Doc. E6–12284 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24003; Airspace Docket No. 06AAL–12]

Revision of Class E Airspace; Adak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Adak, AK to provide adequate controlled airspace to contain aircraft executing one new special Standard Instrument Approach Procedure (SIAP) and one new special departure procedure (DP). This rule results in revised Class E airspace revised upward from 700 feet (ft.) and 1,200 ft. above the surface at Adak, AK.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, June 2, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Adak, AK (71 FR 31983). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing one new special SIAP and one new special DP for the Adak Airport. The special SIAP is the Instrument Landing System (ILS) or Localizer (LOC)/Distance Measuring Equipment (DME) Runway (RWY) 23, Amendment 2. The special DP is unnamed. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Adak Airport area is revised by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

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

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Adak, AK [Revised]

Adak Airport, AK

(Lat. 51°52′41″ N., long. 176°38′46″ W.)

Mount Moffett NDB

(Lat. 51°52′19″ N., long. 176°40′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Adak Airport and within 5.2 miles northwest and 4.2 miles southeast of the 060° bearing of the Mount Moffett NDB extending from the 7-mile radius to 11.5 miles northeast of the Adak Airport; and that airspace extending upward from 1,200 feet above the surface within an 11-mile radius of the Adak Airport, and within 16 miles of the Adak Airport extending clockwise from the 033° bearing to the 081° bearing of the Mount Moffett NDB.

* * * * *

Issued in Anchorage, AK, on July 24, 2006.

Anthony M. Wylie,

Director, Alaska Flight Service Information Office.

[FR Doc. E6–12282 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 1976N–0052N] (formerly 76N–052N)

RIN 0910–AF34

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Monograph for OTC Nasal Decongestant Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend the final monograph (FM) for over-the-counter (OTC) nasal decongestant drug products (drug products used to relieve nasal congestion due to a cold, hay fever, or other upper respiratory allergies) to add phenylephrine bitartrate (PEB), both individually and in combination drug products in an effervescent dosage form, as generally recognized as safe and effective (GRASE). An effervescent dosage form is intended to be dissolved in water before taking by mouth. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date*: This rule is effective August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5484, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

A. Advance Notice of Proposed Rulemaking (ANPR)

1. OTC Cough-Cold Drug Products

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published the report of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel). That Panel reviewed oral and topical nasal decongestant drug products and found several active ingredients, including phenylephrine hydrochloride (PEH), to be safe and effective ingredients for OTC use (41 FR 38312 at 38399 and 38400). The Cough-Cold Panel did not evaluate PEB.

2. OTC Oral Health Care Drug Products

In the **Federal Register** of May 25, 1982 (47 FR 22760), FDA published the report of the Advisory Review Panel on OTC Oral Cavity Drug Products (Oral Cavity Panel). That Panel reviewed the safety and effectiveness of two oral nasal decongestant ingredients, PEH and phenylpropanolamine hydrochloride (both in lozenge form for topical use), and classified these ingredients as Category III (more effectiveness data needed) (47 FR 22760 at 22911 through 22914). The Oral Cavity Panel did not evaluate PEB.

B. Tentative Final Monograph (TFM)

1. OTC Cough-Cold Drug Product

In the **Federal Register** of January 15, 1985 (50 FR 2220), FDA published the TFM for OTC nasal decongestant drug products. The TFM proposed PEH as a monograph ingredient, but PEB was not addressed due to lack of available data.

2. OTC Oral Health Care Drug Products

In the **Federal Register** of January 27, 1988 (53 FR 2436), FDA published the TFM for OTC oral health care (anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent) drug products. FDA referred the data on the oral nasal decongestant ingredients PEH and phenylpropanolamine hydrochloride in lozenge form for topical use to the rulemaking for OTC nasal decongestant drug products, because that was the primary rulemaking for these ingredients (53 FR 2436 at 2448 and 2449).

C. Final Monograph (FM) OTC Cough-Cold Drug Products

In the **Federal Register** of August 23, 1994 (59 FR 43386), FDA published the FM for OTC nasal decongestant drug products. The monograph included PEH as GRASE for oral and topical use as a nasal decongestant (21 CFR 341.20(a)(1) and (b)(8)). The monograph did not specify specific oral dosage forms. FDA acknowledged that PEB was submitted as an oral nasal decongestant active ingredient in an effervescent combination tablet for OTC use. FDA noted that PEB was not reviewed by the Cough-Cold Panel, or included in its report, and was not addressed in the FM for OTC nasal decongestant drug products (59 FR 43386 at 43394 and 43395). FDA reviewed data on PEB submitted in a comment and concluded that the data were inadequate to demonstrate the safety and effectiveness of PEB in an effervescent dosage form as an OTC oral nasal decongestant ingredient. Consequently, this ingredient was not included in the FM.

On March 20, 2002, a manufacturer submitted a citizen petition to amend the OTC nasal decongestant FM to include the ingredient PEB in an effervescent tablet as GRASE for use as a single ingredient or in combination with any monograph cough-cold active ingredient. The petition included:

- Domestic and international marketing experience to meet FDA's material time and extent criteria for inclusion in an OTC drug monograph (see 21 CFR 330.14)
- In vitro and in vivo studies to demonstrate comparability of PEB with PEH, an approved monograph active ingredient
- A proposal that PEB would provide consumers with greater choice in combination nasal decongestant/analgesic cough-cold formulations

In the **Federal Register** of November 2, 2004 (69 FR 63482), FDA published a proposed rule to amend the FM for OTC nasal decongestant products to add PEB in an effervescent tablet as a single ingredient or in combination with aspirin and chlorpheniramine maleate. A drug manufacturer and an individual submitted comments, which included several issues that are discussed in section II of this document.

II. The Agency's Conclusion on the Comments

(Comment 1) One comment asked FDA to expand the definition of an effervescent dosage form. FDA had proposed the following definition for an effervescent tablet: ''A tablet intended to be dissolved in water before administration. It contains, in addition to the active ingredient(s), mixtures of acids (citric acid, tartaric acid) and sodium bicarbonate, which releases carbon dioxide when dissolved in water.''

The comment requested that FDA revise the proposed definition of effervescent tablet to permit additional inactive ingredients, claiming that its suggested revision would provide greater formulation flexibility. The comment based its revised definition upon definitions from pharmaceutical texts and reference books, including the United States Pharmacopeia (U.S.P.), the British/European Pharmacopeia (BP/EP), and other pharmacopeial individual monographs. The comment requested that FDA revise the definition of effervescent tablet as follows: ''A tablet intended to be dissolved or dispersed in water before administration. It generally contains, in addition to the active ingredient(s), mixtures of acids/acid salts (citric acid, tartaric acid, malic acid, or any other suitable acid or acid anhydride), which release carbon dioxide when mixed with water. Occasionally, the active ingredient itself could act as the acid or alkali metal compound necessary for effervescent reaction.''

FDA declines the request to revise the definition of effervescent tablet to permit additional inactive ingredients, but is expanding the definition in a different manner to provide manufacturers greater formulation flexibility. FDA's definition in the OTC nasal decongestant FM is substantially the same as the definitions for effervescent tablets in the U.S.P. (Ref. 1) and for effervescent tablets and granules in the FDA Center for Drug Evaluation and Research (CDER) Data Standards Manual (Ref. 2). All of these definitions describe a dosage form that contains citric acid, tartaric acid, and sodium bicarbonate as inactive ingredients to produce the effervescence, and the product releases gas (carbon dioxide) when added to water.

FDA is not revising the definition in the manner suggested by the comment because the agency has concerns about the comment's proposed use of the term ''any other suitable acid or acid anhydride.'' This term is not sufficiently specific to ensure consistency with the current regulatory requirements for inactive ingredients. Under § 330.1(e) (21 CFR 330.1(e)), a product is required to contain only suitable inactive ingredients that meet certain criteria. These inactive ingredients must be safe in the amounts administered and must not interfere with the effectiveness of the preparation or with suitable tests or assays to determine if the product meets its professed standards of identity, strength, quality, and purity. The comment did not submit data to demonstrate that the additional inactive ingredients it requests are safe in the amounts administered or that they do not interfere with the effectiveness of the preparation or with suitable tests or assays. FDA is not aware of any such data for effervescent dosage forms that contain PEB. FDA is also not aware of PEB as the active ingredient in these products acting as ''the acid or alkali metal compound necessary for effervescent reaction.'' Accordingly, FDA is not adding this requested information to the definition at this time.

Interested parties should contact U.S.P. for any change in the compendial definition of an effervescent tablet that would apply to all such products. The definition in § 341.3(i) applies only to products containing PEB covered by this FM. Interested parties who wish to

include a PEB effervescent dosage form that contains different inactive ingredients than those listed in the definition in this FM may provide FDA specific data on such a product

FDA is expanding the definition of ''effervescent tablet'' by replacing ''effervescent tablet'' in § 341.3(i) of the proposed rule with ''effervescent dosage form'' in this final rule. We are making this change to provide greater formulation flexibility to permit other effervescent dosage forms (e.g., granules and powders) to be marketed. The FDA CDER Data Standards Manual (Ref. 2) defines an effervescent granule as ''a small particle or grain containing a medicinal agent in a dry mixture * * *.'' The pharmacokinetic data provided for the PEB effervescent tablet dosage form would also support use of an effervescent granule or powder dosage form, based on the smaller particle size of these dosage forms. Accordingly, the definition in § 341.3(i) now reads: ''*Effervescent dosage form.* A dosage form intended to be dissolved in water before administration. It contains, in addition to the active ingredient(s), mixtures of acids (citric acid, tartaric acid) and sodium bicarbonate, which release carbon dioxide when dissolved in water.'' In conjunction with this change, we have also changed the proposed active ingredient description ''phenylephrine bitartrate effervescent tablet'' in § 341.20(a)(4) to ''phenylephrine bitartrate effervescent dosage form'' in this FM.

(Comment 2) One comment requested FDA to allow PEB as an oral nasal decongestant in all combination products containing an oral nasal decongestant when formulated as an effervescent tablet and labeled in accordance with 21 CFR 341.80 and 21 CFR 341.85. The comment contended that PEH is included as a GRASE oral nasal decongestant ingredient in the monograph for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products and is included in 17 permitted combinations. The comment further stated that FDA acknowledged in the proposed rule that both phenylephrine salts (bitartrate and hydrochloride) have similar safety and efficacy profiles, and could be used in effervescent tablets interchangeably without any clinically significant impact on the performance of the formulations studied. The comment provided in-vitro data demonstrating comparable recovery of the active ingredient following dissolution in various solution media of effervescent tablets formulated with either PEH or PEB, in the presence or absence of other common cough/cold active ingredients.

FDA agrees with the comment. In the **Federal Register** of January 15, 1985 (50 FR 2220), FDA affirmed the Cough-Cold Panel recommendations for numerous combinations containing an oral nasal decongestant and other active ingredients. PEH was one of those active ingredients. In the proposed rule of the current rulemaking (69 FR 63482 at 63485, November 2, 2004), FDA acknowledged that the two phenylephrine salts in effervescent tablets could be used interchangeably. The similarity in the rate and extent of absorption of PEH and PEB in the effervescent tablets allows FDA to conclude that the bioavailability of the phenylephrine salts in the effervescent tablets is comparable (69 FR 63482, November 2, 2004). With regard to PEB and other combinations:

- PEH is similarly bioavailable to PEB, as stated previously, and in-vitro dissolution data demonstrate that recovery of phenylephrine from formulations of either salt is virtually indistinguishable (PEH v PEB). FDA believes that PEB would have also been among the ingredients recommended for inclusion in the same combinations as PEH, had the Cough-Cold Panel considered that ingredient. Accordingly, FDA is including PEB in an effervescent dosage form as a permitted active ingredient as follows:
- In the same types of combination products as the other oral nasal decongestant active ingredients under §§ 341.40 (b), (c), (e), (g), (i), (j), (m), (n), (p), (q), (r), (s), (t), (x), (y), (aa), and (bb),
- With labeling for combination products under § 341.85 (b)(1), (b)(2), (b)(3), and (c)(3).

(Comment 3) One comment contended that FDA should not approve PEB for OTC use until an official compendium exists to define the quality and purity of its effervescent dosage form. FDA does not agree with the comment's suggestion. PEB as a drug substance became official in the U.S.P. on August 1, 2005 (Ref. 3). FDA's regulation in 21 CFR 330.14(i) sets forth criteria and procedures for classifying OTC drugs as GRASE and not misbranded. It states that ''any active ingredient or botanical drug substance included in a final OTC drug monograph * * * must be recognized in an official USP-NF drug monograph that sets forth its standards of identity, strength, quality, and purity.'' While FDA's regulation mentions a U.S.P.–N.F. drug monograph for the active ingredient, it does not also require a U.S.P.–N.F. drug monograph for the active ingredient in a specific dosage form. Accordingly, FDA concludes that a U.S.P. compendial monograph for the PEB drug substance is a sufficient basis for including PEB as an active ingredient in an effervescent tablet or other effervescent dosage form in the FM for OTC nasal decongestant drug products.

III. Submission of Pharmacokinetic Data for Other Solid Dosage Forms of PEB

FDA notes in the proposed rule that the rate and extent of absorption after the first dose of PEB capsules are not similar to PEH capsules. FDA is willing to consider pharmacokinetic data in support of other PEB solid dosage forms (e.g., capsule, or noneffervescent tablet, granule, or powder) and invites interested persons to submit such data in the form of a petition under 21 CFR 10.30 to amend the monograph for OTC nasal decongestant drug products.

IV. Labeling Change from the Proposed Rule

At the time of the proposed rule, sinusitis would have been a permitted indication for OTC combination drug products that include PEB in an effervescent dosage form as an oral nasal decongestant. Subsequently, FDA revised the labeling for these products. In the **Federal Register** of October 11, 2005 (70 FR 58974), FDA published a final rule to eliminate the term ''sinusitis'' from the labeling of OTC nasal decongestant drug products. Accordingly, FDA has revised the introductory language of §§ 341.85(b)(2) and (b)(3) of the proposed rule to replace the term ''sinusitis'' with ''nasal congestion.'' Sections 341.85(b)(2) and (b)(3) of the final rule now read as follows:

''§ 341.85 *Labeling of permitted combinations of active ingredients.*

(b)(2) *For permitted combinations containing an analgesic-antipyretic active ingredient * * * when labeled for relief of hay fever/allergic rhinitis and/or nasal congestion symptoms.*

(b)(3) *For permitted combinations containing an oral analgesic-antipyretic active ingredient * * * when labeled for relief of general cough-cold symptoms and/or the common cold and for relief of hay fever/allergic rhinitis and/or nasal congestion symptoms.*''

V. Summary of Agency Changes

1. FDA is changing the definition of ''effervescent tablet'' in § 341.3(i) to ''effervescent dosage form.'' In conjunction with this change, FDA is changing the active ingredient description in § 341.20(a)(4) from ''Phenylephrine bitartrate in an effervescent tablet'' to ''Phenylephrine bitartrate in an effervescent dosage

form'' (see section II, comment 1 of this document).

2. In the proposed rule, FDA proposed to amend § 341.40(b), (c), (e), (g), (i), (j), (m), (n), (p), (q), (r), (s), (t), (x), (y), (aa), and (bb) to exclude PEB in § 341.20(a)(4). Now that FDA is allowing PEB in all of these combinations, there is no need to amend these paragraphs because the existing language therein already refers to all nasal decongestant active ingredients in § 341.20(a).

3. FDA is eliminating proposed § 341.40 (cc) because the combination is now covered by § 341.40(c). With the elimination of proposed § 341.40(cc), the proposed amendments of the headings in § 341.85(a)(1), (b)(1), (b)(2), (b)(3), and (c)(3) to add § 341.40(cc) are no longer needed and are withdrawn. However, the headings in § 314.85(b)(2) and (b)(3) are being revised as discussed in section IV of this document.

VI. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if the rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by state, local, and tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation).

FDA believes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. This final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product.

The purpose of this final rule is to include PEB in the monograph for OTC nasal decongestant drug products. This final rule will allow manufacturers who market products containing this ingredient in foreign countries and manufacturers who would like to market products containing this ingredient in the United States to enter the market place under the OTC drug monograph instead of a new drug application (NDA). Cost savings will occur from marketing without an NDA.

Marketing a new OTC drug product containing PEB is optional for any interested manufacturer. The costs would involve the standard startup costs associated with marketing any new product under an OTC drug monograph. Manufacturers will not incur any costs determining how to state the product's labeling because the monograph amendment provides that information. This final rule is not expected to require any new reporting and recordkeeping activities. Therefore, no additional professional skills will be needed.

FDA considered but rejected the option of not including PEB in the monograph because it considers the data presented supportive of monograph status. The ingredient became official in the U.S.P. on August 1, 2005 (Ref. 3).

This analysis shows that FDA has considered the burden to small entities. FDA does not consider an exemption for small entities necessary because those manufacturers can enter the market place like larger entities anytime after this FM becomes effective. Therefore, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the monograph labeling is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379r) is an express preemption provision. Section 751(a) of the act (21 U.S.C. 379r(a)) provides that: ''* * * no State or political subdivision of a State may establish or continue in effect any requirement— * * * (1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*).'' Currently, this provision operates to preempt States from imposing requirements related to the regulation of nonprescription drug products. (See Section 751(b) through (e) of the act for the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision.) This final rule would add PEB, individually and in combination drug products when used in effervescent dosage form, to the FM for OTC nasal decongestant drug products. Although this final rule would have a preemptive effect, in that it would preclude States from promulgating requirements related to these PEB drug products that are different from or in addition to, or not otherwise identical with a requirement in the final rule, this preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act

displaces both State legislative requirements and State common law duties. We also note that even where the express preemption provision is not applicable, implied preemption may arise. See *Geier* v. *American Honda Co.*, 529 US 861 (2000).

FDA believes that the preemptive effect of the final rule would be consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule in the **Federal Register** of November 2, 2004 (69 FR 63482). FDA received no comments from any States on the proposed rulemaking.

In addition, on June 19, 2006, FDA's Division of Federal and State Relations provided notice via fax and email transmission to elected officials of State governments and their representatives of national organizations. The notice provided the States with further opportunity for comment on the rule. It advised the States of the publication of the proposed rule and encouraged State and local governments to review the notice and to provide any comments to Docket No. 1976N–0052N, opened in the November 2, 2004, **Federal Register** notice, by a date 30 days from the date of the notice (i.e., by July 19, 2006), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in Docket No. 1976N–0052N.

In conclusion, FDA believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. Effective Date

This final rule becomes effective August 31, 2006.

XI. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 under Docket No. 1976N–0052N and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. *The United States Pharmacopeia 29–National Formulary 24*, The United States Pharmacopeial Convention, Inc., Rockville, MD, pp 3005, 2006.

2. *CDER Data Standards Manual* (see sections entitled ''Tablet Effervescent'' and ''Granule Effervescent'') at *http://www.fda.gov/cder/dsm/DRG/drg00201.htm*.

3. *The United States Pharmacopeia 28–National Formulary 23, Supplement 2*, The United States Pharmacopeial Convention, Inc., Rockville, MD, pp 3520, 2005.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 341.3 is amended by adding paragraph (i) to read as follows:

§ 341.3 Definitions.

* * * * *

(i) *Effervescent dosage form.* A dosage form intended to be dissolved in water before administration. It contains, in addition to the active ingredient(s), mixtures of acids (citric acid, tartaric acid) and sodium bicarbonate, which release carbon dioxide when dissolved in water.

■ 3. Section 341.20 is amended by adding paragraph (a) (4) to read as follows:

§ 341.20 Nasal decongestant active ingredients.

* * * * *

(a) * * *

(4) Phenylephrine bitartrate in an effervescent dosage form.

* * * * *

■ 4. Section 341.80 is amended by revising the headings in paragraphs (c)(1)(i) and (c)(1)(ii), and by adding paragraph (d)(1)(iii) to read as follows:

§ 341.80 Labeling of nasal decongestant drug products.

* * * * *

(c) * * *

(1) *Oral nasal decongestants*—(i) *For products containing phenylephrine hydrochloride, pseudoephedrine hydrochloride, pseudoephedrine sulfate, or phenylephrine bitartrate identified in § 341.20 (a)(1) through (a)(4) when labeled for adults.* * * *

* * * * *

(ii) *For products containing phenylephrine hydrochloride, pseudoephedrine hydrochloride, pseudoephedrine sulfate, or phenylephrine bitartrate identified in § 341.20 (a)(1) through (a)(4) when labeled for children under 12 years of age.* * * *

* * * * *

(d) * * *

(1) * * *

(iii) *For products containing phenylephrine bitartrate identified in § 341.20(a)(4).* Include information on the number of dosage units and the quantity of water the dosage units are to be dissolved in prior to administration as shown in the following table:

Age[1]	Dose[1]
Adults and children 12 years of age and over	15.6 milligrams every 4 hours not to exceed 62.4 milligrams in 24 hours
Children 6 to under 12 years of age	7.8 milligrams every 4 hours not to exceed 31.2 milligrams in 24 hours
Children under 6 years of age	Ask a doctor

[1]Headings are not required to appear in the product's labeling

* * * * *

■ 5. Section 341.85 is amended by revising the headings in paragraphs (b)(2) and (b)(3).

§ 341.85 Labeling of permitted combinations of active ingredients.

* * * * *

(b) * * *

(2) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40 (a), (c), (f), (g), (m), (q), and (r) when labeled for relief of hay fever/allergic rhinitis and/or nasal congestion symptoms.****

* * * * *

(3) *For permitted combinations containing an oral analgesic-antipyretic active ingredient identified in § 341.40 (a), (c), (f), (g), (m), (q), and (r) when labeled for relief of general cough-cold symptoms and/or the common cold and for relief of hay fever/allergic rhinitis and/or nasal congestion symptoms.****

* * * * *

Dated: July 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–12265 Filed 7–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9272]

RIN 1545–BE81

REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions) (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general income tax purposes. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated. The regulations clarify the timing of income under section 860G for purposes of determining a domestic partnership's responsibility under sections 1441 and 1442 for withholding tax with respect to a foreign partner's share of REMIC net income as a result of indirectly holding a residual interest. The regulations also provide that an excess inclusion is treated as income from sources within the United States. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 1, 2006.

Applicability Dates: For dates of applicability, see §§ 1.860A–1T(b)(5), 1.863–1T(f) and 1.1441–2T(f).

FOR FURTHER INFORMATION CONTACT: Dale Collinson, (202) 622–3900 (not a toll-free number).

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1 under sections 860A, 860G(b), 863, 1441, and 1442 of the Internal Revenue Code (Code). Under section 860C(a)(1), in general, a holder of a REMIC residual interest must take into account the holder's daily portion of the taxable income or net loss of the REMIC for each day of the taxable year on which the holder held the interest. Thus, a residual interest holder generally is taxable currently on the taxable income or net loss of the REMIC without regard to whether or when the REMIC makes distributions. Section 860G(b) provides an exception to this general rule in section 860C for the timing of income attributable to the ownership of a REMIC residual interest. Under this exception, for purposes of sections 871(a), 881, 1441, and 1442, if amounts are includible in the income of a holder of a REMIC residual interest that is a nonresident alien individual or a foreign corporation, the amounts are taken into account only when paid or distributed to the foreign holder, or when the interest is disposed of.

In its earlier years, a REMIC may accrue and recognize more taxable interest income from the mortgages that it holds than it accrues and deducts as interest on the regular interests that it has issued. This produces net income for the REMIC and thus for the holder of the REMIC's residual interest. Many REMICs are structured so that the REMIC uses all, or substantially all, of its cash flow to pay expenses and to pay principal and interest on regular interests (effectively using a portion of interest receipts to pay principal or other nondeductible items). Such a REMIC will make little or no distributions to the holders of the residual interest in the REMIC, and each holder will incur tax liabilities with respect to its share of the REMIC's net income in an amount that exceeds the holder's economic return.

In addition, all or substantially all of the income attributable to holding the residual interest will be subject to special rules relating to *excess inclusions*. To ensure that the income will be taxable in all events, these rules, among other things, prevent the use of net operating losses to offset the excess inclusions, see section 860E, and preclude any exemption from, or reduction in, applicable withholding taxes, see section 860G(b)(2). Residual interests that entitle the holder to little or no distributions are commonly referred to as *noneconomic* REMIC residual interests, and persons acquiring those interests receive an *inducement fee* for becoming the holder and undertaking the associated tax payment responsibilities. Taxable income that must be recognized in excess of the economic income for a period is often called *phantom income.* In the case of a REMIC, the early phantom income is generally offset by matching deductions (generally called *phantom losses*) in later periods.

Consistent with the Congressional purpose of ensuring that excess inclusions of REMICs be subject to tax, § 1.860E–1(c) of the Income Tax Regulations provides for disregarding transfers of noneconomic REMIC residual interests if a significant purpose of the transfer is avoiding assessment or collection of tax. In addition, § 1.860G–3(a)(1) provides, ''A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal income tax purposes if the transferee is a foreign person.'' Section 1.860G–3(a)(2) provides, ''A residual interest has tax avoidance potential * * * unless, at the time of the transfer, the transferor reasonably expects that, for each excess inclusion, the REMIC will distribute to the transferee residual interest holder an amount that will equal at least 30 percent of the excess inclusion, and that each such amount will be distributed at or after the time at which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.'' Accordingly, foreign persons are generally precluded from becoming the direct holders of noneconomic residual interests.

''Where necessary or appropriate to prevent the avoidance of tax imposed by [chapter 1 of the Code],'' section 860G(b) authorizes the adoption of regulations requiring REMIC net income inclusions of foreign holders of REMIC residual interests to be taken into account for purposes of sections 871(a), 881, 1441, and 1442 earlier than is provided in section 860G(b)(1). The legislative history of the Tax Reform Act of 1986 indicates that Congress intended that this regulatory authority may be exercised with respect to noneconomic residual interests. *See* 2 H.R. Rep. No. 841, 99th Cong., 2d Sess. II–236 (1986) (referring to residual interests that do ''not have significant value'').

The IRS and Treasury Department have become aware that noneconomic REMIC residual interests are being

transferred to domestic partnerships that subsequently allocate the phantom income to foreign persons. If a partnership has no foreign partners at the time the partnership acquires a noneconomic REMIC residual interest, the person transferring the residual interest to the partnership may take the position that neither § 1.860E–1(c) nor § 1.860G–3 is applicable. In turn, the partnership may take the position, by applying the aggregate approach to the relation between a partnership and its partners, that foreign persons who later become partners hold the REMIC residual interest that had previously been acquired by the partnership. Based on the conclusion that the foreign partners are holders of the residual interest, the partnership may take the further position that, under section 860G(b), a withholding tax obligation on the partnership's allocation to the foreign partner of income from the residual interest arises no sooner than the time when distributions on the residual interest are made by the REMIC (distributions that will almost never occur with a noneconomic residual) or when the interest is disposed of. Under this view, the foreign holder's tax liability with respect to net income of the REMIC (including excess inclusions) would be deferred until disposition of the holder's interest in the REMIC residual interest, including a disposition through termination of the REMIC, a disposition of the REMIC residual interest by the partnership, or a disposition of the partnership interest by the foreign partner.

The IRS and Treasury Department have concluded that, in order to achieve effective assessment and collection of U.S. tax on REMIC net income, including excess inclusion income, in furtherance of the congressional purpose referenced above and section 860E(a)(1), (b), and (e) and section 860G(b) of the Code, the time when foreign partners are required to account for REMIC net income should be accelerated. That is, for purposes of sections 871(a), 881, 1441, and 1442, the temporary regulations eliminate the deferral (relative to section 860C) that section 860G(b)(1) might otherwise prescribe. To prevent the adoption of similar schemes using real estate investment trusts, regulated investment companies, common trust funds, or subchapter T cooperative organizations, foreign persons to whom excess inclusion income is allocated by any of these other entities must account for REMIC excess inclusions on a similarly accelerated basis.

Several provisions of regulations under sections 1441 and 1442 are relevant to the taxation of REMIC net income inclusions (and particularly net income inclusions with respect to noneconomic REMIC residual interests) that are allocated to foreign persons. Under § 1.1441–2(e), for purposes of section 1441 and 1442, a payment generally is considered made to a person if that person realizes income, whether or not the income results from an actual transfer of cash or other property. Under § 1.1441–2(d)(1), however, if a withholding agent is not related to the recipient or beneficial owner, the withholding agent has an obligation to withhold only to the extent that, at any time between the date that the obligation to withhold would arise but for the provisions of § 1.1441–2(d) and the due date for the filing of a return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' (including extensions) for the year in which the payment occurs, the withholding agent has control over, or custody of money or property owned by the recipient or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. For this purpose, a withholding agent is related to the recipient or beneficial owner if it is related within the meaning of section 482. Section 1.1441–2(d)(1) further provides that the foregoing exception does not apply ''to distributions with respect to stock or if the lack of control or custody of money or property owned by the recipient or beneficial owner from which to withhold is part of a prearranged plan known to the withholding agent to avoid withholding under sections 1441, 1442, or 1443.''

Under § 1.1441–5(b)(2), a U.S. partnership is required to withhold under § 1.1441–1 as a withholding agent on an amount subject to withholding (as defined in § 1.1441–2(a)) that is includible in the gross income of a partner that is a foreign person. Except as provided in § 1.1441–5(b)(2)(v) (which prevents a second withholding obligation from arising with respect to the actual distribution of income previously withheld upon as a distribution from a U.S. partnership or trust), a U.S. partnership is required to withhold when making any distributions that include amounts subject to withholding. To the extent a foreign partner's distributive share of income subject to withholding has not actually been distributed to the foreign partner, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that the statement on Form 1065, ''U.S. Return of Partnership Income,'' is mailed (or otherwise provided) to the partner or the due date for furnishing that statement.

Pursuant to the authority granted under section 860G(b), for purposes of sections 871(a), 881, 1441, and 1442, these temporary regulations generally require a foreign partner in a partnership holding one or more REMIC residual interests to take into account REMIC net income inclusions at the end of its taxable year (or on the last date of the taxable year of a partnership that allocates REMIC net income to the foreign partner). The temporary regulations require a foreign shareholder in a real estate investment trust or regulated investment company, a foreign participant in a common trust fund, or a foreign patron of a subchapter T cooperative organization to take into account excess inclusion income at the same time as other income from the entity.

The temporary regulations also provide that an excess inclusion is treated as income from sources within the United States. The Treasury Department and the IRS believe this treatment is appropriate because the inclusions are largely *phantom income* arising from the special provisions of the Code relating to REMICs and thus are unlikely to have tax significance outside the United States. The temporary regulations provide that, to the extent excess inclusions are taken into account with respect to a residual interest, net losses with respect to the residual interest are allocated and apportioned to the class and grouping(s) of gross income to which the excess inclusions were assigned.

The temporary regulations also provide that the exemption available under certain circumstances to certain withholding agents that do not have custody or control of money or property from which to satisfy a withholding obligation is not available in any case with respect to an excess inclusion subject to these rules. No inference is intended as to whether, for purposes of this exemption, any right, obligation, contract, or arrangement other than a REMIC residual interest constitutes property of a sort from which a withholding obligation may be satisfied.

Effective Date

The regulations regarding the timing of REMIC income inclusions apply to REMIC net income of a foreign person with respect to REMIC residual interests with respect to which the first REMIC net income allocation to the foreign person under section 860C occurs on or after August 1, 2006. The regulations

regarding the source of excess inclusions are applicable for taxable years ending after August 1, 2006.

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 taxpayers with immediate guidance to discourage the overly aggressive interpretations being employed for the inappropriate avoidance of current income tax assessment or collection by foreign persons who are allocated income from REMIC residual interests. 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). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the special analysis section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of Code, these temporary regulations 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 these regulations is Dale Collinson, Office of the Associate Chief Counsel (Financial Institutions and Products). 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.

Adoption of 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 is amended by adding entries in numerical order to read, in part, as follows:

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

Section 1.860A–1 also issued under 26 U.S.C. 860G(b) and 860G(e).

Section 1.860A–1T also issued under 26 U.S.C. 860G(b) and 860G(e). * * *

Section 1.860G–3T also issued under 26 U.S.C. 860G(b) and 860G(e). * * *

■ **Par. 2.** Section 1.860A–0 is amended as follows:

■ 1. Section 1.860A–1, paragraph (b)(5) is added.

■ 2. Section 1.860A–1T is added.

■ 3. Section 1.860G–3, paragraph (b) is revised.

■ 4. Section 1.860G–3T is added.

The additions and revisions read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) [Reserved].

§ 1.860A–1T Effective dates and transition rules (temporary).

(a) through (b)(4) [Reserved].

(5) Accounting for REMIC net income of foreign persons.

* * * * *

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) Accounting for REMIC net income. [Reserved].

§ 1.860G–3T Treatment of foreign persons (temporary).

(a) [Reserved].

(b) Accounting for REMIC net income.

(1) Allocation of partnership income to a foreign partner.

(2) Excess inclusion income allocated by certain pass-through entities to a foreign person.

■ **Par. 3.** In § 1.860A–1 paragraph (b)(5) is added to read as follows:

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) [Reserved]. For further guidance, see § 1.860A–1T(b)(5).

■ **Par. 4.** Section 1.860A–1T is added to read as follows:

§ 1.860A–1T Effective dates and transition rules (temporary).

(a) through (b)(4) [Reserved]. For further guidance, see § 1.860A–1(a) through (b)(4).

(5) *Accounting for REMIC net income of foreign persons.* Section 1.860G–3T(b) is applicable to REMIC net income (including excess inclusions) of a foreign person with respect to a REMIC residual interest if the first net income allocation under section 860C(a)(1) to the foreign person with respect to that interest occurs on or after August 1, 2006. This section will expire July 31, 2009.

■ **Par. 5.** In § 1.860G–3, paragraph (b) is revised as follows:

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) *Accounting for REMIC net income.* [Reserved]. For further guidance, see § 1.860G–3T(b).

■ **Par. 6.** Section 1.860G–3T is added to read as follows:

§ 1.860G–3T Treatment of foreign persons (temporary).

(a) [Reserved]. For further guidance, see § 1.860G–3(a).

(b) *Accounting for REMIC net income*—(1) *Allocation of partnership income to a foreign partner.* A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with § 1.702–1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner for purposes of sections 871(a), 881, 1441, and 1442 as if that amount were received on the last day of the partnership's taxable year, except to the extent that some or all of the amount is required to be taken into account by the foreign partner at an earlier time under section 860G(b) as a result of a distribution by the partnership to the foreign partner or a disposition of the foreign partner's indirect interest in the REMIC residual interest. A disposition in whole or in part of the foreign partner's indirect interest in the REMIC residual interest may occur as a result of a termination of the REMIC, a disposition of the partnership's residual interest in the REMIC, a disposition of the foreign partner's interest in the partnership, or any other reduction in the foreign partner's allocable share of the portion of the REMIC net income or deduction allocated to the partnership. See § 1.871–14(d)(2) for the treatment of interest received on a regular or residual interest in a REMIC. For a partnership's withholding obligations with respect to excess inclusion amounts described in this paragraph (b)(1), see § 1.1441–2T(b)(5), § 1.1441–2T(d)(4), § 1.1441–5(b)(2)(i)(A) and §§ 1.1446–1 through 1.1446–7.

(2) *Excess inclusion income allocated by certain pass-through entities to a foreign person.* If an amount is allocated under section 860E(d)(1) to a foreign person that is a shareholder of a real estate investment trust or a regulated investment company, a participant in a common trust fund, or a patron of an organization to which part I of subchapter T applies and if the amount so allocated is governed by section 860E(d)(2) (treating it ''as an excess

inclusion with respect to a residual interest held by'' the taxpayer), the amount shall be taken into account for purposes of sections 871(a), 881, 1441, and 1442 at the same time as the time prescribed for other income of the shareholder, participant, or patron from the trust, company, fund, or organization.

■ **Par. 7.** Section 1.863–0 table of contents is amended as follows:

■ 1. The entries for § 1.863–1(e) are revised.

■ 2. Entries for § 1.863–1T are added.

The revisions and additions read as follows:

§ 1.863–0 Table of contents.

* * * * *

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(e) Residual interest in a REMIC.

(1) REMIC inducement fees.

(2) Excess inclusion income and net losses.

* * * * *

§ 1.863–1T Allocation of gross income under section 863(a).

(a) through (d) [Reserved].

(e) Residual interest in a REMIC.

(1) REMIC inducement fees.

(2) Excess inclusion income and net losses.

(f) Effective date.

■ **Par. 8.** Section 1.863–1 is amended as follows:

■ 1. The paragraph heading for paragraph (e) is revised.

■ 2. The text of paragraph (e) is redesignated as (e)(1).

■ 3. A new paragraph heading for paragraph (e)(1) is added.

■ 4. A new paragraph (e)(2) is added.

■ 5. The last sentence of paragraph (f) is revised and a new sentence is added to the end.

The revisions and additions read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(e) *Residual interest in a REMIC*—(1) *REMIC inducement fees.* * * *

(2) *Excess inclusion income and net losses.* [Reserved]. For further guidance, see § 1.863–1T(e)(2).

(f) * * * Paragraph (e)(1) of this section is applicable for taxable years ending on or after May 11, 2004. For further guidance, see § 1.863–1T(f).

■ **Par. 9**. Section 1.863–1T is added to read as follows:

§ 1.863–1T Allocation of gross income under section 863(a) (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.863–1(a) through (d).

(e) *Residual interest in a REMIC*—(1) *REMIC inducement fees.* [Reserved]. For further guidance, see § 1.863–1(e)(1).

(2) *Excess inclusion income and net losses.* An excess inclusion (as defined in section 860E(c)) shall be treated as income from sources within the United States. To the extent of excess inclusion income previously taken into account with respect to a residual interest (reduced by net losses previously taken into account under this paragraph), a net loss (described in section 860C(b)(2)) with respect to the residual interest shall be allocated to the class of gross income and apportioned to the statutory grouping(s) or residual grouping of gross income to which the excess inclusion income was assigned.

(f) *Effective date.* Paragraph (e)(2) of this section applies for taxable years ending after August 1, 2006. For further guidance, see § 1.863–1(f). This section will expire July 31, 2009.

■ **Par. 10**. Section 1.1441–0 is amended by adding entries for §§ 1.1441–2(b)(5), 1.1441–2(d)(4), and 1.1441–2T to read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

* * * * *

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(5) REMIC residual interests.

* * * * *

(d) * * *

(4) Withholding exemption inapplicable.

* * * * *

§ 1.1441–2T Amounts subject to withholding.

(a) through (b)(4) [Reserved].

(5) REMIC residual interests.

(c) through (d)(3) [Reserved].

(d)(4) Withholding exemption inapplicable.

(e) [Reserved]

(f) Effective date.

* * * * *

■ **Par. 11**. Section 1.1441–2 is amended by adding paragraphs (b)(5) and (d)(4), and a sentence to the end of paragraph (f), to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(5) *REMIC residual interest.* [Reserved]. For further guidance, see § 1.1441–2T(b)(5).

* * * * *

(d) * * *

(4) *Withholding exemption inapplicable.* For further guidance, see § 1.1441–2T(d)(4).

* * * * *

(f) * * * For further guidance, see § 1.1441–2T(f).

■ **Par. 12**. Section 1.1441–2T is added to read as follows:

§ 1.1441–2T Amounts subject to withholding (temporary).

(a) through (b)(4) [Reserved]. For further guidance, see § 1.1441–2(a) through (b)(4).

(5) *REMIC residual interests.* Amounts subject to withholding include an excess inclusion described in § 1.860G–3T(b)(2) and the portion of an amount described in § 1.860G–3T(b)(1) that is an excess inclusion.

(c) through (d)(3) [Reserved]. For further guidance, see § 1.1441–2 (c) through (d)(3).

(4) *Withholding exemption inapplicable.* The exemption in § 1.1441–2(d) from the obligation to withhold shall not apply to amounts described in § 1.860G–3T(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest).

(e) [Reserved]. For further guidance, see § 1.1441–2(e).

(f) *Effective date.* This section applies after August 1, 2006. This section will expire July 31, 2009.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. E6–12363 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–076]

RIN 1625–AA08

Special Local Regulations for Marine Events; Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.513 during

the Wilmington YMCA Triathlon to be held September 30, 2006, on the waters of Wrightsville Channel, Wrightsville Beach, North Carolina. This action is necessary to provide for the safety of life on navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and vessels transiting the event area.

DATES: *Effective Dates:* 33 CFR 100.513 will be enforced from 6:30 a.m. to 8:30 a.m. on September 30, 2006.

FOR FURTHER INFORMATION CONTACT: CWO Chris Humphrey, Coast Guard Sector North Carolina, Prevention Department, at (252) 247–4525.

SUPPLEMENTARY INFORMATION: The Wilmington YMCA will sponsor the Wilmington YMCA Triathlon on September 30, 2006 on the waters of Wrightsville Channel, Wrightsville Beach, North Carolina. The event will involve approximately 1500 swimmers competing along a course within the regulated area. In order to ensure the safety of the swimmers and transiting vessels, 33 CFR 100.513 will be enforced for the duration of the event. Under provisions of 33 CFR 100.513, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly.

Dated: July 19, 2006.

L.L. Hereth,

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

[FR Doc. E6–12333 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–091]

Drawbridge Operation Regulations; Mill Neck Creek, Oyster Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Bayville Bridge, across Mill Neck Creek, mile 0.1, at Oyster Bay, New York. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. Under this deviation the bridge shall be crewed on a fixed daily schedule between July 21, 2006 and October 18, 2006. At all other times the bridge shall open on signal if at least a two-hour notice is given by calling the number posted at the bridge.

DATES: This deviation is effective from July 21, 2006 through October 18, 2006. Comments must reach the Coast Guard on or before November 18, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The First Coast Guard District, Bridge Branch, maintains the public docket for this deviation. Comments and material received from the public, as well as documents indicated in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in evaluating this test schedule by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this deviation (CGD01–06–091), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by November 18, 2006.

Background and Purpose

The Bayville Bridge has a vertical clearance in the closed position of 9 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations require the bridge to open on demand.

The bridge owner, County of Nassau, Department of Public Works, requested a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation schedule to help relieve the bridge owner from the burden of crewing the bridge during the time periods the bridge seldom receives requests to open.

Under this temporary deviation, in effect from July 21, 2006 through October 18, 2006, the Bayville Bridge at mile 0.1, across Mill Neck Creek, shall operate as follows:

From July 21, 2006 through Labor Day, September 4, 2006, the bridge shall open on signal from 7 a.m. through 5 p.m., Monday through Wednesday; from 7 a.m. through 9 p.m., on Thursday; from 7 a.m. through 11 p.m., on Friday and Saturday; and from 7 a.m. through 9 p.m. on Sunday.

From September 5, 2006 through October 18, 2006, the bridge shall open on signal from 7 a.m. through 5 p.m., daily.

At all other times the bridge shall open on signal if at least a two-hour notice is given by calling the number posted at the bridge.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: July 20, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–12278 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–092]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Path Bridge, across the Hackensack River, mile 3.0, at Jersey City, New Jersey. This deviation allows the bridge to remain in the closed position every Saturday and Sunday from July 22, 2006 through September 18, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from July 22, 2006 through September 18, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Path Bridge, across the Hackensack River, mile 3.0, at Jersey City, New Jersey, has a vertical clearance in the closed position of 40 feet at mean high water and 45 feet at mean low water. The existing regulation is listed at 33 CFR 117.723(a)(5).

The owner of the bridge, Port Authority of New York and New Jersey, requested a temporary deviation to facilitate scheduled structural bridge repairs, miter rail replacement. In order to perform the above repairs the bridge must remain in the closed position and the work performed on Saturdays and Sundays when the rail traffic is less frequent.

Under this temporary deviation the Path Bridge across the Hackensack River, mile 3.0, at Jersey City, New Jersey, shall remain in the closed position on every Saturday and Sunday from July 22, 2006 through September 18, 2006.

Vessels that can pass under the draw without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 20, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–12279 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper, Unalakleet, and Yukon Rivers

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect Chinook salmon escapement in the Unalakleet River, and to provide additional subsistence harvest opportunities for Chinook salmon in the Yukon River and for sockeye salmon in the Copper River. The revised fishing schedule for the Chitina Subdistrict of the Copper River, the additional fishing time on the Yukon River, and the closure of the Unalakleet River provide exceptions to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 29, 2006. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2006 regulatory year.

DATES: The latest fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective July 11, 2006, through September 1, 2006. The closure of the Unalakleet River is effective July 10, 2006, through August 1, 2006. Drift gillnet fishing in Subdistricts 4B and 4C of the Yukon River is effective from noon, July 13, 2006, to midnight, July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2006 fishing seasons, harvest limits, and methods and means were published on March 29, 2006 (71 FR 15569). Because this action relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska.

However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

Current Management Actions

These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed on a schedule similar to the pre-season schedule, with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. The preseason schedule was intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement.

This action extends the open periods for the taking of salmon in the Chitina Subdistrict of the Copper River. During June 26–July 9, there were 131,592 salmon counted past the Miles Lake sonar. The preseason projection for this period was 104,277 salmon, which results in 27,315 more salmon than projected. Copper River sockeye salmon migratory timing and the previous 5-year average harvest and participation rates indicate sufficient numbers of salmon available to allow additional fishing time. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Monday, July 3, 12:01 a.m.–Sunday, July 9, 11:59 p.m.

Monday, July 10, 12:01 a.m.–Sunday, July 16, 11:59 p.m.

Monday, July 17, 12:01 p.m.–Sunday, July 23, 11:59 p.m.

Monday, July 24, 12:01 a.m.–Saturday, September 30, 11:59 p.m.

Depending on actual numbers of salmon passing the Miles Lake sonar, future openings may be increased or decreased, accordingly. State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2006. No deviation from this date is currently anticipated.

Unalakleet River

This seasonal adjustment closes the Federal waters of the Unalakleet River to the taking of Chinook salmon for a specified time period as identified below, and prohibits the use of all subsistence fishing methods except for beach seining. The total returns of Chinook salmon in eastern Norton Sound are very low, and returns have dropped off markedly rather than building. The escapement goal for Chinook salmon passing the North River tower project is 1,200–2,600 Chinook salmon with the midpoint of the run coming about July 10. As of July 10, 2006, only 350 Chinook salmon have been counted at the North River tower. The escapement goal for Chinook salmon has not been met at North River for the last 2 years, and there were at least 200 more Chinook salmon past the tower by July 7 in those previous years.

The Board, acting through the in-season manager, has therefore closed all waters of the Unalakleet River to the taking of Chinook salmon from 8 p.m., Monday, July 10, 2006 through 12:01 a.m., August 1, 2006, and prohibited the use of all subsistence fishing methods except for beach seining. Concurrent action was being taken by ADF&G to prohibit harvest of Chinook salmon by all other all users. Very strong runs of pink and chum salmon will greatly help to offset the subsistence restriction that prohibits the retention of Chinook salmon. This action will still allow beach seining, which is a favored method of harvesting pink salmon, while closing subsistence harvest methods most likely to cause Chinook salmon mortality. The action will be lifted when coho salmon reach Federal waters and the Chinook salmon harvest is no longer a concern.

Yukon River

The 2006 Yukon River Chinook salmon return appears to be less than average but somewhat better than the 2005 return. All indexes project that the Chinook salmon escapement into the Alaska portion of the Yukon River drainage should be met and that sufficient fish should be available for subsistence fishing opportunities. It is also projected that the passage across the border into Canada will provide for a normal Canadian aboriginal harvest as well as the interim escapement goal of 28,000 salmon.

During the Yukon River Drainage Fisheries Association weekly teleconference on July 4, 2006, State and Federal management staff heard from users that poor weather (rain and wind), high water, and high gas prices were limiting fishing opportunities. These conditions combined with the late run timing (approximately 5 days), compressed entry pattern, and only three pulse groups of fish are heightening upriver fishers' concern for their ability to meet their harvest goals this year. In response to these concerns, both ADF&G and FWS managers agreed jointly to liberalize the District 4 subsistence fishing schedule.

The Federal Subsistence Board adopted the expansion of the subsistence drift gillnet Chinook salmon fishery in the middle Yukon River to help reduce overcrowding in the river and help rural residents meet their subsistence goals in a more efficient manner. Extending the normal weekly 18-hour period to 36 hours, preceding the normal calendar date closing of July 14, is warranted due to the fishing conditions this year and is consistent with the initial regulatory intent of the Board. This action was discussed with the State managers prior to implementation.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, could adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and

comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Federal Agencies 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.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a federalism assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Bill Knauer drafted this document under the guidance of Peter J. Probasco, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 17, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: July 20, 2006.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. E6–12300 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

Proposed Rules

Federal Register
Vol. 71, No. 147
Tuesday, August 1, 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

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD47

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) by adding three requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004 concerning retail vendors authorized by WIC State agencies to provide supplemental food to WIC participants in exchange for WIC food instruments. This rulemaking would require WIC State agencies to notify WIC-authorized retail vendors of an initial violation in writing, for violations requiring a pattern of occurrences in order to impose a sanction, before documenting a subsequent violation, unless notification would compromise an investigation. In addition, State agencies would be required to maintain a list of State-licensed wholesalers, distributors, and retailers, and infant formula manufacturers registered with the Food and Drug Administration, and would require WIC-authorized retail vendors to purchase infant formula only from sources on the list. Further, State agencies would be required to prohibit the authorization of or payments to WIC-authorized vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments (''above-50-percent vendors'') and which provide incentive items or other free merchandise, except food or merchandise of nominal value, to program participants or customers unless the vendor provides the State agency with proof that the vendor obtained the incentive items or merchandise at no cost. The intent of these provisions is to, respectively, enhance due process for vendors; prevent defective infant formula from being consumed by infant WIC participants; and ensure that the WIC Program does not pay the cost of incentive items provided by above-50-percent vendors in the form of high food prices.

Finally, this rule also proposes to adjust the vendor civil money penalty (CMP) levels to reflect inflation.

DATES: To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before October 2, 2006.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia, 22302, (703) 305–2746.
- Web Site: Go to *http://www.fns.usda.gov/wic.* Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- E-Mail: Send comments to *wichq-sfpd@fns.usda.gov.* Include Docket ID Number 0584–AD47, Discretionary WIC Vendor Provisions Proposed Rule in the subject line of the message.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia, 22302, (703) 305–2746, OR *Debbie.Whitford@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

The following summarizes the conclusions of the regulatory impact analysis.

Need for Action

This rule proposes to amend the Federal WIC Regulations by adding three requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004 concerning WIC-authorized retail vendors. This rulemaking would require WIC State agencies to notify WIC-authorized retail vendors of an initial violation in writing, for violations requiring a pattern of occurrences in order to impose a sanction, before documenting a subsequent violation, unless notification would compromise an investigation. In addition, State agencies would be required to maintain a list of State-licensed wholesalers, distributors, and retailers, and infant formula manufacturers registered with the FDA, and would require WIC-authorized retail vendors to purchase infant formula only from sources on the list. Further, State agencies would be required to prohibit the authorization of or payments to above-50-percent vendors which provide incentive items or other free merchandise, except food or merchandise of nominal value, to program participants or customers unless the vendor provides the State agency with proof that the vendor obtained the incentive items or merchandise at no cost. Finally, this rule also proposes a process for the periodic adjustment (at least once every four years) of all vendor civil money penalty (CMP) levels to reflect inflation; under the current regulations, the CMP levels for some but not all vendor

violations have been previously adjusted for inflation. Initially, this would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation.

Benefits

The notification of vendors of an initial incidence of a violation provides the vendor with an opportunity to correct a violation. Thus, State agencies may spend less time and resources on sanction cases and ultimately program operations would be improved and program costs would decrease.

Requiring vendors to obtain infant formula only from suppliers registered with FDA or licensed under State law will help to prevent the sale of adulterated stolen infant formula for use by infant WIC participants, thus safeguarding their health.

Requiring above-50-percent vendors to restrict the costs of their participant incentive items to nominal value would protect the WIC program from paying excess money for WIC foods.

Making the inflation adjustment consistent for all CMP levels would benefit WIC Program administration by making all CMP calculations uniform.

Costs

Although this proposed rule has been designated as significant, the costs associated with implementing the proposed changes are not expected to significantly add to current program costs.

Little time will be needed to issue a notice of violations to a vendor, which presumably will entail a standardized format with space for the vendor's name and address and for listing the violations. Likewise, little time will be needed to document in the vendor file the reason(s) such notice would compromise an investigation and thus would not be sent.

The State agency is required to provide the list of registered or licensed infant formula suppliers to vendors on an annual basis, which a State agency could satisfy by linking its Web site to the list of licensed suppliers on the Web site of the State's licensing agency.

FNS currently estimates that only about 2,000 of the approximately 50,000 authorized vendors will be subject to incentive items restrictions. Little time will be needed by the State agency to approve/disapprove incentive items, since this process only involves comparison of the vendor's price documentation with the less-than-$2 nominal value limit. Indeed, the State agency may provide above-50-percent vendors with a list of allowable incentive items, and the vendor would indicate on the list which of these incentive items it wishes to use and return the list to the State agency.

The proposed process for the periodic adjustment of WIC vendor CMP amounts to reflect inflation would not increase administrative costs because the CMP calculation process would be the same for all vendor violations. Under the current regulations, the CMP levels for some but not all vendor violations have previously been adjusted for inflation. Under the proposed process, all vendor CMP levels would be periodically adjusted for inflation. Initially, this would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review, Eric M. Bost, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule would not have a significant impact on a substantial number of small entities. However, in fulfilling the intent of the Child Nutrition and WIC Reauthorization Act of 2004, the rule may have a significant economic impact on the small number of above-50-percent vendors that have been authorized to participate in the WIC Program. These vendors tend to be smaller grocery stores that serve WIC participants exclusively or predominantly, have a large volume of WIC transactions, and may not be subject to the retail market forces that keep food prices at competitive levels. In accordance with the law, the proposed rule would require that State agencies implement restrictions on the incentive items provided to program participants by above-50-percent vendors in order to prevent the cost of the incentive items from increasing the food prices charged to the WIC Program by these vendors. Currently FNS estimates that about 2,000 of the approximately 50,000 authorized vendors will be subject to incentive items restrictions. FNS does not expect that the rule will result in an overall reduction in the number of authorized vendors, but rather in lower food prices charged to the WIC Program by above-50-percent vendors.

FNS also does not expect the other three provisions of the proposed rule to have a significant economic impact on small entities. One of these provisions requires State agencies to provide WIC retail vendors with a list of State-licensed infant formula wholesalers, distributors, retailers, and FDA-registered manufacturers; vendors may obtain infant formula for sale to WIC participants only from the entities on the list. FNS believes that a large majority of WIC vendors currently obtain infant formula from legitimate sources which will appear on the lists provided by the State agencies. Thus the requirement for the list will impact a very small minority of WIC vendors.

One of the other provisions requires the State agency to notify a vendor of a violation in writing before documenting a subsequent violation which could result in sanctions based on a pattern of violations, unless such notification would compromise an investigation. This provision will help vendors to comply with their responsibilities and thus prevent sanctions. FNS estimates that only 5 percent of WIC-authorized vendors would be impacted by this provision. Moreover, this impact would be economically beneficial for these vendors since such notification would help them to prevent the loss of business resulting from disqualification, or CMP payments imposed in lieu of disqualification, and related legal costs.

The remaining provision would periodically increase the CMP amounts to reflect inflation for those CMP's which had not previously been adjusted for inflation. Under the current regulations, the CMP levels for some but not all vendor violations have previously been adjusted for inflation. Initially, the proposed process would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation. FNS estimates that only 3 percent of WIC-authorized vendors would be impacted by this provision. Moreover, this provision would only increase maximum CMP amounts on a periodic basis to reflect inflation; the underlying formula for calculating CMP amounts, based on a percentage of a vendor's average redemptions and the number of violations as set forth in

§ 246.12(l)(1)(x), would not be altered by this provision.

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, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

Prior Consultation With State Officials

Prior to drafting this proposed rule, we received input from State agencies regarding issues and concerns with implementation of the three legislative provisions contained in this rulemaking. FNS regional offices have formal and informal discussions with WIC State agency officials on an ongoing basis regarding program and policy issues. In December and April 2005, FNS issued policy guidance to WIC State agencies on the implementation of the legislative requirements addressed in this proposed rule. In response, FNS received a number of questions which resulted in informal discussions with State agency officials and other stakeholders on program implementation. Much of the discussion in the preamble of this rule reflects the substance of those consultations.

Nature of Concerns and the Need To Issue This Rule

State agencies are primarily concerned with the potential administrative burdens involved with implementing the new legislative requirements in this proposed rule. However, as previously noted, this proposed rule is based mainly on three new requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265. First, the statute requires State agencies to notify WIC-authorized retail vendors in writing of an initial violation, for violations requiring a pattern of occurrences in order to impose a sanction, before documenting a subsequent violation unless notification would compromise an investigation; this requirement was intended to enhance the due process afforded to vendors facing disqualification or civil money penalties. Second, the statute requires State agencies to maintain a list of State-licensed wholesalers, distributors, and retailers, and infant formula manufacturers registered with the Food and Drug Administration, and requires that WIC-authorized retail vendors purchase infant formula only from sources on the list; this requirement was intended to prevent defective infant formula from being consumed by infant WIC participants. Third, the statute requires State agencies to prohibit the authorization of or payments to above-50-percent vendors which provide incentive items or other free merchandise, except food or merchandise of nominal value, to program participants or customers unless the vendor provides the State agency with proof that the vendor obtained the incentive items or merchandise at no cost; this requirement was intended to ensure that the WIC Program does not pay the cost of incentive items provided by above-50-percent vendors in the form of high food prices.

The proposed rule would also provide a process for periodically adjusting WIC vendor CMP levels for inflation in a manner consistent with the process for adjusting other WIC CMP levels for inflation set forth in the final rule ''Department of Agriculture Civil Monetary Penalties Adjustment,'' 70 FR 29573, May 24, 2005. Under that final rule, the CMP levels for some but not all vendor violations have previously been adjusted for inflation. Initially, the proposed process would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation.

Extent to Which We Meet Those Concerns

FNS has considered the impact of this proposed rule on WIC State and local agencies. Through the rule-making process, FNS has attempted to balance the need for State agencies to meet the new requirements against the administrative challenges that State agencies are likely to encounter in meeting them. These challenges include the commitment of adequate resources to compile the list of acceptable entities from which infant formula must be purchased; determine when notification of violations would compromise an investigation; and, develop and enforce the incentive items provisions.

The proposed rule would allow State agencies discretion to determine if providing notification of violations to vendors before documenting additional violations would compromise the investigation.

In addition, under the proposed rule, State agencies could use their Web sites as the primary means for providing their vendors with lists of infant formula manufacturers registered with the FDA and infant formula wholesalers, distributors, and retailers licensed under State law. FNS will also provide the State agencies with the FDA list of manufacturers, and State licensing and tax authorities could provide the WIC State agencies with lists or Web site links on the other entities. Also, State legislation or rulemaking could be used to limit the kind of entities to be included on the lists provided to the vendors.

Further, State agencies would not be required to permit above-50-percent vendors to provide incentive items. If a State agency decides not to permit such promotions at all, then there would be no administrative burden to the State agency to approve such items to ensure compliance with the statutory requirement.

Finally, State agencies would need to amend their schedules of sanctions to reflect the inflation adjustments for CMP levels in the proposed rule and to notify their vendors of this change. FNS does not expect this to involve a significant expenditure of resources.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATES** section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted. This rule concerns WIC vendors. In the WIC Program, the administrative procedures which must be exhausted by WIC vendors are as follows. First, State agency hearing procedures pursuant to § 246.18(a)(1) must be exhausted for vendors concerning denial of authorization, termination of agreement, disqualification, civil money penalty or fine. Second, the State agency process for providing the vendor an opportunity to justify or correct the food instrument pursuant to § 246.12(k)(3) must be exhausted for vendors concerning delaying payment for a food instrument or a claim. Third, administrative appeal to the extent required by § 3016.36 must be exhausted for vendors concerning procurement decisions of State agencies.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to soften the effect on any of the protected classes regarding those provisions of the rule concerning notice of violations and restrictions on incentive items. However, the rule explicitly forbids discrimination against a protected class recognized by the WIC Program (race, color, national origin, age, sex, or disability) regarding the inclusion of businesses on the list which State agencies must provide to vendors of infant formula manufacturers registered with the FDA, and State-licensed infant formula wholesalers, distributors, or retailers. All data available to FNS indicate that protected classes have the same opportunity to participate in the WIC Program as non-protected classes. FNS specifically prohibits the State and local government agencies that administer the WIC Program from engaging in actions that discriminate based on race, color, national origin, age, sex, or disability in accordance with § 246.8 of the WIC Regulations. Where State agencies have options and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at § 246.8.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS has submitted an information collection under OMB#0584–0043, which contains the changes in burden from adoption of the proposals in the rule, for OMB's review and approval.

Comments on the information collection in this proposed rule must be received by October 2, 2006.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302. For further information, or for copies of the information collection requirements, please contact Debra Whitford at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265.

OMB Number: 0584–0043.

Expiration Date: March 31, 2007.

Type of Request: Revision of a currently approved collection.

Abstract: Pursuant to the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, this rule proposes three new requirements and one administrative change for WIC State agencies regarding vendors authorized to provide supplemental food to WIC participants in exchange for WIC food instruments. First, State agencies would be required to notify a vendor of an initial violation in writing for violations requiring a pattern of occurrences in order to impose a sanction before documenting a subsequent violation, unless such notification would compromise an investigation. Second, State agencies would be required to provide the vendors with a list of State-licensed infant formula wholesalers, distributors, and retailers, and FDA-registered infant formula manufacturers, and would require the vendors to purchase infant formula only from the sources on the list. Third, State agencies would be required to implement restrictions on incentive items provided to WIC participants by above-50-percent vendors, with limited exceptions subject to State agency discretion.

The administrative change concerns § 246.12(l)(1)(x)(C) and (l)(2)(i), which this rule proposes to amend by adding a process for periodically adjusting the WIC vendor CMP levels for inflation in a manner consistent with the process for adjusting other WIC CMP levels for inflation set forth in the final rule ''Department of Agriculture Civil Monetary Penalties Adjustment,'' 70 FR 29573, May 24, 2005. Under that final rule, the CMP levels for some but not all vendor violations have previously been adjusted for inflation. Initially, this would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation. This would only require WIC

State agencies to change the maximum CMP amount per violation and the maximum CMP amount per total investigation in the CMP calculation process set forth in each State agency's schedule of sanctions, which is part of the vendor agreement. The CMP calculation process may be set forth only once in the sanctions schedule since the same CMP calculation process may be applied to all violations and investigations. Thus no measurable reporting or recordkeeping burden would result.

The respondents are the 89 WIC State agencies which administer the WIC Program under Federal-State agreements executed annually with FNS. The average burden per response and the annual burden hours are explained below and summarized in the chart which follows.

Respondents for this Proposed Rule: State agencies.

Estimated Number of Respondents for this Proposed Rule: 405.

Estimated Number of Responses per Respondent for this Proposed Rule: 3,303.

Estimated Total Annual Burden on Respondents for this Proposed Rule: 1,095 Hours.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section of regulations	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting Burden:				
§ 246.4(a)(14)(iii)	90	1	1.0	90
§ 246.4(a)(14)(xvii)	90	1	1.0	90
Total Reporting Burden in the Proposed Rule	180	2		180
Recordkeeping Burden:				
§ 246.12(g)(10)	90	1	1.0	90
§ 246.12(h)(8)	45	1,000	0.25	250
§ 246.12 (l)(3)	90	2,300	0.25	575
Total Recordkeeping Burden in the Proposed Rule	225	3,301		915
Total Reporting and Recordkeeping Burden in the Proposed Rule	405	3,303		1,095
Total Current WIC Reporting and Recordkeeping Burden Hours Approved by OMB for Information Collection #0584–0043	16,325,125	28,280,366		3,051,075
Grand Total Proposed WIC Reporting and Recordkeeping Burden Hours Resulting from the Proposed Rule	16,325,530	28,283,669		3,052,170

1. Reporting

Section 246.4(a)(14)(iii)

Section 246.4(a)(14)(iii), as amended by this proposed rule, would require WIC State agencies to set forth policies and procedures in their WIC State Plans for notifying a retail vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be imposed in order to impose a sanction, unless the State agency determines that the notice would compromise an investigation. FNS estimates that this would require one burden hour per State agency per year.

Section 246.4(a)(14)(xvii)

Section 246.4(a)(14)(xvii), as proposed to be added by this rule, would require WIC State agencies to set forth policies and procedures in their WIC State Plans for annually compiling and distributing to authorized WIC retail vendors a list of infant formula wholesalers, distributors, and retailers licensed under State law, and infant formula manufacturers registered with the Food and Drug Administration (FDA). FNS estimates that this would require one burden hour per State agency per year.

2. Recordkeeping

Section 246.12(g)(10)

Section 246.12(g)(10) would require WIC State agencies to provide to authorized WIC retail vendors a list, on an annual basis, of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with FDA that provide infant formula. FNS has provided the State agencies with the list of the infant formula manufacturers registered with FDA. A State agency would contact the licensing agency in its State to obtain a list of the other suppliers. A State agency could satisfy this requirement by linking its Web site to the list of licensed suppliers on the Web site of the State's licensing agency. FNS estimates that this would require one burden hour per State agency per year.

Section 246.12(h)(8)

Section 246.12(h)(8) would require WIC State agencies to establish a process for approval or disapproval of requests from above-50-percent vendors for permission to provide incentive items to WIC participants or other customers. As previously mentioned, FNS currently estimates that about 2,000 of the approximately 50,000 authorized vendors will be subject to incentive items restrictions. A State agency could decide not to allow any incentive items at all, in which case an approval process would not be necessary. FNS has received inquiries from several WIC State agencies indicating an interest in not allowing such incentive items at all.

Accordingly, we assume that half of the WIC State agencies will not allow any incentive items at all, and that half of the approximate 2,000 above-50-percent vendors nationwide reside in those States. We also assume that little time will be needed to approve/disapprove a request and record it, since this process only involves comparison of the vendor's price documentation with the less-than-$2 limit established for such items in the rule. Indeed, the State agency may provide above-50-percent vendors with a list of allowable incentive items, valued above the less-than-$2 nominal value limit per item; the vendor would indicate on the list which of these incentive items it wishes to use and return the list to the State agency. Thus FNS estimates that State

agencies will approve/disapprove incentive items for 1,000 above-50-percent vendors, and that each approval/disapproval will require 15 minutes, resulting in 250 total annual burden hours.

Section 246.12(l)(3)

Section 246.12(l)(3) would require the State agency to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction before another such violation is documented, unless the State agency determines, in its discretion on a case-by-case basis, that notifying the vendor would compromise an investigation. Prior to imposing a sanction for a pattern of violations, the State agency would either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such notice would compromise an investigation. Approximately 2,300 vendors investigated annually commit violations involving a pattern. We assume that little time will be needed to issue the notice, which presumably will entail a standardized format with space for the vendor's name and address and for listing the violations. We also assume that little time will be needed to document in the vendor file the reason(s) such notice would compromise an investigation and thus would not be sent. Thus FNS estimates that State agencies will either issue such notices or make such entries in vendor files 2,300 times, and that issuing each notice or making such entries will require 15 minutes, resulting in 575 total annual burden hours.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

II. Background

As previously noted, this proposed rule would amend the WIC Program regulations by adding three requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, concerning retail vendors authorized by WIC State agencies to provide supplemental food to WIC participants in exchange for WIC food instruments. This rulemaking would reflect the statutory requirement that WIC State agencies notify WIC-authorized vendors of an initial violation in writing for violations requiring a pattern of occurrences in order to impose a sanction before documenting a subsequent violation, unless notification would compromise an investigation. In addition, the State agency would be required to maintain a list of State-licensed wholesalers, distributors, and retailers, and FDA-registered manufacturers, and WIC-authorized vendors would be required to purchase infant formula only from sources on the list. Further, State agencies would be required to prohibit the authorization of or payments to WIC-authorized vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments (''above-50-percent vendors'') and which provide incentive items or other free merchandise, except food or merchandise of nominal value, to program participants or other customers unless the vendor provides the State agency with proof that the vendor obtained the incentive items or merchandise at no cost.

October 1, 2004 was the effective date of Public Law 108–265 for all of these requirements. In December 2004 and April 2005, FNS issued policy and guidance to WIC State agencies on implementation of these requirements. This proposed rule reflects the policy and guidance provided to State agencies.

Additionally, this proposed rule would add a process for periodically adjusting the WIC vendor CMP levels for inflation in a manner consistent with the process for adjusting other CMP levels for inflation set forth in the final rule ''Department of Agriculture Civil Monetary Penalties Adjustment,'' 70 FR 29573, May 24, 2005. Under that final rule, the CMP levels for some but not all vendor violations have previously been adjusted for inflation. Initially, this proposed provision would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation.

1. Notice of Violation

a. Introduction

Section 203(c)(5) of Public Law 108–265 amended section 17(f) of the Child Nutrition Act of 1966, 42 U.S.C. 1786 (CNA), by adding a new paragraph (26) to require the State agency to notify the vendor in writing of the initial violation, for violations requiring a pattern of occurrences in order to impose a sanction, prior to documenting another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

This requirement was effective for violations committed under investigations beginning on or after October 1, 2004, superseding § 246.12(l)(3) of the current WIC regulations, which provides that the State agency is not required to warn a vendor that violations had been detected before imposing a sanction. (All references to regulatory sections in this preamble are to Title 7 of the CFR unless otherwise indicated.) In December 2004, State agencies were advised that their vendor agreements and sanction schedules must be reviewed and amended as appropriate to reflect this new requirement.

b. Provisions in the Proposed Rule (§§ 246.4(a)(14)(iii), 246.12(h)(3)(xviii), 246.12(l)(3))

The proposed revision of § 246.12(l)(3) would require the State agency, prior to imposing a sanction for a pattern of violations, to either notify the vendor in writing of the initial violation, or document in the vendor file the reason(s) for determining that such notification would compromise an investigation.

Also, as proposed in § 246.12(l)(3)(ii), the State agency may use the same method of notification which the State agency uses to provide a vendor with adequate advance notice of the time and place of an administrative review per § 246.18(b)(3) of the WIC regulations. We recommend that State agencies use a method of notification which provides evidence of delivery of the notification. Finally, as proposed in § 246.12(l)(3)(iii), the State agency may conduct another compliance buy visit after the notification of violation is received by the vendor, or presumed to be received by the vendor consistent with the State agency's procedures for providing such notification. During a compliance buy visit, an investigative agent of the State or local agency transacts WIC food instruments with a vendor while posing as a participant.

Further, the proposed amendment of § 246.12(h)(3)(xviii) would remove the reference to the current requirement that the State agency does not have to provide a vendor with a prior warning about violations, and would add the notification requirement as set forth in Public Law 108–265.

Section 246.4(a)(14)(iii) currently provides that the State Plan must include a copy of the vendor agreement, including a copy of the sanction schedule, which may be incorporated as an attachment, or, if the sanction schedule is in the State agency's

regulations, through citation to those regulations. This proposed rule amends § 246.4(a)(14)(iii) by including the notice of violations process so that, like the schedule of sanctions, the notice of violations process may be incorporated as an attachment or, if it is in the State agency's regulations, through citation to those regulations.

c. Types of Violations Subject to the Notification Requirement

The State agency must notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction, before another such violation is documented, unless the State agency determines that notifying the vendor would compromise an investigation. This includes violations for a pattern of overcharging; receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; charging for supplemental food not received by the participant; providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments; or providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument. This notice requirement also applies to any violations for which a pattern of violations must be established in order to impose a State agency vendor sanction in accordance with § 246.12(l)(2) of the WIC regulations.

Notification is not required for violations involving a vendor's redemptions exceeding its inventories, since there are no initial violations in such instances; such violations are determined during one audit of inventory, not separate compliance buy visits. Additionally, such notification is not required for WIC vendor disqualifications or civil money penalties based on Food Stamp Program sanctions. Neither is notification required for violations that only require one incidence before a sanction is imposed.

d. Impact of the Notice Requirement on Documenting a Pattern of Violations

Several State agencies have requested clarification as to whether a State agency may sanction a vendor based on violations detected in the initial compliance buy visit if those violations fulfill the State agency's pattern requirement, even though a notice of violations has not been provided to the vendor. We have also been asked several related questions.

For investigations beginning on or after October 1, 2004, a pattern may not be established based solely on violations occurring during one compliance buy visit, even if violations on several food instruments occur during that one compliance buy visit. This is true regardless of whether the State agency determines that notifying the vendor would compromise the investigation. For example, if a State agency requires three violations as the pattern for overcharging, and the vendor initially commits this violation by overcharging on three food instruments during one compliance buy visit, the State agency may not sanction the vendor without two additional overcharging violations detected during one or more subsequent compliance buy visits. The intent of the notification provision is that a vendor be notified in writing that a violation had occurred prior to documenting another violation, unless such notification would compromise an investigation. As such, to allow a pattern to be identified during one compliance buy visit would be contrary to the intent of the law. Instead, the State agency must treat all of the violations of one type occurring during the first compliance buy visit as one occurrence in the pattern determination.

Also, if multiple violations occur during a compliance buy visit, the State agency must cite in the notification all of the types of violations which require a pattern of violative incidences in order to impose a sanction (with the exception of redemptions exceeding inventory, as previously discussed). For example, if a vendor transacts food instruments for unauthorized food items and also overcharges during the same compliance visit, then the vendor has committed two separate types of violations; both types must be cited in a notification of violation, unless such notification would compromise an investigation on either type of violation.

Likewise, if a vendor commits one type of violation in one compliance buy visit, followed by a notification, and then commits another type of violation in a subsequent compliance visit, then another notification must be provided to the vendor concerning this second type of violation. Further, we also encourage State agencies to attach a copy of the sanctions schedule to any notification of violations, to provide greater assurance that a vendor is on notice of all sanctionable violations prior to a subsequent compliance buy visit.

e. Determination of Whether the Notice Would Compromise an Investigation

As noted above, the State agency is not required to notify the vendor after the initial violation if the State agency determines that such notice would compromise an investigation. The notice could compromise an investigation if the investigation is covert, such as a compliance buy investigation, which involves an investigative agent posing as a WIC participant and transacting WIC food instruments. In such circumstances, the notice would reveal the existence of an investigation which had been previously unknown to the vendor.

The notice could also compromise covert investigations of the vendor being conducted by the Food Stamp Program, the USDA Office of Inspector General, the State Police, or other authorities, as well as the WIC investigation being conducted by the State agency; the term ''investigation'' does not exclusively refer to WIC investigations. Ideally, these other authorities should coordinate with the WIC State agency to prevent several investigations of the same vendor from being conducted at the same time. However, sometimes the WIC State agency may not learn about the existence of another investigation until after the WIC investigation has already begun.

A State agency may determine that any notification based on a different violation occurring during a subsequent compliance buy visit would compromise the investigation, even though the State agency had not determined that the notification following the previous compliance buy visit would compromise the investigation. The State agency may choose not to notify the vendor regarding a different violation identified in a subsequent compliance buy visit.

The statute provides the State agency with the discretion to determine whether notifying the vendor will compromise an investigation and to use its judgment to determine whether a notice should be sent to the vendor. Such determinations must be made on a case-by-case basis. In making this determination, there are a number of factors which the State agency may wish to review—for example, the severity of the initial violation, the compliance history of the vendor, or whether the vendor has been determined to be high risk consistent with § 246.12(j)(3) of the WIC regulations. The State agency has the discretion to determine which factors to consider and how much weight should be assigned to each factor. If the State agency decides not to

send the notice, the basis for this decision must be documented in the vendor file since the matter may be raised on appeal of any adverse actions taken as a result of the investigative activity.

2. List of Infant Formula Manufacturers, Wholesalers, Distributors, and Retailers

a. Introduction (§ 246.12(g)(10))

Section 203(e)(8) of the Public Law 108–265 amends section 17(h)(8)(A) of the CNA by requiring that each State agency maintain a list of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with FDA that provide infant formula. This statute requires authorized vendors to only purchase infant formula from sources on the above-described list. In December 2004, State agencies were notified of the requirement and when to amend their State Plans, vendor agreements, vendor manuals, and vendor training plans and materials as appropriate to reflect this new requirement.

This provision is intended to prevent stolen infant formula from being purchased with WIC food instruments. Such formula may constitute a health hazard for a variety of reasons, including direct tampering with formula before it is sold to unsuspecting retailers, falsification of labeling to change expiration dates, counterfeiting, or improper storage.

This proposed rule would add a new § 246.12(g)(10) which requires the State agency to provide the above-noted list of infant formula sources to the vendors on at least an annual basis, and to provide that the list must include the addresses as well as the names of the businesses; this is intended to make it easier for vendors to locate a nearby business and also to avoid inadvertently contacting an unlicensed business with a similar name.

The proposed § 246.12(g)(10)(i) would require a State agency to notify vendors that they must purchase infant formula only from the sources set forth on the State agency's list, although the State agency may, at its option, permit vendors to obtain infant formula from sources on another State agency's list.

The proposed § 246.12(g)(10)(i) also clarifies that the infant formula list requirement would only pertain to ''infant formula,'' contract and non-contract brand, as defined in § 246.2, and infant formula covered by a waiver granted under § 246.16a(e), but not to ''exempt infant formula'' or ''WIC-eligible medical foods'' as defined in § 246.2. These terms are used in the same manner in the CNA and Public Law 108–265.

b. State Licenses for Wholesalers, Distributors, and Retailers (§ 246.12(g)(10)(ii) and (g)(10)(iii))

The proposed § 246.12(g)(10) would require the State agency to compile its list in accordance with its State licensing laws and regulations. As previously noted, Public Law 108–265 requires State agencies to maintain a list of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with FDA that provide infant formula. Congress recognized that licensing requirements and types may vary significantly among States, noting, for example, that some States may have health licensing requirements while other States have business licensing requirements. (House Committee on Education and the Workforce, Report No. 108–445, 3/23/04, p. 58) Consistent with this recognition, the statute does not require that the license must specifically cover infant formula; many States/Indian Tribal Organizations (ITOs) may not have such licensing.

For example, a State agency has asked whether tax registration would be considered a State/ITO ''license'' within the meaning of the statutory provision. If a State/ITO has no other kind of health or business licensing, then tax registration or some other form of official State recognition of a business would suffice.

Moreover, the statute does not require that a State agency use all of the licenses which might apply to one of the State-licensed categories (wholesaler, distributor, retailer). For example, a State might have health licensing and business licensing for retailers. Thus, the proposed § 246.12(g)(10)(ii) would permit a State agency to choose which license to use for compiling the list; the State agency would not be required to use both kinds of licenses.

Further, the statute does not address the question as to whether a State agency could restrict the sources of infant formula available to authorized vendors. Absent guidance in statute, this proposed rule has been drafted to permit a State agency to exclude an entity from the list only for two specific reasons. First, the proposed § 246.12(g)(10)(iii)(A) would permit the State agency to exclude a State-licensed entity when specifically required by State law or regulations; State agencies would need to consult with their legal counsel to determine the correct process for implementing any restrictions on its list of infant formula sources. Second, the proposed § 246.12(g)(10)(iii)(B) would permit a State agency to exclude an entity from the list if the entity does not sell infant formula.

Also, the statute did not provide a basis for a licensed entity to exclude itself from the list. Accordingly, there is no basis in the proposed rule for a wholesaler, distributor, or retailer to exclude itself from the list, except as permitted by State law or regulations.

The State agency must be mindful of its responsibility to abide by all applicable Civil Rights laws and regulations. The State agency may not exclude any business from the list in a discriminatory manner against any protected class, or in a manner which would have a disparate impact on a protected class. Likewise, State agencies are encouraged to consider the impact on small businesses of their decisions on how to construct their lists.

c. Methods for Providing the List to Vendors (§ 246.12(g)(10))

Under this proposed provision, the State agency may provide a hard copy list to each vendor. However, the list may also be provided by ''other effective means.'' This refers to such means as providing vendors with a telephone number or e-mail address to inquire about the license status of a source. Alternatively, the list could be made available to the general public on-line, including an on-line list maintained by a State licensing agency. Such on-line lists may provide a search function for the license status of a business, instead of an actual list; this is acceptable. These are only examples; other methods may also be acceptable, depending on whether these other methods are effective.

Of course, some vendors may not have access to the Internet and will need a hard copy provided by the State agency, or some other means to determine if a business is licensed, such as contacting the State agency by telephone, in writing, or by electronic facsimile transmission.

d. Selection Criterion (§ 246.12(g)(3)(i), 246.4(a)(14)(xvii))

The proposed rule would require the State agency to adopt a new vendor selection criterion requiring vendors to obtain infant formula from the listed sources as a condition of authorization. The current § 246.12(g)(3)(i) requires minimum variety and quantity of supplemental foods as a vendor selection criterion. This proposed rule would add a sentence to this existing selection criterion which would make

infant formula from a supplier on the State agency's list part of the requirement for a minimum variety and quantity of supplemental foods. This proposed rule would add § 246.4(a)(14)(xvii) to require that the State agency describe its policies and procedures in the State Plan regarding compiling and distributing the infant formula list, and requiring vendors to purchase infant formula only from that list. Also, State agencies have the discretion under § 246.12(l)(2) to establish sanctions for vendors obtaining infant formula from unlicensed sources.

For the selection criterion to be effective, as well as any sanctions which a State agency may choose to establish, vendors must be required to maintain invoices or receipts showing the source of their infant formula purchases to enable the State agency to monitor vendor compliance. State agencies currently have the authority to require vendors to maintain such documentation under § 246.12(h)(3)(xv). State agencies should ensure that their vendor agreements require maintenance of this documentation by the vendors.

e. Training (§ 246.12(i)(2))

Section 246.12(i)(2) of the current WIC regulations, would be revised by the proposed rule to ensure that vendors are aware of their responsibilities regarding use of the list of infant formula sources provided to them by State agencies. Section 246.12(i)(2) of the current WIC regulations sets forth the content of the training which State agencies are required to provide to their vendors. This proposed rule would revise § 246.12(i)(2) to add the State agency infant formula list requirement to the subjects which State agencies must include in their training for vendors.

3. Incentive Items

a. Introduction (§ 246.12(g)(3)(iv))

Section 203(e)(13) of Public Law 108–265 amends section 17(h)(14) of the CNA by prohibiting a State agency from authorizing or making payments to above-50-percent vendors which provide incentive items or other free merchandise to program participants, with only two exceptions. One exception includes food or merchandise of nominal value as determined by the Secretary; USDA advised the State agencies in December 2004 that the nominal value is less than $2. The other exception includes incentive items or other merchandise for which the vendor provides proof to the State agency showing that the vendor had obtained the incentive items or other merchandise at no cost. Above-50-percent vendors are for-profit vendors that derive more than 50 percent of their annual food revenue from the transaction of WIC food instruments or for-profit vendor applicants expected to derive more than 50 percent of annual food revenue from the transaction of WIC food instruments. The above-50-percent vendor category includes vendors which have often been referred to as ''WIC-only stores.'' In December 2004, State agencies were advised to amend their vendor selection criteria and sanction schedules to reflect this new requirement.

Data indicate that WIC food expenditures increasingly include payments to WIC-only stores whose prices are not governed by the market forces that affect most retail grocers. As a result, the prices charged by these vendors tend to be higher than the prices charged by other WIC-authorized retail vendors. WIC-only stores have provided a wide array of incentive items to WIC participants—including diapers, strollers, bicycles, small kitchen appliances, other household products, food, sales or ''specials,'' services such as transportation, and cash incentives to WIC shoppers for bringing new customers to these stores. Because WIC-only vendors serve WIC shoppers exclusively or primarily, this provision is intended to ensure that the WIC Program does not pay the cost of incentive items in the form of high food prices.

Under § 246.12(h)(3)(ii) of the current Federal WIC Regulations, a WIC food instrument may only be used to purchase the supplemental foods listed on that food instrument, and directly adding the cost of an incentive item to a WIC food instrument is a vendor violation subject to sanctions under § 246.12(l)(1)(iii)(F). However, these regulatory provisions do not address the increased prices charged by above-50-percent vendors for WIC supplemental foods to reflect the costs of the incentive items.

As discussed more fully below, the proposed rule would add a new vendor selection criterion to the WIC regulations which would make compliance with the State agency's incentive items policies a condition of vendor authorization for above-50-percent vendors. This proposed provision, § 246.12(g)(3)(iv), also describes allowable and prohibited incentive items. Further, the proposed regulations include a requirement for a mandatory sanction for incentive items violations committed by above-50-percent vendors. The proposed regulations also require training for vendors on the policies and procedures concerning incentive items. Finally, this rule proposes to require the State agency to include in its vendor agreement with the above-50-percent vendor, or in another document provided to the above-50-percent vendor and cross-referenced in the vendor agreement, the policies and procedures regarding the provision of incentive items to customers.

Also, § 246.12(h)(3)(iii) of the current WIC regulations requires the vendor to provide program participants the same courtesies offered to other customers. Thus, an above-50-percent vendor must not treat non-WIC customers more favorably than WIC customers regarding incentive items. In addition, such vendors would not have a reliable means to distinguish between WIC customers and non-WIC customers when a WIC food instrument is not transacted. Consequently, the only way to ensure that WIC participants are not provided with incentive items which exceed nominal value would be to apply the same restrictions on incentive items provided to all customers.

b. Allowable and Prohibited Incentive Items (§ 246.12(g)(3)(iv))

i. Allowable Incentive Items

Although Public Law 108–265 prohibits the authorization of above-50-percent vendors that provide most incentive items, it does not require State agencies to permit the use of any incentive items. State agencies currently have broad discretion to establish vendor selection criteria that meet their needs for effective program administration. Moreover, since State agencies have authority to exclude all above-50-percent vendors, they may establish more restrictive limits on incentive items for such vendors as a condition of authorization. Thus allowable incentive items could be disallowed by a State agency under the proposed rule.

As proposed by this rule, the first allowable incentive item would include food or merchandise obtained at no cost to the above-50-percent vendor, and provided to customers without charge or sold to customers at or above cost, subject to documentation. As proposed by this rule, the second allowable incentive item would include food or merchandise of nominal value; that is, having a per item cost of less than $2, including food or merchandise of nominal value involved with a raffle or similar promotion.

As proposed by this rule, the third allowable incentive item would include

food sales and ''specials'' if there is no cost or only a nominal cost to the above-50-percent vendor (less than $2) regarding the food items involved and they do not result in a charge to a WIC food instrument for foods in excess of the foods listed on the food instrument. Sales and specials include reduced prices for a period of time; buy one, get one free; buy one, get one at a reduced price; free amounts added to an item by a manufacturer; manufacturer coupons; and, store loyalty shopping cards.

As an example of no cost or nominal cost to the above-50-percent vendor, regarding buy one, get one free, the free food item would be acceptable if it had been obtained by the vendor at no cost or for less than $2, or if the vendor would be compensated for the second item, e.g., upon presentation of a manufacturer's coupon to the manufacturer. However, if the vendor had purchased the food item for $2 or more, then the free item would not be acceptable.

Regarding buy one, get one at a reduced price promotions, the reduced price may not be charged to the WIC food instrument if the second product is not covered by the food instrument; the WIC customer must pay this amount with his/her own money. Otherwise, this incentive item would be purchased with Federal funds, which is prohibited by statute. Also, use of the food instrument to purchase a second product not covered by the food instrument would constitute a violation of § 246.12(l)(1)(iv) of the WIC regulations, which mandates a one-year disqualification of the vendor for providing foods in excess of those listed on the food instrument.

As proposed by this rule, the fourth allowable incentive item would include for-profit services which would not otherwise be prohibited, and which the participant would purchase at a fair market value. As discussed below, services which constitute a conflict of interest or the appearance of such conflict, such as assistance with applying for benefits, would be prohibited. However, other services, such as transportation, would be allowable if the participant purchases such services at a fair market value for comparable services.

As previously noted, the only exceptions to the statute's prohibition on incentive items of above-50-percent vendors are food or merchandise of nominal value and incentive items or other merchandise which the above-50-percent vendor had obtained at no cost. This implies that all services are prohibited since services are not food or merchandise. However, the legislative history of the statute does not indicate an intention to prohibit for-profit business enterprises or minimal customary courtesies of the retail food trade.

For example, as proposed by this rule, an above-50-percent vendor would be allowed to provide customers with transportation by automobile if the fare charged to customers for this service would be equal to the taxi cab fare for the same distance. The fare charged by the above-50-percent vendor could be based on a bus or van fare for the same distance if the above-50-percent vendor provides participants with transportation by bus or van, and the comparable bus or van fare is not publicly subsidized. The transportation fare charged by the above-50-percent vendor could not be based on a fare which is subsidized with tax funds, as often occurs with bus fares, since such fares do not compensate for all of the related costs and provide all of the profit. A service not otherwise prohibited would be allowable if it is provided only for profit. This would ensure that none of the costs of the transportation would be reflected in the prices charged for WIC supplemental food.

The legislative history of the statute also does not indicate an intention to prohibit the minimal customary courtesies of the retail food trade, such as helping the customer to obtain an item from a shelf or from behind the counter, bagging purchased items for the customer, and assisting the customer with loading the purchased items into his/her automobile. Such services are an integral part of customer service in a retail food store. As proposed by this rule, the fifth allowable incentive item includes the minimal customary courtesies of the retail food trade.

ii. Prohibited Incentive Items

First, as proposed by this rule, services which would constitute a conflict of interest, or which would have the appearance of such conflict, would be prohibited. For example, assistance with applying for WIC benefits would be prohibited because the above-50-percent vendor would benefit financially if the applicant is certified.

Second, as previously discussed, the State agency would have the discretion to prohibit incentive items which this rule proposes to allow.

Third, lottery and raffle tickets provided to WIC shoppers at no charge or below face value would be prohibited incentive items. The perceived value of a lottery or raffle ticket is far greater than its face value, since the perceived value is based on potential winnings. The legislative history of Public Law 108–265 supports the prohibition of lottery tickets as incentives, 150 Cong. Rec. S7244–01., June 23, 2004.

Fourth, cash gifts in any amount for any reason would be prohibited incentive items. Cash is neither food nor merchandise, and thus would not fall under the exceptions.

Fifth, anything made available in a public area as a complimentary gift which a customer may consume or take without charge would be a prohibited incentive item. This applies to give-away food, soft drinks, or other items which are placed on a counter top, shelf, or display rack, for customers to take as they please. As a result, there is no control on the amount of such items which a customer may take. Thus there is no assurance that a customer would be limited to less than $2 worth of such items.

Sixth, an allowable incentive item of nominal value would be a prohibited incentive item if it is provided more than once per customer per shopping visit, regardless of the number of participants, the amount of food, or the number of food instruments involved. Without this restriction, the less-than-$2 limit would be undermined. However, this restriction does not apply if the less-than-$2 limit would not be exceeded. For example, the less-than-$2 limit would not be exceeded if the incentive items had been obtained by the vendor at no cost. Likewise, the less than $2 limit would also not be exceeded for an incentive item with a nominal value of less than $2, which, if multiplied, would not exceed the less-than-$2 limit; for example, the vendor would be allowed to provide two incentive items during one shopping visit if the per item cost of the incentive item was 99 cents.

Seventh, food or merchandise of greater than nominal value would be a prohibited incentive item, as required by the statute. As previously noted, the statute provided USDA with the authority to determine the nominal value amount, which USDA has advised State agencies to be less than $2.

Eighth, food or merchandise provided to customers for more than $1.99 that is below cost would be prohibited incentive items, since the $1.99 nominal value requirement would otherwise be circumvented, and services provided for a fee of less than fair market value would be prohibited incentive items, to ensure that the costs of the transportation would not be reflected in the prices charged for WIC supplemental food, as intended by the statute.

Ninth, any kind of incentive item which incurs a liability for the WIC Program would be prohibited. For example, if an accident occurs when an above-50-percent vendor provides transportation services to customers, resulting in personal injury or property damage, the WIC Program would not be liable for such personal injury or property damage.

Tenth, any kind of incentive item would be prohibited if it violates any Federal, State, or local law or regulations. For example, this prohibition would be intended to prevent an above-50-percent vendor from providing transportation services without the permits required by State and local laws for such services.

We are specifically soliciting comments on whether there are circumstances in which a legitimately market-competitive above-50-percent vendor could be disadvantaged by the prohibition on providing incentives to non-WIC customers.

c. The Authorization Process (§ 246.12(g)(3)(iv))

As previously noted, Public Law 108–265 prohibits a State agency from authorizing or making payments to an above-50-percent vendor which provides prohibited incentive items to customers. As discussed below, the vendor agreement would set forth the restrictions on incentive items; the vendor's signature on the agreement would signify the intention to comply with the restrictions. However, other evidence of intent might be revealed at the on-site preauthorization visit, such as advertising prohibited incentive items. Accordingly, the proposed § 246.12(g)(3)(iv) prohibits the authorization of an above-50-percent vendor which engages in such practices or otherwise indicates an intention to provide prohibited incentive items to customers.

d. Sanctions (§ 246.12(l)(iii)(G)) and Training (§ 246.12(i)(2))

A mandatory sanction would be appropriate if an authorized vendor has engaged in a pattern of incentive items violations. As previously indicated, this kind of violation reduces the funds available to provide benefits to needy women, infants and children at nutritional risk. Accordingly, § 246.12(l)(1)(iv)(B) of this proposed rule would provide a one-year disqualification for a pattern of such violations. This sanction must be included in the State agency's schedule of sanctions. To ensure that the above-50-percent vendors are aware of their responsibilities regarding incentive items, this issue has been added to § 246.12(i)(2) in this proposed rule, which lists the subjects which State agencies must include in their training for vendors.

e. Vendor Agreement Provisions on Incentive Items (§ 246.12(h)(8))

Sections 246.4(a)(14)(iii) and 246.12(h)(8) of the proposed rule would require the State agency in its vendor agreement or another document provided to the vendor and cross-referenced in the vendor agreement for above-50-percent vendors to set forth which incentive items are allowable, if any, and the process for obtaining approval before the vendor provides incentive items to customers.

Further, if any incentive items are permitted, the State agency would have to approve all incentive items which above-50-percent vendors intend to provide to customers. Therefore, such vendors would have to submit to State agencies a list of incentive items, the cost of each item, and documentation, such as an invoice or similar document, indicating the cost of each incentive item. The documentation for each item would have to show that it had been obtained for either less than the $2 nominal value limit or that it had been obtained at no cost.

The WIC State agency may need to contact the source stated on the invoice or similar document to verify the information. The invoices must be closely examined to ensure that the sources of the incentive items are not buying services or other arrangements designed to circumvent the law. For example, the vendor provides $30 to a buying service, which purchases a stroller for $30 and then provides it to the vendor at no cost; the vendor then provides it to the customer at no cost. The State agency must ensure that the vendor does not provide this stroller to a customer for less than $30. Otherwise, this kind of arrangement would circumvent the prohibition on using Federal funds to provide incentive items above nominal value to WIC shoppers.

Under this proposed rule, the State agency would be required to notify the vendor in writing of the approval or disapproval of the incentive item; this notification may be electronic, such as electronic mail or facsimile. This approval process may be structured in a number of different ways. The list and its supporting documentation may be submitted when the vendor signs the vendor agreement, either for an initial or subsequent authorization, and returns it to the State agency for approval and cosigning by the State agency. The State agency may include a list of allowable incentive items as part of the vendor agreement format; the vendor would indicate on the list which of these incentive items it wishes to use. Of course, the State agency may only include food or merchandise on the list, and must ensure that these items are not valued above the less-than-$2 nominal value limit per item.

Alternatively, instead of including the incentive items approval process within the authorization process, the State agency may permit the vendor to request approval for use of an incentive item at any time during the period of the agreement, or only at specified times during the period of the agreement.

f. Incentive Item Restrictions for Non-Above-50-Percent Vendors

The statute only addresses incentive items provided by above-50-percent vendors. Thus, restrictions on incentive items for vendors other than above-50-percent vendors must be established in accordance with State/ITO law and/or regulations. State agencies should consult with their legal counsel to determine the correct process for implementing any restrictions on incentive items for vendors other than above-50-percent vendors in accordance with State/ITO law and/or regulations.

4. Administrative Review (§ 246.18(a)(1)(iii)(D) Through (a)(1)(iii)(F))

This proposed rule would add three new exclusions under which a currently authorized vendor would not be entitled to pursue an administrative review of the State agency's WIC policies through the WIC administrative review process. First, a current vendor could not obtain an administrative review of the State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list which the State agency must provide to vendors. Second, an above-50-percent vendor could not obtain administrative review of the State agency's determination to deny that above-50-percent vendor's request for approval of an allowable incentive item. Third, the State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction is not subject to administrative review.

a. State Agency's Exclusion or Inclusion From the Infant Formula Supplier List Not Subject to Administrative Review (§ 246.18(a)(1)(iii)(D))

The State agency's determination to include or exclude an infant formula supplier from the list provided to

vendors is a responsibility of the State agency set forth in the CNA. Section 246.4(a)(14)(xvii) of this proposed rule would require State agencies to describe this determination process in its WIC State Plan. Thus, concerns about this determination process would be properly raised during the public comment phase of State Plan development. Moreover, a vendor would retain the right to seek review of a denial of authorization, termination of the vendor agreement, or imposition of a sanction based on the vendor's alleged non-compliance with the infant formula supplier list policies and procedures.

Further, the exclusion from an administrative review for a State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the infant formula list only applies to WIC-authorized retail vendors. This exclusion would not deny any party aggrieved by such decisions, such as a retailer excluded from the list, from using the legal process administratively or in the courts to pursue an action based on laws or regulations concerning Civil Rights, small business, or other legal rights.

b. The Validity or Appropriateness of the State Agency's Prohibition of Incentive Items and the State Agency's Denial of an Above-50-Percent Vendor's Request To Provide an Incentive Item to Customers Not Subject to Administrative Review (§ 246.18(a)(1)(iii)(E))

The Department's view is that State agencies must have the authority to safeguard WIC food funds. WIC is not an entitlement program. Rather, WIC's funding is discretionary, meaning it is provided as a set amount of funding and can serve only as many customers as this funding allows. As previously noted, the higher prices charged to the WIC Program by above-50-percent vendors reflect the cost of the incentive items which above-50-percent vendors provide to customers. Thus, it is necessary to restrict such incentive items in order to safeguard WIC food funds.

Consistent with this authority, as previously discussed in section 3.b. of this preamble, this proposed rule would provide State agencies with the discretion to prohibit all incentive items.

Administrative review of the State agency's decision to prohibit a particular kind of incentive item or to deny an above-50-percent vendor's request to provide an incentive item to customers would be inconsistent with this discretion of the State agency. However, a vendor would retain the right to seek review of a denial of authorization, termination of the vendor agreement, or imposition of a sanction based on a vendor's alleged non-compliance with restrictions on incentive items.

c. State Agency's Determination To Notify a Vendor of Violations Not Subject to Administrative Review (§ 246.18(a)(1)(iii)(F))

The statute provides the State agency with the discretion to determine whether to notify a vendor in writing after a violation has occurred, based on whether it would compromise an investigation. If the State agency determines that the notification would compromise an investigation, the State agency is not required to provide the notification to the vendor. Thus, administrative review of the absence of such notification would be inconsistent with the discretion provided to the State agency by the statute. Section 246.12(l)(3) of this proposed rule would require the State agency to determine whether notification would compromise an investigation on a case-by-case basis and to document this determination in the vendor file whenever notification is not provided.

5. Adjusting Vendor Civil Money Penalty (CMP) Levels for Inflation

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, 28 U.S.C 2461, requires periodic adjustment (at least once every four years) of civil money penalty (CMP) levels to reflect inflation. The only WIC vendor-related CMPs established in the CNA pertain to convictions in court for trafficking and illegal sales.

Each Federal Executive agency is responsible for adjusting all CMPs within the agency's jurisdiction. Accordingly, the Department published a final rule to implement inflation adjustments for CMPs of all USDA agencies, ''Department of Agriculture Civil Monetary Penalties Adjustment,'' 70 FR 29573, May 24, 2005, which amended the regulations of individual programs, including WIC (7 CFR part 246), as well as the Departmental regulations on CMPs (Adjusted Civil Money Penalties, 7 CFR 3.91).

Prior to the Department's rule, for all of the mandatory and State agency sanctions, WIC regulations provided that a CMP or fine may not exceed $10,000 per violation or $40,000 for all of the violations investigated as part of a single investigation. The Department's final rule amended § 246.12(l)(1)(x)(C) of the WIC regulations by adding citations to § 3.91(b)(3)(v) and (b)(3)(vi) which provide the amount of the CMP adjusted for inflation for only those vendor sanctions set forth in the CNA. This had the effect of raising the maximum CMP level from $10,000 to $11,000 per violation for convictions for trafficking and illegal sales, and raising the CMP level from $40,000 to $44,000 as the maximum amount for such violations occurring during a single investigation.

As a result, all of the other vendor-related CMPs established in the WIC regulations have not been adjusted for inflation and remain unchanged. This includes CMPs for vendor violations resulting in mandatory sanctions that are handled administratively by the State agency instead of through the courts, and CMPs for State agency sanctions.

The Department believes that the amount of all CMPs should be uniform for all vendor violations. Accordingly, we are proposing to amend § 246.12(l)(1)(x)(C) and (l)(2)(i), to change the amount of the CMPs for the remaining WIC vendor violations to be consistent with the CMP levels set forth in the Department's rule at § 3.91(b)(3)(v).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.4, revise the first sentence of paragraph (a)(14)(iii) and add a new paragraph (a)(14)(xvii) to read as follows:

§ 246.4 State plan.

(a) * * *

(14) * * *

(iii) * * * A sample vendor agreement, including the sanction schedule, the process for notification of violations in accordance with § 246.12(l)(3), and the State agency's policies and procedures on incentive items in accordance with § 246.12(g)(3)(iv), which may be incorporated as attachments or, if the sanction schedule, the process for

notification of violations, or policies on incentive items are in the State agency's regulations, through citations to the regulations. * * *

* * * * *

(xvii) *List of infant formula wholesalers, distributors, and retailers.* The policies and procedures for compiling and distributing to authorized WIC retail vendors, on an annual or more frequent basis, as required by § 246.12(g)(10), a list of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula. The vendor may provide only the authorized infant formula which the vendor has obtained from a source included on the list described in § 246.12(g)(10) to participants in exchange for food instruments specifying infant formula.

* * * * *

3. In § 246.12:

a. Amend paragraph (g)(3)(i) by adding a sentence at the end of the paragraph;

b. Add new paragraphs (g)(3)(iv) and (g)(10);

c. Revise paragraph (h)(3)(ii);

d. Revise the third sentence of paragraph (h)(3)(xviii);

e. Add new paragraph (h)(8);

f. Revise paragraphs (i)(2) and (l)(1)(iv);

g. Amend the third sentence of paragraph (l)(1)(x)(C) by removing the words ''$10,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the civil money penalty must be the maximum amount per violation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.'' and adding in their place the words ''a maximum amount specified in §3.91(b)(3)(v) of this title for each violation.'';

h. Amend the fifth sentence of paragraph (l)(1)(x)(C) by removing the words ''$40,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the total amount of civil money penalties may not exceed the maximum amount for violations occurring during a single investigation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.'' and adding in their place the words ''an amount specified in § 3.91(b)(3)(v) of this title as the maximum penalty for violations occurring during a single investigation.'';

i. Amend paragraph (l)(2)(i) by removing the words ''$10,000 for each violation.'' in the fourth sentence, and adding in their place the words ''a maximum amount specified in §3.91(b)(3)(v) of this title for each violation.'', and by removing the word ''$40,000.'' in the fifth sentence, and adding in its place the words ''an amount specified in §3.91(b)(3)(v) of this title as the maximum penalty for violations occurring during a single investigation.''; and

j. Revise paragraph (l)(3).

The revisions and additions read as follows:

§ 246.12 Food delivery systems.

* * * * *

(g) * * *

(3) * * *

(i) * * * The State agency may not authorize a vendor applicant unless it determines that the vendor applicant obtains infant formula only from sources included on the State agency's list described in § 246.12(g)(10).

* * * * *

(iv) *Provision of incentive items.* The State agency may not authorize or continue the authorization of an above-50-percent vendor, or make payments to an above-50-percent vendor, which provides or indicates an intention to provide prohibited incentive items to customers. Evidence of such intent includes, but is not necessarily limited to, advertising the availability of prohibited incentive items.

(A) The State agency may approve the following incentive items to be provided by above-50-percent vendors to customers:

(*1*) Food or merchandise obtained at no cost to the vendor, subject to documentation;

(*2*) Food or merchandise of nominal value, i.e., having a per item cost of less than $2, subject to documentation;

(*3*) Food sales and specials which involve no cost or less than $2 in cost to the vendor for the food items involved, subject to documentation, and do not result in a charge to a WIC food instrument for foods in excess of the foods listed on the food instrument;

(*4*) For-profit services which are not otherwise prohibited and are purchased by participants at a fair market value based on comparable for-profit services; and

(*5*) Minimal customary courtesies of the retail food trade, such as helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting the customer with loading the food into a vehicle.

(B) The following incentive items are prohibited for above-50-percent vendors to provide to customers:

(*1*) Services which result in a conflict of interest or the appearance of such conflict for the above-50-percent vendor, such as assistance with applying for WIC benefits;

(*2*) Incentive items allowed under paragraph (g)(3)(iv)(A) of this section, at the discretion of the State agency;

(*3*) Lottery tickets provided to customers at no charge or below face value;

(*4*) Cash gifts in any amount for any reason;

(*5*) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

(*6*) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not exceed the less-than-$2 nominal value limit;

(*7*) Food, merchandise or services of greater than nominal value provided to the customer;

(*8*) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

(*9*) Any kind of incentive item which incurs a liability for the WIC Program; and

(*10*) Any kind of incentive item which violates any Federal, State, or local law or regulations.

* * * * *

(10) *List of infant formula wholesalers, distributors, and retailers licensed under State law or regulations, and infant formula manufacturers registered with the Food and Drug Administration (FDA).* The State agency must provide a list in writing or by other effective means to all authorized WIC retail vendors of the names and addresses of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, on at least an annual basis.

(i) *Notification to vendors.* The State agency is required to notify vendors that they must purchase infant formula only

from a source included on the State agency's list, or from a source on another State agency's list if the vendor's State agency permits this, and must only provide such infant formula to participants in exchange for food instruments specifying infant formula. For the purposes of paragraph (g)(10) of this section, ''infant formula'' means infant formula as defined in § 246.2, contract brand and non-contract brand infant formula as defined in § 246.2, and infant formula covered by a waiver granted under § 246.16a(e).

(ii) *Type of license.* If more than one type of license applies, the State agency may choose which one to use.

(iii) *Exclusions from list.* The State agency may not exclude a State-licensed entity from the list except when:

(A) Specifically required or authorized by State law or regulations; or

(B) The entity does not carry infant formula.

(h) * * *

(3) * * *

(ii) *No substitutions, cash, credit, refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the food instrument.

(A) The vendor may not provide unauthorized food items, nonfood items, cash, or credit (including rain checks) in exchange for food instruments. The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its ''sell by,'' ''best if used by,'' or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the customer.

(B) The vendor may provide only the authorized infant formula which the vendor has obtained from sources included on the list described in § 246.10(g)(10) to participants in exchange for food instruments specifying infant formula.

* * * * *

(xviii) * * * The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

* * * * *

(8) *Allowable and prohibited incentive items for above-50-percent vendors.* The vendor agreement for an above-50-percent vendor, or another document provided to the vendor and cross-referenced in the agreement, must include the State agency's policies and procedures for allowing and prohibiting incentive items to be provided by an above-50-percent vendor to customers, consistent with paragraph (g)(3)(iv) of this section.

(i) The State agency must provide written approval or disapproval (including by electronic means such as electronic mail or facsimile) of requests from above-50-percent vendors for permission to provide allowable incentive items to customers;

(ii) The State agency must maintain documentation for the approval process, including invoices or similar documents showing that the cost of each item is either less than the $2 nominal value limit, or obtained at no cost; and

(iii) The State agency must define unallowed incentive items.

(i) * * *

(2) *Content.* The annual training must include instruction on the purpose of the Program, the supplemental foods authorized by the State agency, the minimum varieties and quantities of authorized supplemental foods that must be stocked by vendors, the requirement that vendors obtain infant formula only from sources included on a list provided by the State agency, the procedures for transacting and redeeming food instruments, the vendor sanction system, the vendor complaint process, the claims procedures, the State agency's policies and procedures regarding the use of incentive items, and any changes to program requirements since the last training.

* * * * *

(l) * * *

(1) * * *

(iv) *One-year disqualification.* The State agency must disqualify a vendor for one year for:

(A) A pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument; or

(B) A pattern of an above-50-percent vendor providing prohibited incentive items to customers as set forth in paragraph (g)(3)(iv) of this section, in accordance with the State agency's policies and procedures required by paragraph (h)(8) of this section.

* * * * *

(3) *Notification of violations.* The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation. This notification requirement applies to the violations set forth in paragraphs (l)(1)(iii)(C) through (l)(1)(iii)(F), (l)(1)(iv), and (l)(2)(i) of this section.

(i) Prior to imposing a sanction for a pattern of incidences of a violation, the State agency must either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such notice would compromise an investigation.

(ii) The State agency may use the same method of notification which the State agency uses to provide a vendor with adequate advance notice of the time and place of an administrative review in accordance with § 246.18(b)(3).

(iii) The State agency may conduct another compliance buy visit after the notice of violation is received by the vendor, or presumed to be received by the vendor consistent with the State agency's procedures for providing such notice.

(iv) All of the incidences of a violation occurring during the first compliance buy visit must constitute only one incidence of that violation for the purpose of establishing a pattern of incidences.

* * * * *

4. In § 246.18, redesignate (a)(1)(iii)(D) through (a)(1)(iii)(H) as paragraphs (a)(1)(iii)(G) through (a)(1)(iii)(K) and add new paragraphs (a)(1)(iii)(D), (a)(1)(iii)(E), and (a)(1)(iii)(F), to read as follows:

§ 246.18 Administrative review of State agency actions.

(a) * * *

(1) * * *

(iii) * * *

(D) The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to § 246.10(g)(10);

(E) The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to § 246.12(h)(8);

(F) The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial

violation for which a pattern of violations must be established in order to impose a sanction, pursuant to § 246.12(l)(3);

* * * * *

Dated: July 18, 2006.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 06–6596 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305, 319, and 352

[Docket No. APHIS–2005–0106]

RIN 0579–AB80

Revision of Fruits and Vegetables Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule to revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We also proposed to make substantive changes to the regulations, including: Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously; doing away with the practice of listing specific commodities that may be imported subject to certain types of phytosanitary measures; and providing for the issuance of special use permits for fruits and vegetables. The proposed changes are intended to simplify and expedite our processes for approving certain new imports and pest-free areas while continuing to allow for public participation in the processes. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on Docket No. APHIS–2005–0106 on or before August 25, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0106 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2005–0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2005–0106.

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

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

FOR FURTHER INFORMATION CONTACT: Regarding the proposed commodity import request evaluation process, contact Mr. Matthew Rhoads, Planning, Analysis, and Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737; (301) 734–8790.

Regarding import conditions for particular commodities, contact Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ–PRI, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8758.

SUPPLEMENTARY INFORMATION: On April 27, 2006, we published in the **Federal Register** (71 FR 25010–25057, Docket No. APHIS–2005–0106) a proposal to revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We also proposed to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously; (2) doing away with the practice of listing specific commodities that may be imported subject to certain types of phytosanitary measures; and (3) providing for the issuance of special use permits for fruits and vegetables. The proposed changes are intended to simplify and expedite our processes for approving certain new imports and pest-free areas while continuing to allow for public participation in the processes.

Comments on the proposed rule were required to be received on or before July 26, 2006. We are reopening the comment period for Docket No. APHIS–2005–0106 until August 25, 2006, an additional 30 days from the original close of the comment period. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between July 27, 2006 (the day after the close of the original comment period) and the date of this notice.

Done in Washington, DC, this 26th day of July 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–12336 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25423; Directorate Identifier 2006–NM–029–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A300 airplanes. The existing AD currently requires repetitive inspections for cracking and corrosion in the lower rim area of the rear pressure bulkhead and adjacent areas, repetitive inspections for cracking or corrosion in the service apertures and the upper rim area of the rear pressure bulkhead, and corrective actions if necessary. This proposed AD would remove certain repetitive inspections and reduce the repetitive interval of one inspection. This proposed AD would also require an inspection for missing or damaged sealant of the area between the outer attachment angle and circumferential joint doubler, and corrective action if necessary. This proposed AD would also require additional inspections for corrosion of certain areas and repetitive inspections for airplanes on which repairs have been done. This proposed AD results from reports of corrosion and cracking in the various components associated with the rear pressure bulkhead. We are proposing this AD to prevent reduced structural capability of the fuselage and consequent decompression of the airplane.

DATES: We must receive comments on this proposed AD by August 31, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–25423; Directorate Identifier 2006–NM–029–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you 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

On January 8, 1990, we issued AD 90–03–08, amendment 39–6481 (55 FR 1799, January 19, 1990), for all Airbus Model A300 series airplanes. That AD requires repetitive inspections for cracking and corrosion in the lower rim area of the rear pressure bulkhead and adjacent areas, repetitive inspections for cracking or corrosion in the service apertures and the upper rim area of the rear pressure bulkhead, and corrective actions if necessary. That AD resulted from reports of corrosion and cracking in the various components associated with the rear pressure bulkhead. We issued that AD to prevent reduced structural capability of the fuselage and subsequent decompression of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 90–03–08, we have issued AD 2005–26–16, amendment 39–14437 (70 FR 77307, December 30, 2005), for certain Airbus Model A300 B2 and A300 B4 series airplanes; A300 B4–600, B4–600R, and F4–600R series airplanes, and C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Airbus Model A310–200 and A310–300 series airplanes. That AD requires repetitive inspections for corrosion on the rear pressure bulkhead between stringer (STGR) 27 right hand (RH) and STGR 27 left hand (LH), and related investigative and corrective actions if necessary. The inspections for the Model A300 B2 and A300 B4 series airplanes are done in accordance with Airbus Service Bulletin A300–53–0363, Revision 01, dated June 10, 2005. Service bulletin A300–53–0363 supersedes Airbus Service Bulletin A300–53–0217, which is cited as an appropriate source of service information for doing the actions required by paragraphs A., B., and C. of AD 90–03–08. Therefore, we have not included the requirements of paragraphs A., B., and C. of AD 90–03–08 in this proposed AD.

Relevant Service Information

Airbus has issued service bulletin A300–53–0218, Revision 02, dated May 10, 2005. Airbus Service Bulletin A300–53–218, Revision 1, dated July 28, 1989, is cited as an appropriate source of service information for doing certain inspections required by AD 90–03–08. Revision 2 of the service bulletin describes the following procedures:

- Repetitive inspections for corrosion and cracking of the upper rim area of the rear pressure bulkhead from the aft face.
- Repetitive eddy current inspections for cracks and corrosion from the

outboard side in certain areas, as applicable.

- Repetitive inspections for cracks and corrosion of the service apertures in the rear pressure bulkhead.
- Repetitive eddy current inspections for cracks and corrosion of the apertures for the auxiliary power unit (APU) bleed-air and fuel.
- Repetitive inspections of the area between the outer attachment angle and circumferential joint doubler to determine if sealant is missing or damaged.
- If any cracking or corrosion is found during an inspection, the service bulletin specifies doing a repair or contacting the manufacturer.

Revision 02 of the service bulletin provides basically the same procedures as Revision 1 for the inspections for corrosion and cracking in the area of the rear pressure bulkhead, and repair if necessary. However, Revision 02 of the service bulletin specifies reduced repetitive intervals for the eddy current inspections of the APU bleed-air line. Revision 02 also removes certain airplanes from the inspection of the area between STGR 25 LH and RH and certain other airplanes from the inspection of the area between STGR 26 LH and RH.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, mandated the service information and issued French airworthiness directive F–2005–093 R1, dated August 3, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 90–03–08 and would remove certain requirements of the existing AD. This proposed AD would also reduce the repetitive interval of the eddy current inspections of the APU bleed-air line. This proposed AD would also require an inspection for missing or damaged sealant of the area between the outer attachment angle and circumferential joint doubler, and corrective action if necessary. This proposed AD would also require additional inspections for corrosion of certain areas and repetitive inspections for airplanes on which repairs have been done.

Differences Between the Proposed AD and the Service Bulletin

Unlike the procedures described in the service bulletin, this proposed AD would not permit further flight if cracks or corrosion are detected within limits specified in the service bulletin. We have determined that, because of the safety implications and consequences associated with that cracking or corrosion, repairs must be done before further flight.

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the European Aviation Safety Agency (EASA) (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the EASA approve would be acceptable for compliance with this proposed AD.

The service bulletin specifies to ''visually inspect'' for missing or damaged sealant. We have determined that this inspection should be described as a ''general visual inspection.'' Note 2 has been included in this proposed AD to define this type of inspection.

Clarification of Requirement of Certain Inspections

Airbus Service Bulletin A300–53–218, Revision 1, describes repetitive inspections of the area between the outer attachment angle and circumferential joint doubler to determine if sealant is missing or damaged and corrective action if necessary. The corrective action includes removing damaged sealant and applying new sealant to areas where sealant is missing or removed. AD 90–03–08 did not specifically require that inspection. Revision 02 of Airbus Service Bulletin A300–53–0218 also includes the inspection for missing or damaged sealant. To ensure that the inspection is being done we have added paragraphs (i) and (j) to this proposed AD. Doing this inspection and corrective action addresses the identified unsafe condition.

Airbus Service Bulletin A300–53–218, Revision 1, describes procedures for doing initial and repetitive non-destructive test (NDT) inspections for corrosion and cracks of the outboard sides of certain stringers and of the apertures for the APU bleed-air and fuel. AD 90–03–08 did not require an inspection for corrosion of those areas (AD 90–03–08 requires NDT inspections of those areas for cracking only; certain NDT inspections cannot detect corrosion). Revision 02 of Airbus Service Bulletin A300–53–0218 also specifies procedures to do NDT inspections of those areas for cracking and corrosion. To inspect those areas for corrosion, detailed visual inspections must be done. Therefore, paragraph (l) has been included in this proposed AD to clarify that, for eddy current (NDT) inspections performed after the effective date of this AD, accomplishment of a detailed inspection for corrosion must be done at the same time as the eddy current inspection.

Clarification of Actions in AD 90–03–08

In paragraphs D.1.a. and E.1. of AD 90–03–08 we specify doing initial and repetitive X-ray inspections for cracking of the rim area of the rear pressure bulkhead as a separate action. Upon further review of Airbus Service Bulletin A300–53–218, Revision 1, we have determined that these inspections are related investigative actions to the eddy current inspections specified in paragraphs D.1.c. and E.3 of AD 90–03–08. Paragraph 3.B. (4) of Revision 02 of Airbus Service Bulletin A300–53–0218 describes these inspections in the same manner. Therefore, we have removed the X-ray inspection specified in the existing AD and added paragraph (l) to this proposed AD to ensure that this inspection is done, if necessary, depending on the results of the inspections specified in paragraphs (f)(2) and (h)(2) of this AD (specified as paragraphs D.1c. and E.3 of AD 90–03–08).

Revision 02 of Airbus Service Bulletin A300–53–0218 removes MSN 002 from the inspection of the area between STGR 25 LH and RH and removes MSNs 009 through 018 from the inspection of the area between STGR 26 LH and RH. We have revised paragraphs (f)(2)(i) and (f)(2)(ii) accordingly.

Changes to Existing AD

This proposed AD would retain certain requirements of AD 90–03–08. Since AD 90–03–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a

result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 90–03–08	Corresponding requirement in this proposed AD
Paragraph D	Paragraphs (f) and (g).
Paragraph E	Paragraph (h).
Paragraph F	Paragraph (n).

Explanation of Change to Applicability

We have changed the airplane model designations in the applicability of this proposed AD to be consistent with the parallel French airworthiness directive.

Explanation of Change Made to Existing Requirements

Where the service bulletin specifies to ''visually inspect,'' except for the inspection for missing or damaged sealant, and where AD 90–03–08 specifies to do a ''visual inspection,'' we specify to do a ''detailed inspection'' in this proposed AD. We have included the definition for a detailed inspection in Note 1 of this proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 90–03–08).	10	$80	$800, per inspection cycle	51	$40,800, per inspection cycle.
New Inspections (required by this AD).	10	80	800, per inspection cycle	51	$40,800, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6481 (55 FR 1799, January 19, 1990) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–25423; Directorate Identifier 2006–NM–029–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 31, 2006.

Affected ADs

(b) This AD supersedes AD 90–03–08.

Applicability

(c) This AD applies to all Airbus Model A300 airplanes, certificated in any category; except the following airplanes:

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes;

(2) Model A300 B4–605R and B4–622R airplanes;

(3) Model A300 F4–605R and F4–622R airplanes; and

(4) Airbus Model A300 C4–605R Variant F airplanes.

Unsafe Condition

(d) This AD results from reports of corrosion and cracking in the various components associated with the rear pressure bulkhead. We are issuing this AD to prevent reduced structural capability of the fuselage and consequent decompression of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 90–03–08 With New Repetitive Intervals

Initial Inspections

(f) Within the time limits specified in paragraph (g) of this AD, conduct the inspections specified in paragraphs (f)(1) through (f)(4) of this AD in accordance with Airbus Service Bulletin

A300–53–218, Revision 1, dated July 28, 1989; or Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005. After the effective date of this AD, Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005, must be used.

(1) Perform a detailed inspection for corrosion and cracking of the upper rim area of the rear pressure bulkhead from the aft face.

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

(2) Perform an eddy current inspection for cracks from the outboard side in the applicable areas specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) For airplanes, manufacturer's serial number (MSN) 003 through 008: Between Stringer (STGR) 25 left hand (LH) and right hand (RH).

(ii) For airplanes, MSN 019 through 305: Between STGR 26 LH and RH.

(3) Perform a detailed inspection for cracks and corrosion of the service apertures in the rear pressure bulkhead.

(4) Perform an eddy current inspection for cracks of the apertures for the auxiliary power unit (APU) bleed-air and fuel.

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do the inspections required by paragraph (f) of this AD.

(1) For airplanes having accumulated 26,000 landings or fewer as of February 23, 1990 (the effective date of AD 90–03–08): Perform the initial inspections required by paragraph (f) of this AD, prior to the accumulation of 24,000 landings or within 2,000 landings after February 23, 1990, whichever occurs later.

(2) For airplanes having accumulated more than 26,000 landings as of February 23, 1990: Perform the initial inspections required by paragraph (f) of this AD, within 1,000 landings after February 23, 1990.

Repetitive Inspections

(h) If no cracking or corrosion is found during the inspections required by paragraph (f) of this AD, repeat the inspections specified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), and (h)(5) of this AD thereafter at the times specified in the paragraphs.

(1) Repeat the detailed inspections of the upper rim area specified in paragraph (f)(1) of this AD thereafter at intervals not to exceed 8,000 landings.

(2) Repeat the eddy current inspection from the outboard side between STGR 25 LH and RH, or STGR 26 LH and RH, as applicable, specified in paragraph (f)(2) of this AD thereafter at intervals not to exceed 8,000 landings.

(3) Repeat the detailed inspection of the service apertures specified in paragraph (f)(3) of this AD thereafter at intervals not to exceed 6,000 landings.

(4) Repeat eddy current inspections of APU fuel apertures specified in paragraph (f)(4) of this AD thereafter at intervals not to exceed 6,000 landings.

(5) At the earlier of the times specified in paragraph (g)(5)(i) and (g)(5)(ii) of this AD, do the eddy current inspection of the APU bleed-air line service aperture specified in paragraph (f)(4) of this AD. Repeat the inspection thereafter at intervals not to exceed 6,000 landing.

(i) Within 12,000 landings since the last inspection of the APU bleed-air line service aperture specified in paragraph (f)(4) of this AD.

(ii) Within 6,000 landings since the last inspection of the APU bleed-air line service aperture specified in paragraph (f)(4) of this AD or within 2,000 landings after the effective date of this AD, whichever occurs later.

New Requirements of This AD

Inspection for Sealant and Corrective Action

(i) Within the time limits specified in paragraph (j) of this AD: Do a general visual inspection of the area between the outer attachment angle and circumferential joint doubler to determine if sealant is missing or damaged and do all applicable corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 6,000 landings.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, do the inspections required by paragraph (i) of this AD.

(1) For airplanes having accumulated 26,000 landings or fewer as of the effective date of this AD): Perform the initial inspection required by paragraph (i) of this AD, prior to the accumulation of 24,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes having accumulated more than 26,000 landings as of the effective date of this AD: Perform the initial inspection required by paragraph (i) of this AD, within 1,000 landings after the effective date of this AD.

Additional Inspections

(k) For airplanes on which the inspections specified in paragraphs (f)(2), (f)(4), (h)(2), and (h)(4) of this AD are accomplished after the effective date of this AD: Where this AD requires an eddy current inspection for cracks, do a detailed inspection for corrosion at the same time as the eddy current inspection for cracks in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005.

(l) For airplanes on which the inspections specified in paragraphs (f)(2) and (h)(2) of this AD are accomplished after the effective date of this AD: If any crack is found during any inspection required by paragraph (f)(2) or (h)(2), before further flight, do an X-ray inspection for cracking of the rim area of the rear pressure bulkhead in the area of STGR 21 LH and RH in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005.

New Repetitive Inspections

(m) For airplanes on which a repair has been done in accordance with Airbus Service Bulletin A300–53–218, Revision 1, dated July 28, 1989; or Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005; before the effective date of this AD: At the later of the times specified in paragraphs (m)(1) and (m)(2) of this AD, do the inspections specified in paragraphs (h), (k), and (l) of this AD. Repeat the inspections specified in paragraphs (h), (k), and (l) of this AD thereafter at the applicable times specified in paragraph (h).

(1) Within the times specified in paragraph (h) of this AD.

(2) Within 2,000 landings after the effective date of this AD.

Corrective Actions for Cracking and Corrosion and Repetitive Inspections

(n) If cracking or corrosion is found during any inspection required by paragraph (f), (h), (k), (l) or (m) of this AD, repair prior to further flight, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–218, Revision 1, dated July 28, 1989; or Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005. As of the effective date of this AD, do the repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0218, Revision 02, dated May 10, 2005; except where the service bulletin specifies to contact the manufacturer to repair certain conditions, this AD requires repairing those conditions using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). As of the effective date of this AD, repeat the inspections specified in paragraphs (h), (k), and (l) of this AD thereafter at the applicable times specified in paragraph (h).

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 90–03–08 are not approved as AMOCs with this AD.

Related Information

French airworthiness directive F–2005–093 R1, dated August 3, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 21, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–12301 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25470; Directorate Identifier 2006–NM–090–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–400 series airplanes. The existing AD currently requires replacement of the decompression panels that are located in the smoke barrier between the passenger and main deck cargo compartment with new panels of an improved design. This proposed AD would require modification of the decompression panels on the smoke barrier in the main deck cargo compartment or replacement of the smoke barrier with an improved smoke barrier, as applicable. This proposed AD would also require repetitive inspections of the decompression (vent) panels on the smoke barrier and corrective actions if necessary. This proposed AD also adds airplanes to the applicability. This proposed AD results from reports of decompression panels on the smoke barrier opening in flight and on the ground without a decompression event. We are proposing this AD to prevent inadvertent opening or tearing of decompression panels, which could result in degraded cargo fire detection and suppression capability, smoke penetration into an occupied compartment, and an uncontrolled cargo fire, if a fire occurs in the main deck cargo compartment.

DATES: We must receive comments on this proposed AD by September 15, 2006.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6474; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–25470; Directorate Identifier 2006–NM–090–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or visit *http://dms.dot.gov.*

Examining the Docket

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

(800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On November 14, 1996, we issued AD 96–24–03, amendment 39–9829 (61 FR 59319, November 22, 1996), for certain Boeing Model 747–400 ''combi'' series airplanes. That AD requires replacing the decompression panels located in the smoke barrier between the passenger and main deck cargo compartments with new panels of an improved design. That AD resulted from reports indicating that normal pressurization cycles are causing premature tearing or opening of these decompression panels. We issued that AD to prevent increased airflow in the cargo compartment caused by the tearing or opening of these panels; this condition, if not corrected, could result in delayed fire detection and reduced effectiveness of the cargo compartment fire suppression system.

Actions Since Existing AD Was Issued

Since we issued AD 96–24–03, operators have reported that decompression panels on the smoke barrier in the main deck cargo compartment are opening in flight and on the ground without a decompression event, on Boeing Model 747–400 series airplanes. We have determined that the modification required by AD 96–24–03 has not been effective in preventing inadvertent opening or tearing of decompression panels on the smoke barrier. This condition, if not corrected, could result in degraded cargo fire detection and suppression capability, smoke penetration into an occupied compartment, and an uncontrolled cargo fire, if a fire occurs in the main deck cargo compartment.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–25A3353, dated December 9, 2004. The service bulletin describes procedures for either modifying the decompression panels on the smoke barrier in the main deck cargo compartment, or replacing the smoke barrier with an improved smoke barrier, depending on the airplane configuration. The modification, if required, includes the following actions:

- Replacing the existing decompression panels with new, improved decompression (vent) panels.
- Replacing the forward frames with new, improved forward frame assemblies.
- For certain airplanes, replacing spring clips with new spring clips.
- For certain airplanes, replacing snap brackets with new spring clips and removing chain assemblies.
- Installing aft frame angles.

The service bulletin also describes procedures for inspecting the decompression (vent) panels of the smoke barrier for changes from their installed condition and accomplishing corrective actions as necessary. The corrective actions include restoring vent panels to their installed condition and replacing any damaged components with new components.

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 develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 96–24–03. The proposed AD would require accomplishing the actions specified in the service bulletin described previously.

Clarification of Inspection Terminology

The ''inspection'' specified in the service bulletin is referred to as a ''general visual inspection'' in the proposed AD. We have included the definition for a general visual inspection in a note in the proposed AD.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models. The proposed AD does not use the term, ''combi'' airplanes. We have also added airplanes to the applicability of this proposed AD.

Costs of Compliance

There are about 63 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with the proposed AD. The estimated work hours and cost of parts for the proposed modification in the table below depends on the configuration of an airplane.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification (new proposed action)	16–17	$12,064–$15,362	$13,344–$16,722	2	$26,688–$33,444
Replacement (new proposed action)	4	48,647	48,967	2	97,934
Inspection (new proposed action)	2	None	160	2	320

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–9829 (61 FR 59319, November 22, 1996) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–25470; Directorate Identifier 2006–NM–090–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 15, 2006.

Affected ADs

(b) This AD supersedes AD 96–24–03.

Applicability

(c) This AD applies to Boeing Model 747–400 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–25A3353, dated December 9, 2004.

Unsafe Condition

(d) This AD results from reports of decompression panels on the smoke barrier opening in flight and on the ground without a decompression event. We are issuing this AD to prevent inadvertent opening or tearing of decompression panels, which could result in degraded cargo fire detection and suppression capability, smoke penetration into an occupied compartment, and an uncontrolled cargo fire, if a fire occurs in the main deck cargo compartment.

Compliance

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

New Requirements of This AD

Modification or Replacement, as Applicable

(f) Within 48 months after the effective date of this AD: Modify the decompression panels on the smoke barrier or replace the smoke barrier with an improved smoke barrier, by accomplishing all of the actions specified in Work Package 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3353, dated December 9, 2004, as applicable.

Repetitive Inspection

(g) Within 20 months or 6,000 flight hours after accomplishing paragraph (f) of this AD, whichever occurs first: Do a general visual inspection of the decompression (vent) panels on the smoke barrier for any changes from their installed condition, and do all corrective actions before further flight after the inspection, by accomplishing all of the actions specified in Work Package 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3353, dated December 9, 2004, as applicable. Repeat the inspection thereafter at intervals not to exceed 20 months or 6,000 flight hours, whichever occurs first.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on July 21, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–12302 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. 1995N–0309] (formerly 95N–0309)

RIN 0910–AA04

Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports for the Production of Infant Formula; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until September 15, 2006 the comment period for the proposed rule published in the **Federal Register** of July 9, 1996 (the 1996 proposed rule) (61 FR 36154). The 1996 proposed rule would revise FDA's infant formula regulations in 21 CFR parts 106 and 107, and FDA is reopening the comment period to receive comment only with respect to specific issues identified in this proposed rule.

DATES: Submit written or electronic comments by September 15, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 1995N–0309 and RIN 0910–AA04, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the

Electronic Submissions portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''How to Submit Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Benson M. Silverman, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1459, e-mail: *benson.silverman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the 1996 proposed rule, FDA proposed regulations to revise its infant formula regulations to establish requirements for quality factors and current good manufacturing practices (CGMPs), to amend the agency's quality control procedure, notification, and records and report requirements for infant formulas, to require that infant formulas contain, and be tested for, required nutrients and for any nutrient added by the manufacturer, throughout the formula's shelf life, to require that infant formulas be produced under strict microbiological controls, and to require that infant formula manufacturers implement the CGMP and quality control procedure requirements by establishing a production and in-process control system of their own design. The agency proposed these requirements to implement provisions of the Drug Enforcement, Education, and Control Act of 1986 (Public Law 99–570) that amended section 412 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a).

In the **Federal Register** of April 28, 2003 (the 2003 proposed rule) (68 FR 22341), FDA reopened the comment period for the proposed rule to update comments generally, and to receive new information based on three meetings of FDA's Food Advisory Committee that were held in 2002 and 2003. Among other issues, the agency specifically requested comment on the following items: (1) Whether there is a need to include a microbiological requirement for *Enterobacter sakazakii* and, if so, what requirement the agency should consider to ensure the safety of powdered infant formulas and prevent future outbreaks; (2) what other changes in the proposed microbiological requirements would be appropriate to ensure the safety of powdered infant formula and to prevent outbreaks of illness; and (3) several questions related to quality factors, including the appropriate age for infant enrollment into clinical studies and the appropriate duration of these studies.

Significant expert consultations held since the publication of the 2003 proposed rule have provided information relevant to this rulemaking. First, a series of expert consultations has occurred related to providing scientific advice concerning *E. sakazakii*, *Salmonella*, and other microorganisms in powdered infant formula, as part of the Codex Alimentarius Commission Committee on Food Hygiene's (CCFH's) efforts to update the 1979 Recommended International Code of Hygienic Practice for Foods for Infants and Children (the 1979 Code). These consultations have resulted in two new reports, which we are adding to the record. The new reports are entitled ''The Food and Agriculture Organization of the United Nations and the World Health Organization. *Enterobacter sakazakii* and Other Microorganisms in Powdered Infant Formula: Joint FAO/WHO Meeting 2–4 February 2004'' (Ref. 1) and ''The Food and Agriculture Organization of the United Nations and the World Health Organization. *Enterobacter sakazakii* and *Salmonella* in Powdered Infant Formula: Meeting Report, FAO Headquarters, Rome, Italy, 16–20 January 2006'' (Ref. 2). We believe that the latter report is the most significant for purposes of informing this rulemaking with respect to *E. sakazakii*, and it is described more fully in section II.A of this document.

In addition, new information has been provided by the Committee on the Evaluation of the Addition of Ingredients New to Infant Formula, which the Institute of Medicine (IOM) convened at the request of FDA and Health Canada, in part, to ''identify tools to evaluate the safety of ingredients new to infant formulas under intended conditions of use in term infants'' (Ref. 3 at 2). This consultation resulted in a March 2004 report entitled ''Infant Formula: Evaluating the Safety of New Ingredients'' (the IOM report) (Ref. 3). This report is described more fully in section II.C of this document.

II. Request for Comments

In the limited reopening of the comment period announced in this proposed rule, FDA is seeking comment only with respect to the following issues: (1) Whether FDA should require a microbiological standard for *E. sakazakii* for powdered infant formula of negative in 30 x 10 gram (g) samples; (2) whether FDA should not require microbiological standards for aerobic plate count, coliforms, fecal coliforms, *Listeria monocytogenes*, *Bacillus cereus*, and *Staphylococcus aureus*; (3) whether FDA should require measurements of healthy growth beyond the two proposed quality factors of normal physical growth (as measured by body weight, recumbent length, head circumference, and average daily weight increment) and protein quality; (4) whether FDA should require a measure for body composition as an indicator of normal physical growth, and if so, what measure; and (5) whether FDA should require that the duration for a clinical study, if required, be no less than 15 weeks, and commence when infants are no older than 2 weeks of age. FDA will not consider comments outside the scope of these issues, which are discussed in more detail in the following sections of this document.

A. Microbiological Standard for E. sakazakii

In the 2003 proposed rule, we asked for comment on whether there is a need to include a microbiological requirement for *E. sakazakii*, and if so, what requirement the agency should consider to ensure the safety of powdered infant formula and to prevent outbreaks of illness (68 FR 22341 at 22342).

Some comments identified a need to include a microbiological requirement for *E. sakazakii*, but did not suggest a specific standard. Other comments stated that there is no need to establish a specific standard for *E. sakazakii*. Some of these comments asserted that the evidence does not support the conclusion that the levels of *E. sakazakii* found in unopened infant formula present a risk of harm to infants, particularly healthy, term infants. Other comments asserted that there is no need to establish a standard because the safety of infant formula would be better assured by hazard analysis critical control plans and

environmental monitoring, including employing stricter criteria for the testing of indicator organisms, such as *Enterobacteriaceae*. One comment suggested that if FDA determines that microbiological specifications for future pathogens of concern are needed, it should use a mechanism for establishing these requirements, such as a guidance, that is less burdensome to publish or change than a regulation. Other comments suggested that point-of-use contamination from poor preparation practices represent the most significant risk of *E. sakazakii* infection for infants consuming formula. These comments suggested that education concerning formula preparation and handling, or additional labeling, is more likely to reduce the risk of infection than finished product testing. Some comments requested that FDA provide an explanation of the number and sample sizes required to test finished formula product for contamination. Other comments suggest that the addition of *E. sakazakii* inhibitors to formula, such as antimicrobials inhibitory to *E. sakazakii* that are presently approved for use in foods, provide a more effective means of preventing the growth of *E. sakazakii*.

In the 2003 proposed rule, we also asked for comments on whether powdered infant formula to be consumed by premature and newborn infants should meet stricter microbiological requirements than formula intended for older infants (68 FR 22341 at 22342). With respect specifically to *E. sakazakii*, some comments said there should be a heightened standard for formulas intended for certain subpopulations of infants, including, variously, infants who are premature, of low birth weight, ill, or among a group described as vulnerable hospitalized infants. These comments argued that there should either be no standard or a lower standard for formulas intended for other infants. Other comments urged FDA to adopt the same standard for formulas intended for term infants as those formulas intended for premature infants because a risk of *E. sakazakii* infection exists in both populations. Some comments stated that FDA's request for comments on this issue is based on the incorrect premise that healthy newborns should be grouped with premature infants for purposes of risk assessment. The comments stated that the correct question is whether there should be separate standards for formulas for premature infants and formulas for healthy term infants. The comments stated that due to FDA's statutory authority under section 412(h)(2) of the act to establish terms and conditions for the exemption of formulas intended for infants who are low birth weight or who have unusual medical problems, any effort to establish stricter microbiological requirements for these formulas should be done with a separate notice and comment rulemaking.

1. What Were the ''*Enterobacter sakazakii* and *Salmonella* in Powdered Milk Formula'' Meeting's (the Rome Meeting's) Conclusions Regarding a Microbiological Standard for *E. sakazakii*?

During January 16 to 20, 2006, in Rome, Italy, the Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO) convened the Rome meeting, a technical meeting on *E. sakazakii* and *Salmonella* in powdered infant formula (Ref. 2). The purposes of the Rome meeting were to consider scientific data newly available since the previous FAO/WHO technical meeting in February 2004, to evaluate a quantitative risk assessment model using these data for *E. sakazakii* in powdered infant formula, to apply this model to various risk reduction scenarios, and to provide input to CCFH for the revision of the 1979 Code. A total of 16 experts from 11 countries participated in the Rome meeting in their individual capacities, including a senior FDA scientist with expertise in microbiological contamination (Ref. 2 at vii, 1).

Recent data reviewed in the report of the Rome meeting include data concerning an *E. sakazakii* outbreak in France involving nine infants, two of which died, as well as evidence of a number of recalls of powdered infant formula contaminated with *E. sakazakii* (Ref. 2 at 8–9). These and other data reviewed in the report indicate that prevention efforts must target infants within and beyond the neonatal period (i.e., beyond the infant's first 28 days) and must target all infants, regardless of immune status (Ref. 2 at xiv). As stated in the report of the Rome meeting, based on a review of *E. sakazakii* infections worldwide, ''*E. sakazakii* meningitis tends to develop in infants during the neonatal period . . . *E. sakazakii* bacteraemia tends to develop in premature infants outside of the neonatal period with most cases occurring in infants less than 2 months of age. However, infants with immunocompromising conditions have developed bloodstream infections as late as age 10 months and previously healthy infants have also developed invasive disease outside the neonatal period'' (Ref. 2 at 8). The data indicate that premature infants and those with low birth weight are at highest risk for severe infection, that infants who contract bacteremia (infection of the blood stream) have a 10 percent mortality rate, that infants with meningitis have a 44 percent mortality rate, and most infants who survive meningitis experience long-term neurological consequences (Id. at 7–8). The data also support the conclusion that there is clear evidence of causality between *E. sakazakii* in powdered infant formula and illness in infants (Ref. 2 at 5).

The experts at the Rome meeting evaluated and reviewed a risk assessment model developed to describe the factors leading to *E. sakazakii* infection in infants and to identify potential risk mitigation strategies (Ref. 2). As described in the report, among other things, the risk assessment model ''provides the means to evaluate microbiological criteria and sampling plans in terms of the risk reductions achieved and the percentage of product lot rejected'' (Id. at xii). In the report, the experts did not select a specific risk management approach, recommending instead that the risk assessment model be applied by risk managers within CCFH and in member countries (Id. at xiv–xv).

The model incorporates published research and extensive unpublished industry data on the prevalence of *E. sakazakii* in powdered infant formula (Ref. 2 at 44), as well as new data on consumer and hospital practices related to the use of powdered infant formula. The model estimates the risk to infants of illness from *E. sakazakii* from contaminated powdered infant formula.[1] Using the model, relative risk reductions and lot rejection rates were projected for a total of 162 scenarios, each incorporating the following: One of nine different sampling plans, one of three mean log concentrations of *E. sakazakii*, one of two between-lot standard deviations, and one of three within-lot standard deviations. The values for the mean log concentrations and the standard deviations were based on the published and unpublished data described previously in this document. For example, the model used mean log concentration of -5, -4, and -3 mean $\log_{10}$ colony-forming units/g (CFU/g) (Ref. 2 at 46–47), while the estimated mean log concentrations in the data

[1]No dose-response for *E. sakazakii* has been established. The risk assessment model assumes that illness results from one colony forming unit (CFU) of *E. sakazakii* in dry powdered infant formula at the time of preparation and calculates an exponential dose-response parameter (Ref. 2 at 16).

ranged from -2.79 to -5.24 CFU/g, with a mean of -3.84 CFU/g and between-lot standard deviation of 0.696 (Id. at 43).

As explained in the report of the Rome meeting, ''the risk associated with any specific [powdered infant formula] lot is a function of the number of contaminated servings it will yield, and the ability of a microbiological criterion to reduce that risk in an effective manner is based on correctly identifying those lots with the highest level of contamination'' (Id. at 50). For example, one scenario presented is for applying a sampling plan of negative in 30 x 10 g samples (n=30, s=10). In other words, under this sampling plan 30 10 g samples from various random parts of a lot of powdered infant formula, or a total of 300 g, must be negative for *E. sakazakii*. If this sampling plan is used for a lot of powdered infant formula with a mean $\log_{10}$ concentration of -5 CFU/g, a between-lot standard deviation of 0.8, and a within-lot standard deviation of 0.5, 1.4 percent of tested lots can be expected to be found positive for *E. sakazakii* and would be rejected, and the relative risk reduction of *E. sakazakii* would be 1.21 (i.e., there would be roughly 20 percent fewer cases of *E. sakazakii* infection per year than would be the case if there were no powdered infant formula sampling plan in place). When this same sampling approach is applied to a lot of powdered infant formula with a mean $\log_{10}$ of -3 CFU/g (a substantially higher contamination level), allowing for the same standard deviations, the result is a probability that 37 percent of tested lots will be found positive and rejected and a relative risk reduction of 5.71. Thus, the more contaminated the powdered infant formula, the more the sampling can effectively reduce the risk of illness, because as the level of contamination increases, the lot rejection rate and the relative risk reduction increase. Similarly, the greater the variability in the concentration of the pathogen between lots, the greater the rejection rate within each sampling plan. Thus, if manufacturers focus on ensuring that the overall mean log concentration of the pathogen is low and that variation between lots is controlled, then the potential for rejection of the lot, and the risk of illness, are both lowered. (The model found that changing the variability within lots did not affect the projected outcomes (Id. at 49).)

2. Should FDA Require a Standard for *E. sakazakii*?

We have considered the comments received in response to the 2003 proposed rule and the information submitted in support of them, and have tentatively concluded that we disagree with those comments that oppose setting a standard for *E. sakazakii*. Some of the reasons given in the comments opposing such a standard (e.g., no evidence that levels of *E. sakazakii* in unopened powdered formula present a risk of harm to infants) no longer appear to be relevant, given the more recent data evaluated by the experts at the Rome meeting related to the health risk posed by contamination of powdered formula (Ref. 2). In addition, the comments asserting that alternatives to finished product testing (e.g., hazard analysis critical control plans and environmental monitoring, education on formula preparation and handling, or use of inhibitors in formula) provide sufficient assurance of safety did not provide support for such assertions with respect to *E. sakazakii*. Further, newly available data, particularly the data analyzed during the Rome meeting, make it clear that *E. sakazakii* poses a significant health risk that has been linked to powdered infant formula. FDA has tentatively concluded that, rather than recommending a standard in a guidance document, as suggested by one comment, these data support establishing a requirement for a standard for *E. sakazakii* in powdered infant formula.

We have also reached a tentative conclusion, based on the scientific information currently available, about the level at which that standard should be set. Based on the data analyzed at the Rome meeting, FDA tentatively concludes that the establishment of a microbiological standard for *E. sakazakii* of negative in 30 x 10 g samples is appropriate to ensure the safety of powdered infant formula and prevent outbreaks. As described previously, FDA tentatively concludes that the standard FDA is considering in this proposed rule will prevent contamination at levels that have been shown to lead to outbreaks of *E. sakazakii*, based on the data evaluated by experts at the Rome meeting. Manufacturers would have the flexibility to decide what in-process controls, which may include environmental monitoring, are necessary to ensure compliance with the microbiological standard of negative in 30 x 10 g samples. FDA has tentatively concluded that end-product testing would provide the manufacturer with the ability to verify the effectiveness of in-process controls and would provide FDA with the ability to determine compliance with the proposed performance standard for *E. sakazakii*. Such a standard also provides reasonable incentives for plants that need to better control *E. sakazakii*, while plants with effective control programs in place face only a minimal risk that positive sampling will necessitate lot rejection. Thus, FDA is considering a modification to part 106 (21 CFR part 106), in proposed § 106.55, that would include a requirement that manufacturers test representative samples of each lot of powdered infant formula at the final product stage, before distribution, to ensure that each lot meets the microbiological quality standard of negative in 30 x 10 g samples. FDA is also considering a modification to proposed § 106.3(g) to define ''lot'' as follows: ''*Lot* means a quantity of product, having a uniform character or quality, within specified limits, or, in the case of an infant formula produced by continuous process, it is a specific identified amount produced in a unit of time or quantity in a manner that assures its having uniform character and quality within specified limits.''

FDA requests comment on the appropriateness of this standard and of the definition of the word ''lot.'' FDA is requesting interested persons to submit, as part of their comments, any available scientific information and data on both the incidence of, and sampling and testing for, *E. sakazakii* in powdered infant formula. In addition to seeking comments on these tentative conclusions in response to this proposed rule, we plan to consider and address in the final rule comments already submitted concerning these matters.

3. Should the Same *E. sakazakii* Standard Apply to All Infant Formulas Covered by This Rulemaking?

We have tentatively concluded that it is not appropriate or feasible to establish a more stringent *E. sakazakii* standard for powdered infant formula that is to be consumed by premature or newborn infants. The population of infants, who may at some point in their infancy consume infant formula that is subject to the 1996 proposed rule, includes most infants who are fed infant formula, such as healthy term infants, preterm infants, low birth weight infants, ill, or hospitalized infants. The epidemiologic data, some of which is described previously in our summary of the Rome meeting, do not support the assumption that term, normal birth weight, and healthy infants—including infants who are no longer newborns—are not also at risk of adverse health consequences associated with *E. sakazakii* contamination of infant formula (Ref. 2

at 8). Furthermore, we are unaware of data that support the assumption that all preterm, low birth weight, ill, or hospitalized infants are exclusively fed formula specifically manufactured for their consumption. As a practical matter it would be difficult, except when the child is under supervised medical care, to limit the consumption by certain subgroups of infants only to a special category of formula. While it may become appropriate at some future date to propose a separate standard for formulas that are to be consumed by certain subpopulations of infants, we decline to do so at this time. Thus, we have tentatively concluded that it is appropriate to set a standard for *E. sakazakii* for infant formulas in proposed § 106.55. In addition to seeking comments on these tentative conclusions in response to this proposed rule, we plan to consider and address in the final rule comments already submitted concerning these matters.

B. Elimination of Microbiological Standards for Aerobic Plate Count, Coliforms, Fecal Coliforms, Listeria monocytogenes, Staphylococcus aureus, and Bacillus cereus

In the 1996 proposed rule, we proposed microbiological standards for aerobic plate count, coliforms, fecal coliforms, *Salmonella* spp., *Listeria monocytogenes*, *Staphylococcus aureus*, and *Bacillus cereus*. In the 2003 proposed rule, we asked for comment on what changes, if any, in the proposed microbiological requirements, other than for *E. sakazakii*, would be appropriate to provide for powdered infant formula and to ensure its safety if microorganisms are intentionally added to infant formulas (68 FR 22341 at 22342).

Several comments took issue with the proposed requirement to test each batch of formula at the final product stage for the microorganisms listed in proposed § 106.55. Other comments argued that testing for *Listeria monocytogenes* was unnecessary because this organism does not pose a significant health concern in infant formula. Several comments requested that FDA change the M value for *Bacillus cereus* to 1,000 most probable number/g (MPN/g) because there is no health concern associated with the proposed level of 100 MPN/g.

With regard to coliforms and fecal coliforms, one comment requested that FDA replace these standards with one for E. coli due to the possibility of improper interpretation of coliform and fecal coliform tests.

Regarding intentionally added microorganisms, one comment suggested that FDA exempt formulas containing these organisms from the aerobic plate count limit as long as the manufacturer employed sanitation indicative testing, such as testing for *Enterobacteriaceae*. One comment recommended an *Enterobacteriaceae* standard of 3.0 MPN/g but did not provide reasoning for this standard. Other than the comment disputing the overall need for testing each batch of formula for microorganisms, no comments argued that the proposed microbiological standard for *Salmonella* spp. is unwarranted.

1. What Were the Conclusions of the Rome Meeting Regarding Microbiological Standards for Organisms Other than *E. sakazakii*?

The experts at the Rome meeting found that only *E. sakazakii* and *Salmonella* spp. in powdered infant formula had been clearly linked to illness in infants (Ref. 2 at 5). Because of this finding, they recommended standards only for *E. sakazakii* (discussed previously) and *Salmonella* spp.

With respect to the existing microbiological standard for *Salmonella* spp. in the 1979 Code of negative in 60 x 25 g samples, the experts at the Rome meeting determined that this standard is effective for protecting public health.

2. Should FDA Set Standards for Microorganisms Other than *E. sakazakii*?

FDA has considered comments submitted in response to the 1996 proposed rule and the 2003 proposed rule, as well as the report of the Rome meeting. The comments submitted on microbiological testing no longer appear to be relevant, in part, due to the changes FDA is considering to the proposed microbiological testing requirements in the 1996 proposed rule (discussed in the following paragraphs) in response to the data available from the Rome meeting. Further, FDA is aware of no marketed infant formula that contains intentionally added microorganisms and tentatively has decided not to consider requirements related to such formula, since it is not clear whether any such formula may be marketed at this time.

FDA has tentatively concluded that there is no need to require routine batch testing for microorganisms other than *E. sakazakii* and *Salmonella* spp. We base this tentative conclusion on the following findings: (1) The data indicating both that *E. sakazakii* and *Salmonella* spp. in powdered infant formula are the microorganisms of public health concern associated with such formula, (2) the data that directly link the presence of these microorganisms to outbreaks of illness, and (3) the evidence that controls to address these pathogens in powdered infant formula will reduce the potential for infant illness. Based on this tentative conclusion, current proposed § 106.55(b) and (c) would not be finalized and proposed § 106.55(b) would be replaced with a provision that would require manufacturers to test representative samples of each lot of powdered infant formula at the final product stage, before distribution, to ensure that each lot meets the microbiological quality standard of negative in 30 x 10 g samples for *E. sakazakii* and negative in 60 x 25 g sub-samples for *Salmonella* spp.[2]

Although FDA believes that testing for aerobic plate count and *Enterobacteriaceae* can be beneficial to manufacturers in monitoring their process and production sanitation, these tests do not distinguish between pathogenic and non-pathogenic bacteria. FDA is currently proposing standards for the two pathogenic bacteria in the family *Enterobacteriaceae*, i.e., *E. sakazakii* and *Salmonella* spp., whose presence in infant formula has been linked to outbreaks of illness. Therefore, FDA has tentatively concluded, based on recent data from the Rome report, that additional batch testing, beyond the proposed *E. sakazakii* and *Salmonella* spp. standards, is not warranted at this time to ensure the microbiological safety of powdered infant formula. Therefore, FDA has tentatively decided not to include requirements for testing microorganisms, other than *Salmonella* spp. and *E. sakazakii*, in the final rule.

Under the testing regimen set forth in this proposed rule, the proposed testing standards in § 106.55(c) would not be finalized. Thus, there would be no standards in a final rule for an aerobic plate count, coliform, fecal coliform test, *Listeria monocytogenes*, *Staphylococcus aureus*, or *Bacillus cereus*. Nor would there be a standard for *Enterobacteriaceae* in a final rule. However, even though batch testing

[2]Although the proposed standard for Salmonella in proposed § 106.55 is listed as an M value of 0, proposed § 106.55(c) states that ''FDA will determine compliance with the M values listed below using the *Bacteriological Analytical Manual* (BAM)'' (61 FR 36154 at 36213). Chapter 1 of the BAM states that a sampling plan of 60 x 25 g samples for *Salmonella* is appropriate for Category I foods, i.e., foods that ''would not normally be subjected to a process lethal to Salmonella between the time of sampling and consumption and are intended for consumption by the aged, the infirm, and infants'' (Andrews, W., et al., *Bacteriological Analytical Manual Online*, Chapter 1, available at *http://www.cfsan.fda.gov/~ebam/bam-1.html*, April 2003).

would not be required for these microorganisms, the presence of these microorganisms in an infant formula reflects that the formula was prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health and therefore is adulterated under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)). FDA is interested in receiving comments, based on the FAO/WHO meetings or other scientific information, concerning its current thinking regarding the establishment of microbiological standards only for *E. sakazakii* and *Salmonella* spp. In addition to seeking comments on these tentative conclusions in response to this proposed rule, we plan to consider and address in the final rule comments already submitted concerning these matters.

C. Assessing Normal Physical Growth in Infants

In the 1996 proposed rule, FDA proposed a quality factor of normal physical growth (61 FR 36154 at 36215). Some comments to the 2003 proposed rule questioned FDA's authority to establish such a quality factor and to require a clinical study to measure physical growth. The agency is considering those comments and will respond to them in the final rule. For purposes of this proposed rule, the agency is seeking comment on certain IOM recommendations for evaluating the safety of new ingredients in infant formula because these recommendations differed from what the agency proposed as quality factor requirements.

1. Clinical Studies to Measure Normal Physical Growth

The IOM report considered a spectrum of tools that can be used for assessment of ingredient safety, including preclinical in vivo (animal) and in vitro toxicity studies and clinical human studies. The committee recognized the importance of conducting a clinical study of a new ingredient under the intended conditions of use, i.e., in the context of human consumption of an infant formula product. Such a study also allows for the evaluation of the entire formula matrix, including interactions among formula components. IOM recommended that ''bioavailability be specifically addressed in any evaluation of the safety of infant formulas'' (Ref. 3 at 5). Thus, IOM's recommendations included the importance of assessing the bioavailability of an infant formula and its nutrients.

The IOM report states that ''growth studies should remain the centerpiece of clinical testing of ingredients new to infant formulas'' (Id. at 113). The IOM report concludes that ''the inability of a formula to support growth represents a significant harm to infants and therefore growth is an essential endpoint for all safety assessments of an ingredient new to infant formulas'' (Id. at 105). The IOM report recommends, however, that growth studies are not sufficient on their own to assess ingredients new to infant formulas. IOM provides a hierarchical study of major organ systems and developmental-behavioral outcomes (Id. at 98). The IOM report states that ''growth deficits are likely to appear only secondary to effects on specific organs or tissues and may not appear for some time after nutritional insult'' (Id. at 113).

While clinical studies that measure other aspects of the bioavailability of nutrients in an infant formula may prove valuable at a future time, FDA's current thinking is that it will not consider requiring additional measurements, under section 412 of the act, for the purpose of assessing the bioavailability of the formula and its nutrients, beyond those measures identified in the 1996 proposed rule. Certain measurements that IOM recommends, other than growth studies, involve invasive procedures and may raise ethical concerns.

FDA is interested in receiving comments, based on the IOM report or other scientific information, concerning its current thinking that protein and physical growth are sufficient at this time for assessing the bioavailability of nutrients in an infant formula.

2. Body Composition as Measure of Normal Physical Growth

FDA proposed growth measurements that include body weight, recumbent length, head circumference, and average daily weight increment (proposed § 106.97(a)(1)(i)(B)). The IOM report recommends that growth measurements include weight, recumbent length, head circumference, weight and length velocity, and body composition (Id. at 107). Thus, FDA did not include a measure of body composition that IOM recommended.

FDA tentatively concludes that a measure of body composition is not necessary to include as a measure of physical growth when a clinical study is used to evaluate the quality factor of physical growth. The IOM report recommends that measurement of normal physical growth include body composition and lists anthropometry (e.g., skinfold measurements), dual x-ray absorptiometry, and isotope dilution as the most feasible methods (Id. at 107). IOM states that body composition is a ''more sensitive indicator of infant nutritional status than measures of size,'' although body composition measurement methods can be expensive and frequently inaccurate (Id. at 108). FDA believes that, due to the expense and frequent inaccuracy of body composition measurement methods, and the adequacy of measures of body weight, recumbent length, head circumference, and data to calculate average daily weight increment for assessing an infant's growth when fed an infant formula, measurement of body composition is not warranted at this time. FDA is interested in receiving comments, based on the IOM report or other scientific information, concerning its current thinking that measures of body weight, recumbent length, head circumference, and data to calculate average daily weight increment are adequate for assessing the quality factor of normal physical growth.

3. Duration of Clinical Studies and Enrollment Age of Infants

The IOM report recommends that, ideally, growth studies should be conducted over the entire period for which infant formula is intended to be fed as the sole source of nutrition, i.e., up to 6 months (180 days), which is consistent with breastfeeding guidelines (Ref. 2 at 10 and 112–113). IOM further states that a 120-day growth study, proposed by FDA, does not allow for the determination of delayed effects or for understanding longer-term effects of early perturbations in growth. This recommendation is based on breastfeeding guidelines that recommend exclusive breastfeeding for infants for at least the first 4 months of age and preferably for the first 6 months of age (Id. at 112). However, the IOM report acknowledges that ''there is no reason to think that an adverse effect of an ingredient new to formulas would be detected *only* between 4 and 6 months of age''[3] and notes that many infants begin consuming foods other than formula between 4 and 6 months of age (Id. at 112). Consumption of foods other than infant formula has the potential to confound a growth study evaluating an infant formula.

Although FDA agrees that the first 6 months of age is the optimal time to

[3]IOM seems to inadvertently alternate between discussion of the study length in terms of duration (i.e., a 180-day study), versus the length in terms of the infant's age (i.e., the study should continue until the infant is 6 months of age). Because most studies will not commence on the day of the infant's birth, it is important to distinguish between the two. FDA has attempted to do so in its explanation of its current thinking on this issue.

measure infant growth, and would not discourage clinical studies for this time period, FDA believes it is not necessary to conduct a clinical study, for the purpose of evaluating physical growth as a quality factor, for the infants' entire first 6 months of age.

FDA proposed that a clinical study be no less than 4 months in duration, enrolling infants no more than 1 month old at the time of entry into the study. FDA received several comments on this issue, both in response to the 1996 proposed rule and in response to the 2003 proposed rule. None of the comments were in favor of a study duration requirement of 6 months. The comments FDA received favored a duration requirement ranging between 112 and 120 days, and recommended an enrollment requirement of between the age of 8 days and 1 month.

To better capture the maximum amount of time during the most rapid growth period for infants, FDA is considering whether to require a time period for clinical studies of a period of no less than 15 weeks that would commence at no more than 2 weeks of age. FDA believes 15 weeks provides a sufficient amount of time for assessing the physical growth of infants. Given this relatively short time period and the importance of a sufficient length of time for determining growth outcomes, FDA believes it is important to require that the study commence no later than 2 weeks of age. These changes would result in a clinical study extending through approximately the infant's first 4 months of age. A required study duration of no less than 15 weeks corresponds to the Iowa reference data recommendations regarding the duration of a clinical study. FDA requests comments on whether, in light of the IOM report's 180-day recommendation, FDA should consider requiring a study period of no less than the infant's first 180 days (6 months). Comments should include any available supporting data and information.

III. What Comments Will Be Considered?

Comments submitted in response to this proposed rule should focus solely on one or more of the following issues: (1) Whether FDA should require a microbiological standard for *E. sakazakii* for powdered infant formula of negative in 30 x 10 g samples; (2) whether FDA should not require microbiological standards for aerobic plate count, coliforms, fecal coliforms, *Listeria monocytogenes*, *Staphylococcus aureus*, and *Bacillus cereus*; (3) whether FDA should require measurements of healthy growth beyond the two proposed quality factors of normal physical growth (as measured by body weight, recumbent length, head circumference, and average daily weight increment) and protein quality; (4) whether FDA should require a measure for body composition as an indicator of normal physical growth, and if so, what measure, and (5) whether FDA should require the duration for a clinical study, if required, be no less than 15 weeks, and commence when infants are no older than 2 weeks of age. FDA requests comments on how, if we make the changes to the proposed rule outlined in this document, the costs and benefits would either be greater or less than estimated in the 1996 proposed rule (61 FR 36154 at 36202). We also request comment on the extent to which the description of industry practices in the Rome meeting report (Ref. 2) accurately describes the activities of all firms supplying infant formula in the United States. Data supplied in response to these questions will be used to inform any rulemaking. FDA will not consider comments outside the scope of these issues.

Comments previously submitted to the Division of Dockets Management do not need to be resubmitted, because all comments submitted to the docket number, found in brackets in the heading of this document, will be considered in development of the final rule.

IV. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Docket Management between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. The Food and Agriculture Organization of the United Nations and the World Health Organization, ''*Enterobacter sakazakii* and Other Microorganisms in Powdered Infant Formula: Joint FAO/WHO Meeting 2–4 February 2004,'' available at *http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/y5502e/y5502e00.htm* (last visited May 10, 2006).

2. The Food and Agriculture Organization of the United Nations and the World Health Organization, ''*Enterobacter sakazakii* and *Salmonella* in Powdered Infant Formula: Meeting Report, FAO Headquarters, Rome, Italy, 16–20 January 2006,'' available at *ftp://ftp.fao.org/ag/agn/jemra/e_sakakazii_salmonella.pdf* (last visited May 10, 2006).

3. Committee on the Evaluation of Ingredients New to Infant Formula, ''Infant Formula: Evaluating the Safety of New Ingredients,'' National Institute of Medicine, March 1, 2004.

Dated: July 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–12268 Filed 7–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–159929–02]

RIN 1545–BB84

REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general tax purposes. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC

residual interests is allocated. The regulations clarify the timing of income under section 860G for purposes of determining a domestic partnership's responsibility under sections 1441 and 1442 for withholding tax with respect to a foreign partner's share of REMIC net income as a result of indirectly holding a residual interest. The regulations also provide that an excess inclusion is treated as income from sources within the United States. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 30, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–159929–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–159929–02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Collinson, (202) 622–3900 (not a toll-free number); concerning the submission of comments, or a request for a public hearing, Kelly Banks (*Kelly.D.Banks@irscounsel.treas.gov*).

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 sections 860A; 860G, 863, 1441, and 1442 of the Internal Revenue Code (Code). The temporary regulations provide rules relating to the recognition and sourcing of income and related withholding issues associated with a Real Estate Mortgage Investment Conduit (REMIC) residual interest that is allocated to a foreign person, including a foreign partner in a domestic partnership. The text of the temporary 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. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the regulations do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 Requests for a 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 request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Dale Collinson, Office of the Associate Chief Counsel (Financial Institutions and Products). 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 * * *

§ 1.860A–1 also issued under 26 U.S.C. 860G(b) and 860G(e). * * *

Par. 2. In § 1.860A–1, paragraph (b)(5) is added to read as follows:

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) [The text of the proposed amendment to § 1.860A–1(b)(5) is the same as the text of § 1.860A–1T(b)(5) published elsewhere in this issue of the **Federal Register**].

Par. 3. In § 1.860G–3, paragraph (b) is added to read as follows:

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) [The text of the proposed amendment to § 1.860G–3(b) is the same as the text of § 1.860G–3T(b) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.863–1 is amended as follows:

1. The paragraph heading for paragraph (e) is revised.
2. The text of paragraph (e) is redesignated as (e)(1).
3. A new paragraph heading for paragraph (e)(1) is added.
4. A new paragraph (e)(2) is added.
5. The last sentence of paragraph (f) is revised and a new sentence is added to the end.

The revisions and additions read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(e) *Residual interest in a REMIC*—(1) *REMIC inducement fees.* * * *

(2) [The text of the proposed amendment to § 1.863–1(e)(2) is the same as the text of § 1.863–1T(e)(2) published elsewhere in this issue of the **Federal Register**].

(f) [The text of proposed amendment to § 1.863–1(f) is the same as the text of § 1.863–1T(f) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.1441–2 is amended by adding paragraphs (b)(5) and (d)(4) and a sentence to the end of paragraph (f) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(5) [The text of the proposed amendment to § 1.1441–2(b)(5) is the same as the text of § 1.1441–2T(b)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) * * *

(4) [The text of the proposed amendment to § 1.1441–2(d)(4) is the same as the text of § 1.1441–2T(d)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(f) [The text of the proposed amendment to § 1.1441–2T(f)(1) is the same as the text of § 1.1441–2T(f)(1)

published elsewhere in this issue of the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–12364 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–075]

RIN 1625–AA08

Special Local Regulations for Marine Events; Back River, Poquoson, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Poquoson Seafood Festival Workboat Races'', a marine event to be held October 15, 2006 on the waters of the Back River, Poquoson, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Back River during the event.

DATES: Comments and related material must reach the Coast Guard on or before August 31, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection of copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigation Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–075), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger then 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On October 15, 2006, the City of Poquoson will sponsor ''Poquoson Seafood Festival Workboat Races'' on the Back River, immediately adjacent and south of Messick Point. The event will consist of approximately 60 traditional Chesapeake Bay deadrise workboats racing along a marked strait line race course in heats of 2 to 4 boats for a distance of approximately 600 yards. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Back River, Poquoson, Virginia. The regulations will be in effect from 12 p.m. to 5 p.m. on October 15, 2006. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Back River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the affected portions of the Back River during the event.

Although this regulation prevents traffic from transiting a portion of the

Back River during the event, this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specially excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, and ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary *§ 100.35–T05–075* to read as follows:

§ 100.35–T05–075 Back River, Poquoson, VA.

(a) *Definitions:* The following definitions apply to this section: (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Poquoson Seafood Festival Workboat races under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(4) *Regulated area* includes the waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ North, bounded on the south by a line drawn along latitude 37°06′15″ North, bounded on the east by a line drawn along longitude 076°18′52″ West and bounded on the west by a line drawn along longitude 076°19′30″ West. All coordinates reference Datum NAD 1983.

(b) Special local regulations: (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(c) *Effective period.* This section will be enforced from 12 p.m. to 5 p.m. on October 15, 2006.

Dated: July 18, 2006.

S. Ratti,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 06–6618 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–123]

RIN 1625–AA00

Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones throughout the Great Lakes. These zones are intended to restrict vessels from portions of the Great Lakes during live fire gun exercises that will be conducted by Coast Guard cutters and small boats. These safety zones are necessary to protect the public from the hazards associated with the firing of weapons.

DATES: Comments and related materials must reach the Coast Guard on or before August 31, 2006.

ADDRESSES: You may mail comments and related material to Commander (dre) Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Ninth Coast Guard District Planning and Development Section (dpw-1) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. (local) and 4 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Gustav Wulfkuhle, Enforcement Branch, Response Division, Ninth Coast Guard District, Cleveland, OH at (216) 902–6091.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–06–123], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail (see **ADDRESSES**). If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period, which may result in a modification to the rule.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a public meeting (see **ADDRESSES**) explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is proposing to establish these safety zones to conduct training essential to carrying out Coast Guard missions relating to military operations and national security. Accordingly, these proposed safety zones fall within the military function exception to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(1). Notice and comment rulemaking under 5 U.S.C. 553(b), and an effective date of 30 days after publication under 5 U.S.C. 553(d) are not required for this rulemaking.

However, we have determined that it would be beneficial to accept public comments on this proposed rule. Therefore, we will be accepting comments until August 31, 2006. By issuing this notice of proposed rulemaking and accepting public comments, the Coast Guard does not waive its use of the military-function exception to notice and comment rulemaking under 5 U.S.C. 553(b).

Background and Purpose

These safety zones are necessary to protect vessels and people from hazards associated with live fire gun exercises. Such hazards include projectiles that may ricochet and damage vessels and/or cause death or serious bodily harm.

Discussion of Proposed Rule

The proposed safety zones are necessary to ensure the safety of vessels and people during live fire gun exercises on the Great Lakes. Twenty-six zones will be located throughout the Great Lakes in order to accommodate 57 separate Coast Guard units. The proposed safety zones are all located at least three nautical miles from the shoreline.

The proposed safety zones will be enforced only upon notice by the cognizant Captain of the Port for the area in which the exercise will be held. The cognizant Captain of the Port will cause notice of the enforcement of a live

fire exercise safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The cognizant Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of a live fire exercise safety zone is suspended.

The proposed live fire exercise safety zones are as follows:

Lake Ontario

Ontario Zone 1 (Eastern): Beginning at 43°44′18″ N, 076°30′22″ W; then south to 43°36′05″ N, 076°30′22″ W; the east to 43°36′05″ N, 076°22′58″ W; then north to 43°44′18″ N, 076°22′58″ W; then west to the point of origin.

Ontario Zone 2 (Middle): Beginning at 43°27′59″ N, 077°34′32″ W; then south to 43°24′19″ N, 077°34′36″ W; the east to 43°24′20″ N, 077°22′55″ W; then north to 43°28′06″ N, 077°23′04″ W; then west to the point of origin.

Ontario Zone 3 (Western): Beginning at 43°24′19″ N, 079°02′25″ W; then south to 43°21′50″ N, 079°00′47″ W; then east to 43°23′48″ N, 078°50′29″ W; then north to 43°26′29″ N, 078°52′05″ W; then west to the point of origin.

Lake Erie

Erie Zone 1 (Eastern): Beginning at 42°12′01″ N, 080°45′11″ W; then south to 42°05′22″ N, 080°38′23″ W; then east to 42°12′35″ N, 080°18′01″ W; then north to 42°15′18″ N, 080°23′52″ W; then west to the point of origin.

Erie Zone 2 (Eastern Middle): Beginning at 41°59′51″ N, 081°16′23″ W; then south to 41°56′15″ N, 081°16′02″ W; then east to 41°58′39″ N, 081°00′12″ W; the north to 42°02′20″ N, 081°01′00″ W; then west to the point of origin.

Erie Zone 3 (Western Middle): Beginning at 41°47′40″ N, 081°47′44″ W; then south to 41°41′50″ N, 081°46′22″ W; then east to 41°41′24″ N, 081°40′26″ W; then north to 41°47′26″ N, 081°37′49″ W then west to the point of origin.

Erie Zone 4 (Western): Beginning at 41°35′30″ N, 082°30′04″ W; then south to 41°30′07″ N, 082°31′02″ W; then east to 41°30′22″ N, 082°25′07″ W; then north to 41°35′30″ N, 082°25′07″ W; then west to the point of origin.

Lake Huron

Huron Zone 1 (Southern): Beginning at 43°43′07″ N, 082°24′23″ W; then south to 43°27′45″ N, 082°24′34″ W; then east to 43°27′45″ N, 082°20′16″ W; then north to 43°42′51″ N, 082°17′14″ W; then west to the point of origin.

Huron Zone 2 (Harbor Beach): Beginning at 44°12′00″ N, 082°40′30″ W; then south to 44°04′02″ N, 082°37′41″ W; then east to 44°04′44″ N, 082°29′24″ W; then north to 44°12′00″ N, 082°33′08″ W; then west to the point of origin.

Huron Zone 3 (Saginaw Bay): Beginning at 44°19′24″ N, 083°10′40″ W; then south to 44°09′48″ N, 083°15′55″ W; then east to 44°12′08″ N, 082°50′35″ W; then north to 44°19′30″ N, 082°55′15″ W; the west to the point of origin.

Huron Zone 4 (Thunder Bay South): Beginning at 44°45′45″ N, 083°07′19″ W; then south to 44°38′00″ N, 083°03′18″ W; then east to 44°38′00″ N, 082°54′11″ W; then north to 44°45′45″ N, 082°57′42″ W; then west to the point of origin.

Huron Zone 5 (Thunder Bay North): Beginning at 45°17′02″ N, 082°51′48″ W; then south to 45°05′54″ N, 082°51′22″ W; then southeast to 45°01′10″ N, 082°47′22″ W; then east to 45°01′07″ N, 082°35′48″ W; then north to 45°16′13″ N, 082°39′33″ W; then west to the point of origin.

Huron Zone 6 (Northern): Beginning at 45°44′35″ N, 083°58′16″ W; then south to 45°39′48″ N, 083°59′55″ W; then east to 45°38′41″ N, 083°49′26″ W; then north to 45°42′39″ N, 083°50′22″ W; then west to the point of origin.

Lake Michigan

Michigan Zone 1 (Charlevoix): Beginning at 45°30′00″ N, 085°25′18″ W, then southwest to 45°22′41″ N, 085°26′47″ W, then northeast to 45°27′45″ N, 085°13′50″ W, then northwest to 45°32′46″ N, 085°16’ 25″ W then southwest to the point of origin.

Michigan Zone 2 (Frankfort): Beginning at 44°47′23″ N, 086°41′12″ W; then south to 44°34′06″ N, 086°48′54″ W; then east to 44°35′55″ N, 086°33′03″ W; then north to 44°46′41″ N, 086°28′43″ W; then west to the point of origin.

Michigan Zone 3 (Manistee): Beginning at 44°22′18″ N, 086°53′41″ W; then southwest to 44°14′34″ N, 087°01′06″ W; then southeast to 44°09′18″ N, 086°51′36″ W; then northeast to 44°21′49″ N, 086°40′14″ W; then northwest to the point of origin.

Michigan Zone 4 (Ludington): Beginning at 43°59′40″ N, 086°46′24″ W; then south to 43°51′24″ N, 086°49′50″ W; then east to 43°51′11″ N, 086°42′28″ W; then north to 43°59′21″ N, 086°39′15″ W; then west to the point of origin.

Michigan Zone 5 (Grand Haven): Beginning at 43°13′03″ N, 086°46′57″ W; then south to 43°00′27″ N, 086°46′04″ W; then east to 43°00′17″ N, 086°27′13″ W; then north to 43°13′49″ N, 086°32′00″ W; then west to the point of origin.

Michigan Zone 6 (St. Joseph): Beginning at 42°12′52″ N, 086°50′10″ W; then south to 42°05′41″ N, 086°53′55″ W; then east to 42°05′24″ N, 086°43′45″ W; then north to 42°12′19″ N, 086°39′42″ W; then west to the point of origin.

Michigan Zone 7 (Michigan City): Beginning at 41°58′36″ N, 087°02′53″ W; then south to 41°48′42″ N, 087°02′53″ W; then northeast to 41°52′51″ N, 086°51′40″ W; then north to 41°59′06″ N, 086°48′00″ W; then west to the point of origin.

Michigan Zone 8 (Chicago): Beginning at 41°55′18″ N, 087°15′49″ W; then south to 41°48′29″ N, 087°17′46″ W; then east to 41°47′45″ N, 087°08′57″ W; then north to 41°55′18″ N, 087°08′48″ W; then west to the point of origin.

Michigan Zone 9 (Waukeegan): Beginning at 42°22′28″ N, 087°39′14″ W; then south to 42°17′49″ N, 087°39′27″ W; then southeast to 42°13′42″ N, 087°37′35″ W; then east to 42°14′02″ N, 087°31′36″ W; then north to 42°22′58″ N, 087°33′02″ W; then west to the point of origin.

Michigan Zone 10 (Kenosha): Beginning at 42°39′28″ N, 087°33′19″ W; then south to 42°30′17″ N, 087°31′09″ W; then east to 42°30′21″ N, 087°23′23″ W; then north to 42°38′55″ N, 087°24′30″ W; then west to the point of origin.

Michigan Zone 11 (Milwaukee): Beginning at 43°05′13″ N, 087°32′48″ W; then south to 42°54′37″ N, 087°34′27″ W; then east to 42°54′50″ N, 087°26′27″ W; then north to 43°05′13″ N, 087°25′55″ W; then west to the point of origin.

Michigan Zone 12 (Two Rivers): Beginning at 44°08′20″ N, 087°24′08″ W; then south to 43°49′06″ N, 087°27′34″ W; then east to 43°48′59″ N, 087°20′19″ W; then north to 44°06′04″ N, 087°16′43″ W; then northwest to the point of origin.

Michigan Zone 13 (Sturgeon Bay): Beginning at 44°41′22″ N, 087°08′43″ W; then south to 44°32′49″ N, 087°13′21″ W; then east to 44°32′32″ N, 087°04′10″ W; then north to 44°40′33″ N, 087°01′41″ W; then west to the point of origin.

Michigan Zone 14 (Washington Island): Beginning at 45°19′17″ N, 086°35′58″ W; then southwest to 45°12′50″ N, 086°41′39″ W; then southeast to 45°10′50″ N, 086°30′48″ W; then northeast to 45°17′29″ N, 086°25′32″ W; then northwest to the point of origin.

Lake Superior:

Superior Zone 1 (Whitefish Bay): Beginning at 46°41′30″ N, 084°54′00″ W; then south to 46°36′00″ N, 084°55′00″ W; continuing south to 46°34′30″ N, 084°54′36″ W; then east to 46°33′18″ N, 084°50′54″ W; continuing east to 46°32′48″ N, 084°46′00″ W; then north to 46°33′12″ N, 084°45′54″ W; then northwest to 46°36′06″ N, 084°49′48″ W; continuing northwest to 46°42′00″ N, 084°52′18″ W; then southwest to the point of origin.

Superior Zone 2 (Sault Ste. Marie): Beginning at 46°56′16″ N, 085°39′01″ W; then southeast to 46°51′55″ N, 085°24′04″ W; then northeast to 46°53′07″ N, 085°12′37″ W; then northwest to 46°58′20″ N, 085°29′44″ W; then southwest to the point of origin.

Superior Zone 3 (Marquette) Beginning at 46°47′39″ N, 087°11′42″ W; then south to 46°39′54″ N, 087°09′47″ W; then east to 46°41′13″ N, 086°57′33″ W; then north to 46°48′14″ N, 086°58′31″ W; then west to the point of origin.

Superior Zone 4 (Portage): Beginning at 47°11′05″ N, 087°53′30″ W; then southwest to 47°07′21″ N, 088°02′39″ W; then southeast to 47°03′54″ N, 087°53′30″ W; then northeast to 47°07′21″ N, 087°44′21″ W; then northwest to the point of origin.

Superior Zone 5 (Bayfield): Beginning at 46°49′09″ N, 090°19′16″ W; then southwest to 46°42′50″ N, 090°21′27″ W; then northeast to 46°46′52″ N, 090°11′38″ W; then northeast to 46°52′26″ N, 090°09′15″ W; then southwest to the point of origin.

Superior Zone 6 (Duluth): Beginning at 47°03′29″ N, 091°16′57″ W; then southwest to 46°59′54″ N, 091°27′22″ W; then southeast to 46°59′13″ N, 091°20′55″ W; then northeast to 47°02′29″ N, 091°08′59″ W; then northwest to the point of origin.

Superior Zone 7 (Grand Marais): Beginning at 47°40′53″ N, 090°04′51″ W; then south to 47°34′18″ N, 090°05′09″ W; then east to 47°34′37″ N, 089°53′35″ W; then north to 47°41′47″ N, 089°53′52″ W; then west to the point of origin.

All coordinates use above are based upon North American Datum 1983 (NAD 83).

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of these safety zones will be periodic in nature and will likely not exceed two or three one-day events per year. Moreover, these safety zones will only be enforced during time the safety zone is actually in use. Furthermore, these safety zones are located in places known not to be heavily used by the boating public. Hence, this determination is based on the minimal amount of time that vessels will be restricted from the proposed zones and that the zones are located in areas which vessels can easily transit around. The Coast Guard expects insignificant adverse impact to mariners from the activation of these zones.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in an activated safety zone.

The proposed safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones will be in effect for only a short time and vessels can easily transit around them. In the unlikely event that these zones do affect shipping, commercial vessels may request permission from an on-scene representative to transit through the safety zone by contacting the on-scene representative on VHF–FM channel 16. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander Gustav Wulfkuhle, Enforcement Branch, Response Division, Ninth Coast Guard District, Cleveland, OH at (216) 902–6091. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.928 to read as follows:

§ 165.928 Safety zones; U.S. Coast Guard, Water Training Areas, Great Lakes.

(a) *Notice of Enforcement or Suspension of Enforcement.* The safety zones established by this section will be enforced only upon notice by the cognizant Captain of the Port for the area in which a live fire gun exercise will be held. The Captain of the Port will cause notice of the enforcement of a safety zone established by this section to be made by all appropriate means and to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The appropriate Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of a safety zone established by this section is suspended.

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

Designated representative means those persons designated by either the Captain of the Port Buffalo, Detroit, Sault Ste. Marie, and Lake Michigan to monitor these safety zones, permit entry into these zones, give legally enforceable orders to persons or vessels within these zones and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (g) to enforce this section are designated representatives.

(c) *Location.* The following areas are safety zones:

Ontario:

Ontario Zone 1 (Eastern): Beginning at 43°44′18″ N, 076°30′22″ W; then south to 43°36′05″ N, 076°30′22″ W; then east to 43°36′05″ N, 076°22′58″ W; then north to 43°44′18″ N, 076°22′58″ W; then west to the point of origin.

Ontario Zone 2 (Middle): Beginning at 43°27′59″ N, 077°34′32″ W; then south to 43°24′19″ N, 077°34′36″ W; then east to 43°24′20″ N, 077°22′55″ W; then north to 43°28′06″ N, 077°23′04″ W; then west to the point of origin.

Ontario Zone 3 (Western): Beginning at 43°24′19″ N, 079°02′25″ W; then south to 43°21′50″ N, 079°00′47″ W; then east to 43°23′48″ N, 078°50′29″ W; then north to 43°26′29″ N, 078°52′05″ W; then west to the point of origin.

Lake Erie:

Erie Zone 1 (Eastern): Beginning at 42°12′01″ N, 080°45′11″ W; then south to 42°05′22″ N, 080°38′23″ W; then east to 42°12′35″ N, 080°18′01″ W; then north to 42°15′18″ N, 080°23′52″ W; then west to the point of origin.

Erie Zone 2 (Eastern Middle): Beginning at 41°59′51″ N, 081°16′23″ W; then south to 41°56′15″ N, 081°16′02″ W; then east to 41°58′39″ N, 081°00′12″ W; then north to 42°02′20″ N, 081°01′00″ W; then west to the point of origin.

Erie Zone 3 (Western Middle): Beginning at 41°47′40″ N, 081°47′44″ W; then south to 41°41′50″ N, 081°46′22″ W; then east to 41°41′24″ N, 081°40′26″ W; then north to 41°47′26″ N, 081°37′49″ W then west to the point of origin.

Erie Zone 4 (Western): Beginning at 41°35′30″ N, 082°30′04″ W; then south to 41°30′07″ N, 082°31′02″ W; then east to 41°30′22″ N, 082°25′07″ W; then north to 41°35′30″ N, 082°25′07″ W; then west to the point of origin.

Lake Huron:

Huron Zone 1 (Southern): Beginning at 43°43′07″ N, 082°24′23″ W; then south to 43°27′45″ N, 082°24′34″ W; then east to 43°27′45″ N, 082°20′16″ W; then north to 43°42′51″ N, 082°17′14″ W; then west to the point of origin.

Huron Zone 2 (Harbor Beach): Beginning at 44°12′00″ N, 082°40′30″ W; then south to 44°04′02″ N, 082°37′41″ W; then east to 44°04′44″ N, 082°29′24″ W; then north to 44°12′00″ N, 082°33′08″ W; then west to the point of origin.

Huron Zone 3 (Saginaw Bay): Beginning at 44°19′24″ N, 083°10′40″ W; then south to 44°09′48″ N, 083°15′55″ W; then east to 44°12′08″ N, 082°50′35″ W; then north to 44°19′30″ N, 082°55′15″ W; the west to the point of origin.

Huron Zone 4 (Thunder Bay South): Beginning at 44°45′45″ N, 083°07′19″ W; then south to 44°38′00″ N, 083°03′18″ W; then east to 44°38′00″ N, 082°54′11″ W; then north to 44°45′45″ N, 082°57′42″ W; then west to the point of origin.

Huron Zone 5 (Thunder Bay North): Beginning at 45°17′02″ N, 082°51′48″ W; then south to 45°05′54″ N, 082°51′22″ W; then southeast to 45°01′10″ N, 082°47′22″ W; then east to 45°01′07″ N, 082°35′48″ W; then north to 45°16′13″ N, 082°39′33″ W; then west to the point of origin.

Huron Zone 6 (Northern): Beginning at 45°44′35″ N, 083°58′16″ W; then south to 45°39′48″ N, 083°59′55″ W; then east to 45°38′41″ N, 083°49′26″ W; then north to 45°42′39″ N, 083°50′22″ W; then west to the point of origin.

Lake Michigan:

Michigan Zone 1 (Charlevoix): Beginning at 45°30′00″ N, 085°25′18″ W, then southwest to 45°22′41″ N, 085°26′47″ W, then northeast to 45°27′45″ N, 085°13′50″ W, then northwest to 45°32′46″ N, 085°16′25″ W then southwest to the point of origin.

Michigan Zone 2 (Frankfort): Beginning at 44°47′23″ N, 086°41′12″ W; then south to 44°34′06″ N, 086°48′54″ W; then east to 44°35′55″ N, 086°33′03″ W; then north to 44°46′41″ N, 086°28′43″ W; then west to the point of origin.

Michigan Zone 3 (Manistee): Beginning at 44°22′18″ N, 086°53′41″ W; then southwest to 44°14′34″ N, 087°01′06″ W; then southeast to 44°09′18″ N, 086°51′36″ W; then northeast to 44°21′49″ N, 086°40′14″ W; then northwest to the point of origin.

Michigan Zone 4 (Ludington): Beginning at 43°59′40″ N, 086°46′24″ W; then south to 43°51′24″ N, 086°49′50″ W; then east to 43°51′11″ N, 086°42′28″ W; then north to 43°59′21″ N, 086°39′15″ W; then west to the point of origin.

Michigan Zone 5 (Grand Haven): Beginning at 43°13′03″ N, 086°46′57″ W; then south to 43°00′27″ N, 086°46′04″ W; then east to 43°00′17″ N, 086°27′13″ W; then north to 43°13′49″ N, 086°32′00″ W; then west to the point of origin.

Michigan Zone 6 (St. Joseph): Beginning at 42°12′52″ N, 086°50′10″ W; then south to 42°05′41″ N, 086°53′55″ W; then east to 42°05′24″ N, 086°43′45″ W; then north to 42°12′19″ N, 086°39′42″ W; then west to the point of origin.

Michigan Zone 7 (Michigan City): Beginning at 41°58′36″ N, 087°02′53″ W; then south to 41°48′42″ N, 087°02′53″ W; then northeast to 41°52′51″ N, 086°51′40″ W; then north to 41°59′06″ N, 086°48′00″ W; then west to the point of origin.

Michigan Zone 8 (Chicago): Beginning at 41°55′18″ N, 087°15′49″ W; then south to 41°48′29″ N, 087°17′46″ W; then east to 41°47′45″ N, 087°08′57″ W; then north to 41°55′18″ N, 087°08′48″ W; then west to the point of origin.

Michigan Zone 9 (Waukeegan): Beginning at 42°22′28″ N, 087°39′14″ W; then south to 42°17′49″ N, 087°39′27″ W; then southeast to 42°13′42″ N, 087°37′35″ W; the east to 42°14′02″ N, 087°31′36″ W; then north to 42°22′58″ N, 087°33′02″ W; then west to the point of origin.

Michigan Zone 10 (Kenosha): Beginning at 42°39′28″ N, 087°33′19″ W; then south to 42°30′17″ N, 087°31′09″ W; then east to 42°30′21″ N, 087°23′23″ W; then north to 42°38′55″ N, 087°24′30″ W; then west to the point of origin.

Michigan Zone 11 (Milwaukee): Beginning at 43°05′13″ N, 087°32′48″ W; then south to 42°54′37″ N, 087°34′27″ W; then east to 42°54′50″ N, 087°26′27″ W; then north to 43°05′13″ N, 087°25′55″ W; then west to the point of origin.

Michigan Zone 12 (Two Rivers): Beginning at 44°08′20″ N, 087°24′08″ W; then south to 43°49′06″ N, 087°27′34″ W; then east to 43°48′59″ N, 087°20′19″ W; then north to 44°06′04″ N, 087°16′43″ W; then northwest to the point of origin.

Michigan Zone 13 (Sturgeon Bay): Beginning at 44°41′22″ N, 087°08′43″ W; then south to 44°32′49″ N, 087°13′21″ W; then east to 44°32′32″ N, 087°04′10″ W; then north to 44°40′33″ N, 087°01′41″ W; then west to the point of origin.

Michigan Zone 14 (Washington Island): Beginning at 45°19′17″ N, 086°35′58″ W; then southwest to 45°12′50″ N, 086°41′39″ W; then southeast to 45°10′50″ N, 086°30′48″ W; then northeast to 45°17′29″ N, 086°25′32″ W; then northwest to the point of origin.

Lake Superior:

Superior Zone 1 (Whitefish Bay): Beginning at 46°41′30″ N, 084°54′00″ W; then south to 46°36′00″ N, 084°55′00″ W; continuing south to 46°34′30″ N, 084°54′36″ W; then east to 46°33′18″ N, 084°50′54″ W; continuing east to 46°32′48″ N, 084°46′00″ W; then north to 46°33′12″ N, 084°45′54″ W; then northwest to 46°36′06″ N, 084°49′48″ W; continuing northwest to 46°42′00″ N, 084°52′18″ W; then southwest to the point of origin.

Superior Zone 2 (Sault Ste. Marie): Beginning at 46°56′16″ N, 085°39′01″ W; then southeast to 46°51′55″ N, 085°24′04″ W; then northeast to 46°53′07″ N, 085°12′37″ W; then northwest to 46°58′20″ N, 085°29′44″ W; then southwest to the point of origin.

Superior Zone 3 (Marquette) Beginning at 46°47′39″ N, 087°11′42″ W; then south to 46°39′54″ N, 087°09′47″ W; then east to 46°41′13″ N, 086°57′33″ W; then north to 46°48′14″ N, 086°58′31″ W; then west to the point of origin.

Superior Zone 4 (Portage): Beginning at 47°11′05″ N, 087°53′30″ W; then southwest to 47°07′21″ N, 088°02′39″ W; then southeast to 47°03′54″ N, 087°53′30″ W; then northeast to 47°07′21″ N, 087°44′21″ W; then northwest to the point of origin.

Superior Zone 5 (Bayfield): Beginning at 46°49′09″ N, 090°19′16″ W; then southwest to 46°42′50″ N, 090°21′27″ W; then northeast to 46°46′52″ N, 090°11′38″ W; then northeast to 46°52′26″ N, 090°09′15″ W; then southwest to the point of origin.

Superior Zone 6 (Duluth): Beginning at 47°03′29″ N, 091°16′57″ W; then southwest to 46°59′54″ N, 091°27′22″ W; then southeast to 46°59′13″ N, 091°20′55″ W; then northeast to 47°02′29″ N, 091°08′59″ W; then northwest to the point of origin.

Superior Zone 7 (Grand Marais): Beginning at 47°40′53″ N, 090°04′51″ W; then south to 47°34′18″ N, 090°05′09″ W; then east to 47°34′37″ N, 089°53′35″ W; then north to 47°41′47″ N, 089°53′52″ W; then west to the point of origin.

All coordinates use above are based upon North American Datum 1983 (NAD 83).

(d) *Obtaining permission to enter or move within the safety zones.* All vessels must obtain permission from the Captain of the Port or a Designated Representative to enter or move within the safety zones established in this section when these safety zones are enforced.

(e) *Compliance.* Upon notice of enforcement by the cognizant Captain of the Port, the Coast Guard will enforce these safety zones in accordance with the rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port, all persons and vessels are authorized to enter, transit, and exit these safety zones.

(f) *Regulations.* The general regulations in 33 CFR part 165 subpart C, apply to any vessel or person in the navigable waters of the United States to which this section applies. No person or vessel may enter the safety zones established in this section unless authorized by the cognizant Captain of the Port or their designated representative. All vessels authorized to enter these safety zones must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the cognizant Captain of the Port or his designated representative.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section.

Dated: July 14, 2006.

John E. Crowley, Jr.,

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

[FR Doc. E6–12332 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 4, 6, 7, 9, 11, 13, 15, 17, 18, 20, 22, 24, 25, 27, 52, 53, 54, 63, 64, 68, 73, 74, 76, 78, 79, 90, 95, 97 and 101

[EB Docket No. 06–119; DA 06–1524]

Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comments requested.

SUMMARY: In this document, the Federal Communications Commission (Commission) reminds parties about the comment cycle applicable to the Notice of Proposed Rulemaking (NPRM) seeking comment on the recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Independent Panel). In addition, the Commission requests that, in addressing the issues raised in the NPRM, parties address the applicability of the Panel's recommendations to all types of natural disasters (e.g., earthquakes, tornados, hurricanes, forest fires) as well as other types of incidents (e.g., terrorist attacks, flu pandemic, industrial accidents, etc.). Parties should also discuss whether the Panel's recommendations are broad enough to take into account the diverse topography of our Nation, the susceptibility of a region to a particular type of disaster, and the multitude of

communications capabilities a region may possess.

DATES: Comments are due on or before August 7, 2006 and reply comments are due on or before August 21, 2006. Written comments on the Paperwork Reduction Act proposed information collection requirements set forth in the NPRM [71 FR 38564, 38565, July 7, 2006] must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 5, 2006.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit comments, identified by EB Docket No. 06–119, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Following the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail; *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained in the NPRM [71 FR at 38565, July 7, 2006] should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234, NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Assistant Bureau Chief, Enforcement Bureau, at (202) 418–7452. For additional information concerning the Paperwork Reduction Act information collection requirements contained in the NPRM [71 FR at 38565, July 7, 2006], contact Judith B. Herman at (202) 418–0214 or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in EB Docket No. 06–119, DA 06–1524 released July 26, 2006. The complete text of this document, as well as a complete text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bciweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov*. The Initial Regulatory Flexibility Analysis as well as proposed information collection requirements were set forth in the NPRM [71 FR at 38565, 38568–38573, July 7, 2006].

Synopsis of the Public Notice

In January 2006, Chairman Kevin J. Martin established the Independent Panel pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended. The mission of the Independent Panel was to review the impact of Hurricane Katrina on the telecommunications and media infrastructure in the areas affected by Hurricane Katrina and make recommendations to the Commission. On June 12, 2006, the Independent Panel submitted its Report to the Commission. On June 19, 2006, the Commission issued a *Notice of Proposed Rulemaking* initiating a comprehensive rulemaking to address and implement the recommendations presented by the Independent Panel. [71 FR 38564, July 7, 2006]

In the *NPRM*, the Commission sought comment on what actions it can take to address the Independent Panel's recommendations which were categorized into four areas: (1) Pre-positioning the communications industry and the government for disasters in order to achieve greater network reliability and resiliency; (2) improving recovery coordination to address existing shortcomings and to maximize the use of existing resources; (3) improving the operability or interoperability of public safety and 911 communications in times of crisis; and (4) improving communication of emergency information to the public. As the Commission stated in the *Notice*, its goal in this proceeding is to take the lessons learned from this disaster and build upon them to promote more effective, efficient response and recovery efforts, as well as a heightened readiness and preparedness in the future. The Commission also stated that it seeks comment whether it should rely on voluntary consensus recommendations, as advocated by the Independent Panel, or whether it should rely on other measures for enhancing readiness and promoting more effective response efforts.

In light of the Commission's comprehensive examination into these areas, we request that parties filing comments in this proceeding address the applicability of the Independent Panel's recommendations to all types of disasters. Specifically, parties should address not only the applicability of the Independent Panel's recommendations to areas of the country subject to hurricanes, but to areas prone to other types of disasters. Would other types of disasters warrant modifications or other changes to the Independent Panel's recommendations? For example, would the characteristics of earthquakes, floods, forest fires, or other natural disasters require modifications to the Independent Panel's recommendations? In addition, we request that parties filing comments discuss the impact of the country's diverse topography on the Independent Panel's recommendations. Would a region's topography warrant modifications or other changes to the Independent Panel's recommendations? If additional steps are warranted to account for unique topography, what actions can the Commission take to improve network resiliency and reliability, recovery coordination, first responder communications and emergency communications to the public in those areas? Finally, different regions may have different communications capabilities. For example, a metropolitan urban area may have greater and diverse communications capabilities than a rural, mountainous region. Would the availability of different communications capabilities in a region affect the Independent Panel's recommendations? If so, what actions should be taken in this regard?

Finally, comments in this proceeding are due on or before August 7, 2006 and reply comments are due on or before August 21, 2006.

Federal Communications Commission

Kris Anne Monteith,

Chief, Enforcement Bureau.

[FR Doc. E6–12447 Filed 7–31–06; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

RIN: 2700–AD26

Security Requirements for Unclassified Information Technology (IT) Resources

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the clause at NASA FAR Supplement (NFS) 1852.204–76, Security Requirements for Unclassified Information Technology Resources, to reflect the updated requirements of NASA Procedural Requirements (NPR) 2810, ''Security of Information Technology''. The NPR was recently revised to address increasing cyber threats and to ensure consistency with the Federal Information Security Management Act (FISMA), which requires agencies to protect information and information systems in a manner that is commensurate with the sensitivity of the information processed, transmitted, or stored.

DATES: Comments should be submitted on or before October 2, 2006.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AD26, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Ken Stepka, NASA Headquarters, Office of Procurement, Analysis Division, Washington, DC 20546. Comments may also be submitted by e-mail to *Ken.stepka@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Ken Stepka, Office of Procurement, Analysis Division, (202) 358–0492, e-mail: *ken.stepka@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA's current contract requirements for IT Security are defined in the clause at NFS 1852.204–76, Security Requirements for Unclassified Information Technology Resources. In order to comply with the Government-wide requirements of FISMA, the proposed revision to 1852.204–76 incorporates several new requirements, including—

- Expanded requirements for IT Security Plans to include a Risk Assessment and a FIPS 199 Assessment;
- Added requirements for a Contingency Plan; and
- Change of the physical security requirement from a National Agency Check to a National Agency Check with Inquiries.

The revised clause is applicable to all NASA contracts that require contractors to: (1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or (2) use information systems to generate, store, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

The text at NFS 1804.470 is also proposed to be revised consistent with the revised clause.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule summarizes the existing Government-wide IT security requirements mandated by, and related to, FISMA.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the Office of Management and Budget (OMB) has determined that the proposed changes to the NFS do not impose information collection requirements that require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1804 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise sections 1804.470, 1804.470–1, 1804.470–2, 1804.470–3, and 1804.470–4 to read as follows:

§ 1804.470 Security requirements for unclassified information technology (IT) resources.

§ 1804.470–1 Scope.

This section implements NASA's acquisition requirements pertaining to Federal policies for the security of unclassified information and information systems. Federal policies include the Federal Information System Management Act (FISMA) of 2002, Homeland Security Presidential Directive (HSPD) 12, Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.), Public Law 106–398, section 1061, Government Information Security Reform, OMB Circular A–130, Management of Federal Information Resources, and the National Institute of Standards and Technology (NIST) security requirements and standards. These requirements safeguard IT services provided to NASA such as the management, operation, maintenance, development, and administration of hardware, software, firmware, computer systems, networks, and telecommunications systems.

§ 1804.470–2 Policy.

NASA IT security policies and procedures for unclassified information and IT are prescribed in NASA Policy Directive (NPD) 2810, Security of Information Technology; NASA Procedural Requirements (NPR) 2810, Security of Information Technology; and interim policy updates in the form of NASA Information Technology Requirements (NITR). IT services must be performed in accordance with these policies and procedures.

§ 1804.470–3 IT Security Requirements.

These IT security requirements cover all NASA contracts in which IT plays a role in the provisioning of services or products (e.g., research and development, engineering, manufacturing, IT outsourcing, human resources, and finance) that support NASA in meeting its institutional and mission objectives. These requirements are applicable where a contractor or subcontractor must obtain physical or electronic (i.e., authentication level 2 and above as defined in NIST Special Publication 800–63, Electronic Authentication Guideline) access to NASA's computer systems, networks, or IT infrastructure. These requirements are also applicable in cases where information categorized as low, moderate, or high by the Federal Information Processing Standards (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, is stored, generated, or exchanged by NASA or on behalf of NASA by a contractor or

subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

§ 1804.470–4 Contract clause.

(a) Insert the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in all solicitations and contracts when contract performance requires contractors to:

(1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

(b) Paragraph (d) of the clause allows contracting officers to waive the requirements of paragraphs (b) and (c)(1) through (3) of the clause. Contracting officers must obtain the approval of the:

(1) Center IT Security Manager before granting any waivers to paragraph (b) of the clause; and

(2) The Center Chief of Security before granting any waivers to paragraphs (c)(1) through (3) of the clause.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 1852.204–76 to read as follows:

§ 1852.204–76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470–4(a), insert the following clause:

Security Requirements for Unclassified Information

Technology Resources

(XX/XX)

(a) The Contractor shall be responsible for information and information technology (IT) security when the Contractor or its subcontractors must obtain physical or electronic (i.e., authentication level 2 and above as defined in National Institute of Standards and Technology (NIST) Special Publication (SP) 800–63, Electronic Authentication Guideline) access to NASA's computer systems, networks, or IT infrastructure, or where information categorized as low, moderate, or high by the Federal Information Processing Standards (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, is stored, generated, or exchanged by NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

(b) IT Security Requirements.

(1) Within 30 days after contract award, a Contractor shall submit to the Contracting Officer for NASA approval an IT Security Plan, Risk Assessment, and FIPS 199, Standards for Security Categorization of Federal Information and Information Systems, Assessment. These plans and assessments, including annual updates shall be incorporated into the contract as compliance documents.

(i) The IT system security plan shall be prepared consistent, in form and content, with NIST SP 800–18, Guide for Developing Security Plans for Federal Information Systems, and any additions/augmentations described in NASA Procedural Requirements (NPR) 2810, Security of Information Technology. The security plan shall identify and document appropriate IT security controls consistent with the sensitivity of the information and the requirements of Federal Information Processing Standards (FIPS) 200, Recommended Security Controls for Federal Information Systems. The plan shall be reviewed and updated in accordance with NIST SP 800–26, Security Self-Assessment Guide for Information Technology Systems, and FIPS 200, on a yearly basis.

(ii) The risk assessment shall be prepared consistent, in form and content, with NIST SP 800–30, Risk Management Guide for Information Technology Systems, and any additions/augmentations described in NPR 2810. The risk assessment shall be updated on a yearly basis.

(iii) The FIPS 199 assessment shall identify all information types as well as the ''high water mark,'' as defined in FIPS 199, of the processed, stored, or transmitted information necessary to fulfill the contractual requirements.

(2) The Contractor shall produce contingency plans consistent, in form and content, with NIST SP 800–34, Contingency Planning Guide for Information Technology Systems, and any additions/augmentations described in NPR 2810. The Contractor shall perform yearly ''Classroom Exercises.'' ''Functional Exercises,'' shall be coordinated with the Center CIOs and be conducted once every three years, with the first conducted within the first two years of contract award. These exercises are defined and described in NIST SP 800–34.

(3) The Contractor shall ensure coordination of its incident response team with the NASA Incident Response Center and the NASA Security Operations Center.

(4) The Contractor shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPR 2810 requirements. The Contractor may use web-based training available from NASA to meet this requirement.

(5) The Contractor shall provide NASA, including the NASA Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out IT security inspection, investigation, and/or audits to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA information or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime. To facilitate mandatory reviews, the Contractor shall ensure appropriate compartmentalization of NASA information, stored and/or processed, either by information systems in direct support of the contract or that are incidental to the contract.

(6) The Contractor shall ensure that all individuals who perform tasks as a system administrator, or have authority to perform tasks normally performed by a system administrator, demonstrate knowledge appropriate to those tasks. Knowledge is demonstrated through the NASA System Administrator Security Certification Program. A system administrator is one who provides IT services, network services, files storage, and/or web services, to someone else other than themselves and takes or assumes the responsibility for the security and administrative controls of that service. Within 30 days after contract award, the Contractor shall provide to the Contracting Officer a list of all system administrator positions and personnel filling those positions, along with a schedule that ensures certification of all personnel within 90 days after contract award. Additionally, the Contractor should report all personnel changes which impact system administrator positions within 5 days of the personnel change and ensure these individuals obtain System Administrator certification within 90 days after the change.

(7) When the Contractor is located at a NASA Center or installation or is using NASA IP address space, the Contractor shall—

(i) Submit requests for non-NASA provided external Internet connections to the Contracting Officer for approval by the Network Security Configuration Control Board (NSCCB);

(ii) Comply with the NASA CIO metrics including patch management, operating systems and application configuration guidelines, vulnerability scanning, incident reporting, system administrator certification, and security training; and

(iii) Utilize the NASA Public Key Infrastructure (PKI) for all encrypted communication or non-repudiation requirements within NASA when secure e-mail capability is required.

(c) Physical and Logical Access Requirements.

(1) Contractor personnel requiring access to IT systems operated by the Contractor for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPR 2810 and Chapter 4, NPR 1600.1, NASA Security Program Procedural Requirements. NASA shall provide screening, appropriate to the highest risk level, of the IT systems and information accessed, using, as a minimum, National Agency Check with Inquiries (NACI). The Contractor shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after contract award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of NASA, interim access may be granted pending completion of the required investigation and final access determination. For Contractors who will reside on a NASA Center or installation, the security screening required for all required access (*e.g.*, installation, facility, IT, information, etc.) is consolidated to ensure only one investigation is conducted based on the highest risk level. Contractors not residing on a NASA installation will be screened based on their IT access risk level determination only. See NPR 1600.1, Chapter 4.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1— Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2— Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of ''level 1'' information whose cost to replace exceeds one million dollars.

(iii) IT–3— Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Contractor for NASA whose function or information has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as established in Chapter 4, NPR 1600.1.

(4) The Contractor may conduct its own screening of individuals requiring privileged access or limited privileged access provided the Contractor can demonstrate to the Contracting Officer that the procedures used by the Contractor are equivalent to NASA's personnel screening procedures for the risk level assigned for the IT position.

(5) Subject to approval of the Contracting Officer, the Contractor may forgo screening of Contractor personnel for those individuals who have proof of a—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within the last three years that meets or exceeds the screening requirements of the IT position; or

(iii) Screening conducted by the Contractor, within the last three years, that is equivalent to the NASA personnel screening procedures as approved by the Contracting Officer and concurred on by the CCS.

(d) The Contracting Officer may waive the requirements of paragraphs (b) and (c)(1) through (c)(3) upon request of the Contractor. The Contractor shall provide all relevant information requested by the Contracting Officer to support the waiver request.

(e) The Contractor shall contact the Contracting Officer for any documents, information, or forms necessary to comply with the requirements of this clause.

(f) The Contractor shall insert this clause, including this paragraph (f), in all subcontracts when the subcontractor is required to:

(1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

[FR Doc. E6–12351 Filed 7–31–06; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Establish the Northern Rocky Mountain Gray Wolf Population (*Canis lupus*) as a Distinct Population Segment To Remove the Northern Rocky Mountain Gray Wolf Distinct Population Segment From the List of Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to establish the northern Rocky Mountain (NRM) gray wolf (*Canis lupus*) population as a Distinct Population Segment (DPS) and to remove the NRM gray wolf DPS from the Federal List of Endangered and Threatened Wildlife, under the Endangered Species Act of 1973, as amended (ESA). After review of all available scientific and commercial information, we find that the petitioned action is not warranted. We have determined that Wyoming State law and its wolf management plan do not provide the necessary regulatory mechanisms to assure that Wyoming's numerical and distributional share of a recovered NRM wolf population would be conserved if the protections of the ESA were removed.

DATES: The finding announced in this document was made on August 1, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this 12-month finding, will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service,

Montana Ecological Services Office, 585 Shepard Way, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, at the above address (see **ADDRESSES**) or by telephone at (406) 449–5225, extension 204.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 et seq.) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information to indicate the petitioned action may be warranted. Section 4(b)(3)(B) of the ESA requires that within 12 months after receiving a petition that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings: (a) The petitioned action is not warranted; (b) the petitioned action is warranted; or (c) the petitioned action is warranted but precluded by higher priority workload. Such 12-month findings are to be published promptly in the **Federal Register.**

Previous Federal Action

In 1974, we listed four subspecies of gray wolf as endangered, including the northern Rocky Mountain (NRM) gray wolf (*Canis lupus irremotus*); the eastern timber wolf (*C. l. lycaon*) in the northern Great Lakes region; the Mexican wolf (*C. l. baileyi*) in Mexico and the southwestern United States; and the Texas gray wolf (*C. l. monstrabilis*) of Texas and Mexico (39 FR 1171; January 4, 1974). In 1978, we published a rule (43 FR 9607; March 9, 1978) listing the gray wolf as endangered at the species level (*C. lupus*) throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened.

On November 22, 1994, we designated unoccupied portions of Idaho, Montana, and Wyoming as two nonessential experimental population areas for the gray wolf under section 10(j) of the ESA (59 FR 60252). This designation assisted us in initiating gray wolf reintroduction projects in central Idaho and the Greater Yellowstone Area (GYA). In 1995 and 1996, we reintroduced wolves from southwestern Canada into remote public lands in central Idaho and Yellowstone National Park (YNP) (Bangs and Fritts 1996; Fritts et al. 1997; Bangs et al. 1998). These reintroductions and accompanying management programs greatly expanded the numbers and distribution of wolves in the NRM. Because of the reintroductions, wolves soon became established throughout central Idaho and the GYA (Bangs et al. 1998; Service et al. 2006). Naturally dispersing wolves from Canada led to the reestablishment of wolf packs into northern Montana in the early 1980s, and the number of wolves in this area steadily increased for the next decade (Service et al. 2006).

The wolf population in the NRM achieved its numerical and distributional recovery goals at the end of 2000, and the temporal portion of the recovery goal was achieved at the end of 2002 (Service et al. 2001, 2002, 2003). Before these wolves can be delisted, the Service requires that Idaho, Montana, and Wyoming develop wolf management plans to demonstrate that other adequate regulatory mechanisms exist should the ESA protections be removed. The Service determined that Montana and Idaho's laws and wolf management plans are adequate to assure the Service that those State's share of the NRM wolf population would be maintained above recovery levels, and the Service approved those two State plans. However, we determined that problems with Wyoming's legislation and plan, and inconsistencies between the law and management plan do not allow us to approve Wyoming's approach to wolf management (Williams 2004). In response, Wyoming litigated this issue (Wyoming U.S. District Court 04–CV–0123–J and 04–CV–0253–J consolidated). The Wyoming Federal District Court dismissed the case on procedural grounds (360 F. Supp 2nd 1214, March 18, 2005). Wyoming appealed that decision, but the Tenth Circuit Court of Appeals agreed with the District Court decision on April 3, 2006 (442 F. 3rd 1262).

On October 30, 2001, we received a petition dated October 5, 2001, from the Friends of the Northern Yellowstone Elk Herd, Inc. (Friends Petition) that sought removal of the gray wolf from endangered status under the ESA (Karl Knuchel, P.C., A Professional Corporation Attorneys at Law, in litt., 2001a). Additional correspondence in late 2001 provided clarification that the petition only applied to the Montana, Wyoming, and Idaho population of gray wolf and that the petition requested full delisting of this population (Knuchel in litt. 2001b). Additionally, on July 19, 2005, we received a petition dated July 13, 2005, from the Office of the Governor, State of Wyoming and the Wyoming Game and Fish Commission (Wyoming Petition) to revise the listing status for the gray wolf by establishing the NRM DPS and concurrently removing the NRM DPS of gray wolf from the Federal List of Endangered and Threatened Wildlife (Dave Freudenthal, Office of the Governor, State of Wyoming, 2005). On October 26, 2005, we published a finding that—(1) The Friends Petition failed to present a case for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted; and (2) the Wyoming Petition presented substantial scientific and commercial information indicating that the NRM gray wolf population may qualify as a DPS and that this potential DPS may warrant delisting (70 FR 61770). We considered the collective weight of evidence and initiated this 12-month status review (70 FR 61770; October 26, 2005).

On February 8, 2006, we published an advanced notice of proposed rulemaking (ANPR) announcing our intention to conduct rulemaking to establish a DPS of the gray wolf in the NRM and to remove that gray wolf DPS from the List of Endangered and Threatened Wildlife, if Wyoming adopts a State law and a State wolf management plan that is approved by the Service (71 FR 6634). This finding is based upon additional analysis and updates the information in the ANPR (71 FR 6634).

For detailed information on previous Federal actions impacting the NRM gray wolf population, see the February 8, 2006, February 8, 2006 ANPR (71 FR 6634). For additional information on previous Federal actions for gray wolves beyond the NRM, see the April 1, 2003, ''Final Rule To Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States'' (2003 Reclassification Rule) (68 FR 15804).

Biology

For detailed information on the biology of the gray wolf see: (1) The ''Background'' section of the February 8, 2006, ANPR (71 FR 6634); and (2) the ''Biology and Ecology of Gray Wolves'' section of the 2003 Reclassification Rule (68 FR 15804; April 1, 2003).

Recovery

Conservation measures provided to species listed as endangered or threatened under the ESA include recovery actions, possible land acquisition, requirements for Federal protection, cooperation with the States, prohibitions against certain practices, and recognition by Federal, State, and private agencies, groups, and individuals. Most of these measures already have been successfully applied to gray wolves. For background on the

history of NRM wolf recovery, recovery planning (including defining appropriate recovery criteria), population monitoring, and cooperation and coordination with our partners in achieving recovery, see the ''Recovery'' section of the February 8, 2006, ANPR (71 FR 6634).

What follows is a summary of recovery progress by (1) State for Wyoming, Montana, and Idaho; and (2) recovery area. Both discussions include 2005 population estimates not available at the time the ANPR was published (71 FR 6634; February 8, 2006).

Recovery by State—We measure wolf recovery by the number of breeding pairs because wolf populations are maintained by packs that successfully raise pups. We use 'breeding pairs' to describe successfully reproducing packs (Service 1994; Bangs 2002). Breeding pairs are only measured in winter because most wolf mortality occurs in spring/summer/fall (illegal killing, agency control and disease/parasites) and winter is the beginning of the annual courtship and breeding season for wolves. Often we do not know if a specific pack actually contains an alpha pair and two pups in winter, but there is a strong correlation between wolf pack size then and its probability of being a breeding pair. The group size of packs of unknown composition in winter can be used to estimate their breeding pair status. Different habitat characteristics result in slightly different probabilities of breeding pair status in each state. Based upon the best scientific information currently available, in Wyoming, 10 groups of 5 wolves of unknown composition in winter would be the equivalent of 5.6 breeding pairs, 10 groups of 6 wolves would equate to 6.5 breeding pairs, etc. The probability of a pack of wolves having a 90% chance of being a breeding pair doesn't occur until there are at least 9 wolves in a pack in winter (Ausband 2006). In the past we had primarily used packs of known composition in winter to estimate the number of breeding pairs. However, now we can use the best information currently available and use pack size in winter as a surrogate to reliably identify breeding pairs and to better predict the effect of managing for certain pack sizes on wolf population recovery.

At the end of 2000, the NRM population first met its numerical and distributional recovery goal of a minimum of 30 ''breeding pairs'' (an adult male and an adult female wolf that have produced at least 2 pups that survived until December 31 of the year of their birth, during the previous breeding season) and over 300 wolves well-distributed among Montana, Idaho, and Wyoming (68 FR 15804, April 1, 2003; Service et al. 2001). While absolute equitable distribution is not necessary, a well-distributed population throughout suitable habitat with no one State maintaining a disproportionately low number of packs or number of individual wolves is needed for recovery in a significant portion of its range. This minimum recovery goal was again exceeded in 2001, 2002, 2003, 2004, and 2005 (Service et al. 2002–2006). Because the recovery goal must be achieved for 3 consecutive years, the temporal element of recovery was not achieved until the end of 2002 (Service et al. 2003). By the end of 2005, the NRM wolf population had achieved its numerical and distributional recovery goal for 6 consecutive years (Service et al. 2001–2006; 68 FR 15804, April 1, 2003; 71 FR 6634, February 8, 2006).

In 2000, 8 breeding pairs and approximately 97 wolves were known to occur in Montana; 12 breeding pairs and approximately 153 wolves were known to occur in Wyoming; and 10 breeding pairs and 187 wolves were known to occur in Idaho (Service et al. 2001). In 2001, 97 reeding pairs and approximately 123 wolves were known to occur in Montana; 13 breeding pairs and approximately 189 wolves were known to occur in Wyoming; and 14 breeding pairs and 251 wolves were known to occur in Idaho (Service et al. 2002). In 2002, 17 breeding pairs and approximately 183 wolves were known to occur in Montana; 18 breeding pairs and approximately 217 wolves were known to occur in Wyoming; and 14 breeding pairs and 216 wolves were known to occur in Idaho (Service et al. 2003). In 2003, 10 breeding pairs and approximately 182 wolves were known to occur in Montana; 16 breeding pairs and approximately 234 wolves were known to occur in Wyoming; and 25 breeding pairs and 345 wolves were known to occur in Idaho (Service et al. 2004). In 2004, 15 breeding pairs and approximately 153 wolves were known to occur in Montana; 24 breeding pairs and approximately 260 wolves were known to occur in Wyoming; and 27 breeding pairs and 422 wolves were known to occur in Idaho (Service et al. 2005). In 2005, 19 breeding pairs and approximately 256 wolves were known to occur in Montana; 16 breeding pairs and approximately 252 wolves were known to occur in Wyoming; and 36 breeding pairs and 512 wolves were known to occur in Idaho, for a total of 71 breeding pairs and 1,020 wolves (Service et al. 2006).

Although we now measure recovery by State, biologically each recovery area remains of some importance. Thus, the following section discusses recovery within each of the three major recovery areas. Because the recovery areas cross State lines, the population estimates sum differently.

Recovery in the Northwestern Montana Recovery Area—The Northwestern Montana Recovery Area (>49,728 square kilometers (km^2) [>19,200 square miles (mi^2)]) includes Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness areas; and adjacent public and private lands in northern Montana and the northern Idaho panhandle. Reproduction first occurred in northwestern Montana in 1986. The natural ability of wolves to find and quickly recolonize empty habitat, the interim control plan, and the interagency recovery program combined to effectively promote an increase in wolf numbers. By 1996, the number of wolves had grown to about 70 wolves in 7 known breeding pairs. However, since 1997, the number of breeding groups and number of wolves has fluctuated widely, varying from 4–12 breeding pairs and from 49–130 wolves (Service et al. 2006). Our 1998 estimate was a minimum of 49 wolves in 5 known breeding pairs (Service et al. 1999). In 1999, and again in 2000, 6 known breeding pairs produced pups, and the northwestern Montana population increased to about 63 wolves (Service et al. 2000, 2001). In 2001, we estimated that 84 wolves in 7 known breeding pairs occurred; in 2002, there were an estimated 108 wolves in 12 known breeding pairs; in 2003, there were an estimated 92 wolves in 4 known breeding pairs; in 2004, there were an estimated 59 wolves in 6 known breeding pairs; and in 2005, there were an estimated 130 wolves in 11 known breeding pairs (Service et al. 2002, 2003, 2004, 2005, 2006).

The Northwestern Montana Recovery Area has sustained fewer wolves than the other recovery areas because there is less suitable habitat. Wolf packs in this area may be near their local social and biological carrying capacity. Some of the variation in our wolf population estimates for northwestern Montana is due to the difficulty of counting wolves in the areas thick forests. Wolves in northwestern Montana prey mainly on white-tailed deer (*Odocoileus virginianus*) and pack size is smaller, which also makes packs more difficult to detect (Bangs et al. 1998). Increased monitoring efforts in northwestern Montana by Montana Fish, Wildlife and Parks (MFWP) in 2005 were likely responsible for some of the sharp increase in the estimated wolf

population. The MFWP have led wolf management in this area since February 2004. It appears that wolf numbers in northwestern Montana are likely to fluctuate around 100 wolves. Since 2001, this area has maintained an average of nearly 96 wolves and about 8 known breeding pairs (Service et al. 2006).

Northwestern Montana's wolves are demographically and genetically linked to both the wolf population in Canada and in central Idaho (Pletscher et al. 1991; Boyd and Pletscher 1999). Wolf dispersal into northwestern Montana from both directions will continue to supplement this segment of the overall wolf population, both demographically and genetically (Boyd et al. in prep.; Forbes and Boyd 1996, 1997; Boyd et al. 1995).

Wolf conflicts with livestock have fluctuated with wolf population size and prey population density (Service et al. 2005). For example, in 1997, immediately following a severe winter that reduced white-tailed deer populations in northwestern Montana, wolf conflicts with livestock increased dramatically, and the wolf population declined (Bangs et al. 1998). Wolf numbers increased as wild prey numbers rebounded. Unlike YNP or the central Idaho Wilderness, northwestern Montana lacks a large core refugium that contains overwintering wild ungulates. Therefore, wolf numbers are not ever likely to be as high in northwestern Montana as they are in central Idaho or the GYA. However, the population has persisted for nearly 20 years and is robust today (Service et al. 2006). State management, pursuant to the Montana State wolf management plan, will ensure this population continues to persist (see Factor D).

Recovery in the Central Idaho Recovery Area—The Central Idaho Recovery Area (53,600 km^2 [20,700 mi^2]) includes the Selway Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness areas; adjacent, mostly Federal, lands in central Idaho; and adjacent parts of southwest Montana (Service 1994). In January 1995, 15 young adult wolves were captured in Alberta, Canada, and released by the Service in central Idaho (Bangs and Fritts 1996; Fritts et al. 1997; Bangs et al. 1998). In January 1996, an additional 20 wolves from British Columbia were released. Central Idaho contains the greatest amount of highly suitable wolf habitat compared to either northwestern Montana or the GYA (Oakleaf et al. 2006). In 1998, the central Idaho wolf population consisted of a minimum of 114 wolves, including 10 known breeding pairs (Bangs et al. 1998). By 1999, it had grown to about 141 wolves in 10 known breeding pairs (Service et al. 2000). By 2000, this population had 192 wolves in 10 known breeding pairs, and by 2001, it had climbed to about 261 wolves in 14 known breeding pairs (Service et al. 2001, 2002). In 2002, there were 284 wolves in 14 known breeding pairs; in 2003, there were 368 wolves in 26 known breeding pairs; in 2004, there were 452 wolves in 30 known breeding pairs, and by the end of 2005, there were 512 wolves in 36 known breeding pairs (Service et al. 2003, 2004, 2005, 2006). As in the Northwestern Montana Recovery Area, some of the Central Idaho Recovery Area's increase in wolf populations in 2005, was due to an increased monitoring effort by the Idaho Department of Fish and Game (IDFG). They began to actively help with wolf management in Idaho beginning in 2005, and have led these efforts since 2006.

Recovery in the Greater Yellowstone Area—The GYA recovery area (63,700 km^2 [24,600 mi^2]) includes YNP; the Absaroka Beartooth, North Absaroka, Washakie, and Teton Wilderness areas (the National Park/Wilderness units); and adjacent public and private lands in Wyoming; and adjacent parts of Idaho and Montana (Service 1994). The wilderness portions of the GYA are rarely used by wolves due to those areas' high elevation, deep snow, and low productivity in terms of sustaining year-round wild ungulate populations. In 1995, 14 wolves from Alberta, representing 3 family groups, were released in YNP (Bangs and Fritts 1996; Fritts et al. 1997; Phillips and Smith 1996). Two of the three groups produced young in late April. In 1996, this procedure was repeated with 17 wolves from British Columbia, representing 4 family groups. Two of the groups produced pups in late April. Finally, 10 5-month-old pups removed from northwestern Montana were released in YNP in the spring of 1997 (Bangs et al. 1998).

By 1998, the wolves had expanded from YNP into the GYA with a population that consisted of 112 wolves, including 6 breeding pairs that produced 10 litters of pups (Service et al. 1999). The 1999 population consisted of 118 wolves, including 8 known breeding pairs (Service et al. 2000). In 2000, the GYA had 177 wolves, including 14 known breeding pairs, and there were 218 wolves, including 13 known breeding pairs, in 2001 (Service et al. 2001, 2002). In 2002, there were an estimated 271 wolves in 23 known breeding pairs; in 2003, there were an estimated 301 wolves in 21 known breeding pairs; in 2004, there were an estimated 335 wolves in 30 known breeding pairs; and in 2005, there were an estimated 325 wolves in 20 known breeding pairs (Service et al. 2003—2006).

Wolf numbers in the GYA were stable in 2005, but known breeding pairs dropped by 30 percent to only 20 pairs (Service et al. 2006). Most of this decline occurred in YNP (which declined from 171 wolves in 16 known breeding pairs in 2004, to 118 wolves in 7 breeding pairs in 2005 (Service et al. 2005, 2006)) and likely occurred because: (1) Highly suitable habitat in YNP is saturated with wolf packs; (2) conflict among packs appears to be limiting population density; (3) there are fewer elk (*Cervus canadensis*) than when reintroduction took place (White and Garrott 2006; Vucetich et al. 2005); and (4) a suspected, but as yet unconfirmed, outbreak of disease, canine parvovirus (CPV) or canine distemper, reduced pup survival to 20 percent in 2005 (Service et al. 2006; D. Smith, YNP, pers. comm. 2005). Additional significant growth in the National Park/Wilderness portions of the Wyoming wolf population is unlikely because suitable wolf habitat is saturated with resident wolf packs. Maintaining wolf populations above recovery levels in the GYA segment of the NRM area will likely depend on wolf packs living outside the National Park/Wilderness portions of Wyoming.

Discussion of the Petition

Wyoming's Petition advocated that the Service: (1) Establish a NRM DPS for the gray wolf composed of Montana, Idaho, and Wyoming; (2) eliminate the experimental population designations established in 1994; and (3) remove the gray wolf within the NRM DPS from protections under the ESA. The only substantive disagreements between the Service and Wyoming are: (1) Whether there is any emergency or urgency to delist wolves in Wyoming and (2) if Wyoming's regulatory framework is adequate to maintain the wolf population above its numerical and distribution recovery levels in Wyoming should the ESA protections be removed. The Wyoming Petition addressed six major issues.

1 Urgent Action Required—The Wyoming Petition argued that delisting was urgent and a priority because of alleged impacts to big game populations, economic impacts, introducing wolves into unnatural and fragmented habitats, and livestock depredation. Wyoming presented this information with an overall perspective that the number of wolves exceeded

recovery goals and that the wolf population and its impacts were larger those analyzed in the Service's 1994 environmental impact statement (EIS) on wolf reintroduction (Service 1994). The Wyoming Petition did not reveal any issues that were not previously anticipated or predicted in the 1994 EIS, nor does there currently appear to be any emergency regarding wolves or wolf management in Wyoming (White et al. 2005). In addition, the Wyoming segment of the wolf population was stable or slightly decreased in 2005, so the rate of predation on wild ungulates and livestock did not increase (Service et al. 2006).

The Wyoming Petition presented data indicating that nearly all Wyoming elk herds still exceeded State management objectives, but that herds in areas with wolves had lower cow/calf ratios than herds in areas without wolves. The Petitionor, however, did not address numerous other significant differences between these elk herds. All elk herds being preyed on by wolves are also being preyed on by grizzly bears (Barber et al. 2005). Elk herds that are living in areas without wolves have fewer large predators interacting with them. Elk herds with wolves typically summer in remote areas at high elevation, without access to as much agricultural forage, possibly making them more susceptible to severe winter or summer drought. Summer drought reduces forage for elk, which can greatly reduce calf production and survival (Cook et al. 2004). Some of Wyoming's comparisons made between elk herds with and without wolves seemed questionable; for example, the Wiggins Fork herd with an objective of 7,000 elk and the largest decrease in cow/calf ratios of any herd, was only being preyed upon by one small wolf pack. It is highly unlikely that one pack of approximately 10 wolves could have any measurable impact on overall herd size or calf ratios among 7,000 elk (White and Garrott 2006; Hamlin 2005). In addition, Wyoming and Montana (North Yellowstone elk herd) initiated deliberate elk herd reduction programs (cow elk hunts in winter) in the GYA to bring the herd sizes down to habitat management objectives and to alleviate landowner complaints about excessive elk competition with livestock for forage and crop damage (Hamlin 2005; Vucetich et al. 2005; White and Garrott 2006). Identifying wolf predation as the only, or primary, cause of differences in elk herd size or calf recruitment is misleading.

There is no doubt that wolves eat elk and that, in some situations and in combination with other factors, wolf predation can affect the survival rate of adult cow elk, older calf elk, herd size, and the potential surplus available for human harvest. However, wolves are territorial, and wolf populations naturally regulate their density with prey density (Mech and Boitani 2003); areas with high prey numbers support more wolves, while areas with few prey support fewer wolves. Wolf populations expand by establishing new packs in new areas, which means that those new packs are preying on new elk and other ungulate herds. An example of this type of adjustment in wolf density was the dramatic decline of wolves in YNP's northern range in 2005, due to disease and social conflict in response, in part, to reduced elk density (Service et al. 2006). Low neonate calf survival is typically related to habitat quality and predation by bears (Barber et al. 2005). The potential impact of wolf predation to decrease some elk herds and reduce hunter harvest for cow elk was relatively accurately forecast in the EIS and has been the subject of a long series of subsequent research projects with various conclusions (Hamlin 2005; See Service et al. 2006 for additional references). Some studies indicted wolves were having minor impacts on elk herds in comparison to other factors (Vucetich et al. 2005), while others suggested wolf predation was a significant factor (White and Garrott 2006).

The Wyoming Petition also asserted that wolf predation reduced the number of elk that needed to be killed by hunters each year to bring herd size down to State management objectives and that reduced harvest had economic costs. This is consistent with the predictions in the 1994 EIS that wolf predation would result in less need to kill cow elk to reduce herd size to habitat carrying capacity and to alleviate private property damage (Service 1994). The EIS also predicted reduced hunter opportunity and the economic losses that would be associated with fewer elk.

Additionally, the Wyoming Petition only discussed the negative impact of wolf predation on select aspects of the economy (big game hunting and livestock depredation), not the entire economic effects of wolf restoration. The EIS analyzed the full range of costs and benefits of wolf reintroduction and concluded that the presence of wolves in YNP would generate many times more economic benefits than costs. A recent economic study in YNP indicted that the presence of wolves was currently generating over $20 million per year in economic activity in Montana, Idaho, and Wyoming, similar to that forecasted ($23 million in 1992) in the EIS (Duffield et al. 2006). Wolf predation on ungulates (primarily elk) has a cost to some segments of society (some types of big game hunters), but those costs are far outweighed (over 10-fold) by the positive economic benefits to GYA States (Service 1994).

The Wyoming Petition proposed that wolves were reintroduced into unnatural and fragmented landscapes and that wolves were living in altered or marginally suitable habitats because of other human uses of the land. Suitable wolf habitat in North America can be simply characterized by moderate rates of human-caused mortality (due to low road density, forest cover, regulation of wolf killing by humans), adequate wild ungulates, and seasonal or low livestock density (Mladenoff and Stickley 1998; Larsen 2004; Oakleaf et al. 2006; Carroll et al. 2003, 2006). Wolves are habitat generalists and live in landscapes altered by humans throughout the world (Mech and Boitani 2003). Wolves listed under the ESA have lived in areas where human activities occur for decades—in the Midwest for over 30 years, the NRM for over 20 years, and the GYA and central Idaho for over 10 years. Wolf packs outside the Park Units in the Montana and Idaho portion of the GYA have occasional conflicts with livestock just like those in Wyoming. Wolf presence and human activity do not have to be mutually exclusive. However, just as in the case of any other species of wildlife (i.e., mountain lions, bears, elk, deer, skunks, geese, etc.), there will be occasional conflicts with people that require management to address. Some areas of historic habitat are currently so modified by human impacts that they are unsuitable habitat for wolves (Carroll et al. 2003, 2006; Oakleaf et al. 2006). However, there are situations where livestock and wolves can both live in the same area, and do so throughout many parts of the Northern Hemisphere. The cost of co-existence is some livestock losses, some wolf losses, and management to reduce the rate of conflict (Woodroffe et al. 2006).

The Wyoming Petition discussed wintering elk feedground issues, moose habitat, and livestock depredation to support its perspective that wolves are largely incompatible with current commercial land-uses on public and private lands outside YNP. In Wyoming, many elk herds are fed in winter, vaccinated against disease, and compensation is paid to private landowners whose livestock they compete against for forage. The artificial feeding of concentrated wildlife has a host of benefits (high elk populations,

high hunter harvest, reduced private property damage in winter, and more food for large predators and scavengers) and costs (funding, diseases, property damage, road/human safety hazards, increased competition with other wild ungulates/wildlife, and habituation to humans) associated with it. Diseases are a particularly difficult problem on Wyoming feedgrounds because artificial crowding in winter increases disease transmission rates. A high proportion of elk are already infected with brucellosis, and chronic wasting disease is being documented increasingly closer to the Wyoming elk feedgrounds. However, these disease-related issues existed long before wolves were ever present and would still be present without wolves. Disease issues, not wolf predation, will likely continue to be the most serious issue facing winter feeding of high numbers of elk, but wolves have added to the complexity of managing wintering elk on feedgrounds (Jimenez and Stevenson 2003, 2004; Jimenez et al. 2005).

As discussed in the Wyoming Petition, moose populations were declining before wolves were present in the GYA, and previous Wyoming Game and Fish Department (WGFD) research indicated this was largely habitat-related. The Service is cooperating with ongoing research by the WGFD to investigate factors effecting moose populations in Wyoming. Wolves occasionally kill moose, but the effect of wolf predation on overall moose population status is unclear. It is unlikely, however, to have been the most important factor to date.

Wolves occasionally depredate livestock. This issue has been discussed in detail in the EIS, interagency annual reports (Service 1999–2006), and many publications (see Literature Cited in Service et al. 2006; Bangs et al. in press). Surprisingly, the rate of confirmed livestock depredations per 100 wolves (average of 14 cattle and 29 sheep killed for every 100 wolves in the GYA from 1995–2005) is actually lower than the EIS predicted (on average 100 wolves in the GYA were predicted to kill 19 cattle and 68 sheep annually) (Service 1994; Service et al. 2006). In 2005, the number of livestock depredations in Wyoming decreased, despite an increasing wolf population near livestock outside of the GYA Park Units. This may be a result of the aggressive agency control of problem wolves and the high level of problem wolf removal by the Service in Wyoming outside of the GYA Park Units. An average of 10% of the GYA wolf population was killed annually by agency control from 1995–2005, the highest rate in the NRM (Service et al. 2006). In Wyoming outside of YNP, about 20% of the wolf population was removed in 2004 and 2005 (Service et al. 2006). No information presented in the Wyoming Petition suggested there was any greater urgency or priority regarding wolf management issues in Wyoming than was anticipated in the 1994 EIS or than currently exists in Montana or Idaho. If wolves remain listed, all wolf/livestock conflict in Wyoming will continue to be aggressively dealt with by the Service.

2 *Current Wolf Numbers and Distribution in the NRM DPS*—The Wyoming Petition presented the Service's information on wolf numbers and distribution in 2004 to reaffirm the Service's position that the wolf population has fully achieved both its numerical and distributional recovery goals every year since 2002 (Service et al. 2006). The NRM wolf population has not significantly increased its overall outer distribution in Montana, Idaho, and Wyoming since 2000 (Service et al. 2000–2006) but has continued to grow and expand within that area and now occupies almost all suitable habitat in Montana, Idaho, and Wyoming (71 FR 6643).

3 *Establish a NRM DPS*—The Wyoming Petition listed reasons why a NRM DPS composed of all Montana, Idaho, and Wyoming is appropriate. In 2006, the Service proposed a very similar gray wolf DPS that would be composed of all of Montana, Idaho, and Wyoming; parts of eastern Washington and Oregon; and northcentral Utah (71 FR 6643). However, in its comments on the ANPR, Wyoming stated that it supported the analysis and justification for the NRM DPS proposed by the Service (public comment to 71 FR 6643).

4 *Justification for Removing the Gray Wolf in the NRM DPS From the List of Endangered and Threatened Wildlife*—Wyoming presented information from the 2003 Reclassification Rule (68 FR 15804) that the NRM wolf population was no longer threatened by habitat issues, overutilization, disease or predation, or other natural or manmade factors. The Service stated in the ANPR (71 FR 6643) that the numerical and distributional recovery of the wolf population is not jeopardized by these factors. Wyoming also agreed with the Service that if ESA protections were removed, the NRM wolf population in Montana and Idaho would be conserved above numerical and distributional recovery levels due to existing regulatory mechanisms. Both Montana and Idaho State law and their State management plans were consistent with one another and were approved by the Service (Bangs 2004; Williams 2004; Hogan et al. 2005). However, the Service has determined that the regulatory framework established by Wyoming would not conserve Wyoming's numerical and distributional share of the NRM DPS wolf population above recovery levels (Williams 2004).

5 *Adequacy of Regulatory Mechanisms in Wyoming*—The adequacy of Wyoming's regulatory framework to maintain Wyoming's numerical and distributional share of the NRM wolf population is the primary area of disagreement between the Service and Wyoming. The Service's determination that Wyoming's regulatory framework is not adequate is fully discussed later in this finding (see Factor D below).

6 *Peer Review of the Wyoming Gray Wolf Management Plan*—The Service, in cooperation with the affected States, selected 12 recognized North American biological experts in wolf biology and management to review to Montana, Idaho, and Wyoming's State wolf management plans in the fall of 2003. The reviewers were not asked to examine other aspects of the State's regulatory framework, such as State laws, nor were they provided copies of these documents. Eleven reviews were completed. In general, most reviewers believed the coordinated implementation of all three State plans would be adequate to maintain 30 breeding pairs in the NRM. While Wyoming's Plan was thought the most extreme in terms of wolf control and minimizing wolf numbers and distribution, it was thought adequate by some reviewers, primarily because they believed that YNP would carry most of Wyoming's share of the NRM wolf population, and that the commitments in the Plan could be implemented under State law. The Wyoming Petition asserts that since a majority of peer reviewers believed that, in combination, the three State plans were adequate to numerically maintain a recovered wolf population in the NRM, the Service should approve Wyoming's plan and propose delisting of the NRM gray wolf DPS.

Four critical conditions have changed since the fall of 2003 and the peer review of the State Plans. These four conditions support the Service's decision to not approve Wyoming's regulatory framework (Bangs 2004; Williams 2004); (1) Our review of the State law questioned whether commitments made in the Plan could actually be implemented under the law; (2) the wolf population in YNP (most reviewers believed YNP would carry the bulk of Wyoming's share of the wolf

population) declined rapidly and dramatically by spring 2005; (3) in 2005, the Federal District Court in Oregon and Vermont ruled on a 2003 Service rule to establish two large DPSs and reclassify wolves in a Western and an Eastern DPS to threatened status (68 FR 15804). Those court rulings emphasized the distribution of the wolf population in historical and still suitable habitat was a critical component of determining if recovery had been achieved. Peer reviewers were not asked whether Wyoming's plan would maintain wolf pack distribution in suitable habitat outside of YNP; (4) in recent consultation with Montana, Idaho, Wyoming, the Nez Perce Tribe, Yellowstone National Park, and the University of Montana, the Service recognized that the relationship between wolf pack size in winter and breeding pairs was not a linear regression as argued in the Wyoming Petition. The Service in consultation with the above groups, established a method of estimating wolf population status that is scientifically sound and consistent with the Service's wolf breeding pair standard (discussed below in Recovery by State section) (Ausband 2006). However, the definition of a wolf pack in Wyoming law and Plan is not consistent with this analysis and the method in the Wyoming definition of a wolf pack would not allow the Wyoming segment of the wolf population to be maintained above recovery levels.

The Service considered the entire regulatory framework that could affect wolf population recovery, not just State management plans. The Service consistently reviewed the overall regulatory framework in Montana, Idaho, and Wyoming to determine whether their State laws and their State management plans were consistent with one another (Bangs 2004; Hogan 2005) (see detailed discussion under Factor D).

Conclusions—The Service agrees with the Wyoming Petition on several points regarding the removal of ESA protections for the NRM wolf population: (1) The population would not be threatened by four of the five categories of threats specified in section 4(a)(1) of the ESA—present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; or other natural or manmade factors affecting its continued existence (71 FR 6634); and (2) the NRM wolf population in Montana and Idaho would be conserved above numerical and distributional recovery levels because of the adequacy of existing regulatory mechanisms in Montana and Idaho. Both Montana's and Idaho's State laws and management plans were consistent with one another and were approved by the Service.

The Service disagrees with the Wyoming Petition regarding the adequacy of Wyoming's regulatory framework, and we have determined that Wyoming's current regulatory framework is not adequate to maintain Wyoming's numerical and distributional share of the NRM wolf population (See Factor D for a detailed discussion). This shortcoming means that the NRM DPS remains subject to a threat that leaves the DPS likely to become endangered in the foreseeable future.

Distinct Vertebrate Population Segment Policy Overview

Under the ESA, we consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. The Service and the National Marine Fisheries Service (NMFS) adopted the Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the ESA (DPS policy) and published it in the **Federal Register** on February 7, 1996 (61 FR 4722). This policy addresses the recognition of a DPS for potential listing, reclassification, and delisting actions. Under our DPS policy, three factors are considered in a decision regarding the establishment and classification of a possible DPS. These are applied similarly for additions to the Lists of Endangered and Threatened Wildlife and Plants, reclassification of already listed species, and removals from the lists. The first two factors—discreteness of the population segment in relation to the remainder of the taxon (i.e., *Canis lupus*) and the significance of the population segment to the taxon to which it belongs (i.e., *C. lupus*)—bear on whether the population segment is a valid DPS. If a population meets both tests, it is a DPS, and then we apply the third factor—the population segment's conservation status in relation to the ESA's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened).

A population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (i.e., *Canis lupus*) as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon (i.e., *C. lupus*) to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and/or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Based on our analysis of the best scientific information available, wolves in the NRM area are discrete in relation to the remainder of the taxon (i.e., *Canis lupus*) in that: (1) The NRM wolf populations exhibit substantial geographic isolation from all other wolf populations in the lower 48 States far exceeding the DPS policy's first criterion for discreteness; and (2) the international boundary between the United States and Canada meets the second discreteness criterion due to differences in exploitation and conservation status (see the 2006 ANPR (71 FR 6634, February 8, 2006) for a detailed analysis). Based on our analysis of the best scientific information available, wolves in the NRM area appear to meet the criterion of significance in that NRM wolves exist in a unique ecological setting and their loss would represent a significant gap in the range of the taxon (see ANPR (71 FR 6634, February 8, 2006) for a detailed analysis).

Although this finding has determined that the NRM population of gray wolves (currently limited to portions of Wyoming, Idaho, and Montana) is both discrete from other wolf populations (found in the Great Lakes Region and the southwestern United States) and significant to the taxon, therefore qualifying as a DPS, actually designating a DPS requires an official rulemaking process. This finding does not initiate, nor complete, such a process. While the ANPR put forward our preferred DPS boundaries (assuming adequate

regulatory mechanisms can be assured), the ANPR also discussed and requested comments on several other alternatives being considered (see the PUBLIC COMMENTS SOLICITED section of the ANPR at 71 FR 6634; February 8, 2006). We intend to fully evaluate this issue, including suggestions submitted as public comments, before proposing a DPS designation. When our evaluation is complete, we will publish another document in the **Federal Register**.

While the ANPR suggested a preferred DPS that encompasses the eastern one-third of Washington and Oregon; a small part of north-central Utah; and all of Montana, Idaho, and Wyoming, this 12-month finding is limited to Montana, Idaho, and Wyoming. This finding focuses only on these three States because—(1) This action is a response to a petition that proposed an Idaho, Montana, and Wyoming DPS, (2) the most suitable wolf habitat in the NRMs and all suitable habitat significant to maintaining a recovered wolf population is contained within these three States (Service 1987; Carroll et al. 2003, 2006; Oakleaf et al. 2006; 71 FR 6634), and (3) all ''occupied wolf habitat'' (defined in Factor A's ''Currently Occupied Habitat'') in the NRMs is limited to portions of Idaho, Montana, and Wyoming.

Summary of Factors Affecting the Species

Section 4 of the ESA and regulations (50 CFR part 424) promulgated to implement the listing provisions of the ESA set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the ESA threaten the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data used for classification of the species.

A recovered population is one that no longer meets the ESA's definition of threatened or endangered. The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1). For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the ESA's protections.

For the purposes of this notice, we consider 'foreseeable future' to be 30 years. We use 30 years because it is a reasonable timeframe for analysis of future potential threats as they relate to wolf biology. Wolves were listed in 1973, and reached recovery levels in the NRMs by 2002. It has taken about 30 years for the causes of wolf endangerment to be alleviated and for those wolf populations to recover. The average lifespan of a wolf in YNP is less than 4 years and even lower outside the Park (Smith et al. 2006). The average gray wolf breeds at 30 months of age and replaces itself in 3 years (Fuller et al. 2003). We used 10 wolf generations (30 years) to represent a reasonable biological timeframe to determine if impacts could be significant. Any serious threats to wolf population viability are likely to become evident well before a 30-year time horizon.

For the purposes of this notice, the ''range'' of the NRM wolf population is the area where viable populations of the species now exist. However, a species' historic range is also considered because it helps inform decisions on the species' status in its current range. While wolves historically occurred outside the areas currently occupied, large portions of this area are no longer able to support viable wolf populations.

We view significance of a portion of the range in terms of biological significance. A portion of a species' range that is so important to the continued existence of the species that threats to the species in that area can threaten the viability of the species, subspecies, or DPS as a whole is considered to be a significant portion of the range. In regard to the NRM wolf population, the significant portions of the gray wolf's range are those areas that are important or necessary for maintaining a viable, self-sustaining, and evolving representative metapopulation in order for the NRM wolf population to persist into the foreseeable future.

Our five-factor analysis follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

We believe that impacts to suitable and potentially suitable habitat will occur at levels that will not significantly affect wolf numbers or distribution in the NRMs as discussed in detail below. Occupied suitable habitat in key areas of Montana, Idaho, and Wyoming is secure and sufficient to provide for a self-sustaining population of gray wolves in the absence of any other threats. These areas include Glacier National Park, Teton National Park, YNP, numerous U.S. Forest Service (USFS) Wilderness areas, and other State and Federal lands. These areas will continue to be managed for high ungulate densities, moderate rates of seasonal livestock grazing, moderate-to-low road densities that will provide abundant native prey, low potential for livestock conflicts, and security from excessive unregulated human-caused mortality. The core recovery areas also are within proximity to one another and have enough public land between them to ensure sufficient connectivity to maintain the wolf population above recovery levels.

Suitable Habitat—Wolves once occupied or transited most, if not all, of Idaho, Montana, and Wyoming. However, much of the wolf's historic range within this area has been modified for human use and is no longer suitable habitat. We used two relatively new models, Oakleaf et al. (2006) and Carroll et al. (2006), to help us gauge the current amount of suitable wolf habitat in the NRMs. Both models ranked areas as suitable habitat if they had characteristics that suggested they might have a 50 percent or greater chance of supporting wolf packs. Suitable wolf habitat in the NRMs was typically characterized by both models as public land with mountainous, forested habitat that contains abundant year-round wild ungulate populations, low road density, low numbers of domestic livestock that are only present seasonally, few domestic sheep, low agricultural use, and few people. Unsuitable wolf habitat was typically just the opposite (i.e., private land; flat open prairie or desert; low or seasonal wild ungulate populations; high road density; high numbers of year-round domestic livestock including many domestic sheep; high levels of agricultural use; and many people). Despite their similarities, there were substantial differences between these two models in their analysis area, layers, inputs, and assumptions. As a result, the Oakleaf et al. (2006) and Carroll et al. (2006) models predicted different amounts of theoretically suitable wolf habitat in Montana, Idaho, and Wyoming.

Oakleaf's basic model was a more intensive effort that only looked at potential wolf habitat in Idaho, Montana, and Wyoming (Oakleaf et al. 2006). It used roads accessible to two-

wheel and four-wheel vehicles, topography (slope and elevation), land ownership, relative ungulate density (based on State harvest statistics), cattle (*Bos sp.*) and sheep (*Ovis sp.*) density, vegetation characteristics (ecoregions and land cover), and human density to comprise its geographic information system (GIS) layers. Oakleaf analyzed the characteristics of areas occupied and not occupied by NRM wolf packs through 2000 to predict what other areas in the NRM might be suitable or unsuitable for future wolf pack formation (Oakleaf et al. 2006). In total, Oakleaf et al. (2006) ranked 170,228 km^2 (65,725 mi^2) as suitable habitat in Montana, Idaho, and Wyoming.

In contrast, Carroll's model analyzed a much larger area (all 12 western States and northern Mexico) in a less specific way (Carroll et al. 2006). Carroll's model used density and type of roads, human population density and distribution, slope, and vegetative greenness as ''pseudo-habitat'' to estimate relative ungulate density to predict associated wolf survival and fecundity rates (Carroll et al. 2006). The combination of the GIS model and wolf population parameters were then used to develop estimates of habitat theoretically suitable for wolf pack persistence. In addition, Carroll predicted the potential effect on suitable wolf habitat of increased road development and human density expected by 2025 (Carroll et al. 2006). Carroll et al. (2006) ranked 265,703 km^2 (102,588 mi^2) as suitable habitat in Montana, Idaho, and Wyoming.

We believe that the Carroll et al. (2006) model tended to be more liberal in identifying suitable wolf habitat under current conditions than either the Oakleaf (et al. 2006) model or our field observations indicate is realistic, but Carroll's model provided a valuable relative measure across the western United States upon which comparisons could be made. The Carroll model did not incorporate livestock density into its calculations as the Oakleaf model did (Carroll et al. 2006; Oakleaf et al. 2006). However, this ignores the fact that in situations where livestock and wolves both live in the same area, there will be some livestock losses, some wolf losses, and some wolf removal to reduce the rate of conflict. During the past 20 years, wolf packs have been unable to persist in areas intensively used for livestock production, primarily because of agency control of problem wolves and illegal killing. This level of wolf mortality occurred despite wolves being protected under the ESA, including areas where wolves are listed as endangered.

Many of the more isolated primary habitat patches that the Carroll model predicted as currently suitable were predicted as unsuitable by the year 2025, indicating they were likely on the lower end of what ranked as suitable habitat in that model (Carroll et al. 2006). Because these types of areas were typically small and isolated from the core population segments, we do not believe they are currently suitable habitat based upon on our data on wolf pack persistence for the past 10 years (Bangs et al. 1998; Service et al. 1999–2006).

Despite the substantial differences in each model's analysis area, layers, inputs, and assumptions, both models predicted that most suitable wolf habitat in the NRMs was in northwestern Montana, central Idaho, and the GYA, and in the area currently occupied by the NRM wolf population. They also indicated that these three areas were connected. However, northwest Montana and Idaho were more connected to each other than the GYA, and collectively the three cores areas were surrounded by large areas of unsuitable habitat.

These models are useful in understanding the relative proportions and distributions of various habitat characteristics and their relationships to wolf pack persistence, rather than as predictors of absolute acreages or areas that can actually be occupied by wolf packs. Additionally, both models generally support earlier predictions about wolf habitat suitability in the NRM (Service 1980, 1987, 1994). Because theoretical models only define suitable habitat as those areas that have characteristics with a 50 percent or more chance of supporting wolf packs, it is impossible to give an exact acreage of suitable habitat that can actually be successfully occupied by wolf packs. It is important to note that these areas also have up to a 50 percent chance of not supporting wolf packs.

We considered data on the location of suitable wolf habitat from a number of sources in developing our estimate of suitable wolf habitat in the NRMs. Specifically, we considered the locations estimated in the 1987 wolf recovery plan (Service 1987), the primary analysis areas analyzed in the 1994 EIS for the GYA (63,700 km^2 [24,600 mi^2]) and central Idaho (53,600 km^2 [20,700 mi^2]) (Service 1994), information derived from theoretical models by Carroll et al. (2006) and Oakleaf et al. (2006), our nearly 20 years of field experience managing wolves in the NRM, and the persistence of wolf packs since recovery has been achieved. Collectively, this evidence leads us to concur with the Oakleaf et al. (2006) model's predictions that the most important habitat attributes for wolf pack persistence are forest cover, public land, high elk density, and low livestock density. Therefore, we believe that Oakleaf's calculations of the amount and distribution of suitable wolf habitat available for persistent wolf pack formation, in the parts of Montana, Idaho, and Wyoming analyzed, represents the most reasonably realistic prediction of suitable wolf habitat in Montana, Idaho, and Wyoming.

Currently Occupied Habitat—The area ''currently occupied'' by the NRM wolf population was calculated by drawing a line around the outer points of radio-telemetry locations of all known wolf pack (n=110) territories in 2004 (Service et al. 2005). We defined occupied wolf habitat as that area confirmed as being used by resident wolves to raise pups or that is consistently used by two or more territorial wolves for longer than 1 month (Service 1994). Although we relied upon 2004 wolf monitoring data (Service et al. 2005), the overall distribution of wolf packs has been similar since 2000, despite a wolf population that has more than doubled (Service et al. 2001–2006). Because the States must commit to maintain a wolf population above the minimum recovery levels (first achieved in 2000), we expect this general distribution will be maintained. Occupied habitat changed little from 2004 (275,533 km^2 [106,384 mi^2]) to 2005 (260,535 km^2 [100,593 mi^2]) (Service et al. 2006), so we relied on the Montana, Idaho, and Wyoming portions of our analysis from the ANPR for this 12-month finding.

We included areas between the core recovery segments as occupied wolf habitat even though wolf packs did not persist in certain portions of it. While models ranked some of it as unsuitable habitat, those intervening areas are important to maintaining the metapopulation structure since dispersing wolves routinely travel through those areas (Service 1994; Bangs 2002). This would include areas such as the Flathead Valley and other smaller valleys intensively used for agriculture, and a few of the smaller, isolated mountain ranges surrounded by agricultural lands in west-central Montana.

As of the end of 2004, we estimate approximately 275,533 km^2 (106,384 mi^2) of occupied habitat in parts of Montana (125,208 km^2 [48,343 mi^2]), Idaho (116,309 km^2 [44,907 mi^2]), and Wyoming (34,017 km^2 [13,134 mi^2]) (Service et al. 2005). As noted above, we are focusing on occupancy limited to

these three States and including both suitable and unsuitable areas (especially in the areas between wolf pack territories). Although currently occupied habitat includes some prairie (4,488 km² [1,733 mi²]) and some high desert (24,478 km² [9,451 mi²]), wolf packs did not use these habitat types successfully (Service et al. 2005). Since 1986, no persistent wolf pack has had a majority of its home range in high desert or prairie habitat. Landownership in the occupied habitat area is 183,485 km² (70,844 mi²) Federal (67 percent); 12,217 km² (4,717 mi²) State (4.4 percent); 3,064 km² (1,183 mi²) tribal (1.7 percent); and 71,678 km² (27,675 mi²) private (26 percent) (Service et al. 2005).

We determined that the current wolf population resembles a three-segment metapopulation and that the overall area used by the NRM wolf population has not significantly expanded its range since the population achieved recovery. This indicates there is probably limited suitable habitat within Montana, Idaho, and Wyoming for the NRM wolf population to expand significantly beyond its current borders. Carroll's model predicted that 165,503 km² (63,901 mi²) of suitable habitat (62 percent) was within the occupied area; however, the model's remaining potentially suitable habitat (38 percent) in Montana, Idaho, and Wyoming was often fragmented and in smaller, more isolated patches (Carroll et al. 2006). Suitable habitat within the occupied area, particularly between the population segments, is important to maintain the overall population. Habitat on the outer edge of the metapopulation is insignificant to maintaining the NRM wolf population's viability.

Oakleaf et al. (2006) predicted that roughly 148,599 km² (57,374 mi²) or 87 percent of Wyoming, Idaho, and Montana's suitable habitat was within the area we describe as the area currently occupied by the NRM wolf population. Substantial threats to this area would have the effect of threatening the viability of the NRM wolf population. These core areas are necessary for maintaining a viable, self-sustaining, and evolving representative metapopulation in order for the NRM wolf population to persist into the foreseeable future. We believe the remaining unoccupied, roughly 13 percent, of theoretical suitable wolf habitat (as described by Oakleaf et al. [2006]) is unimportant to maintaining the recovered wolf population. We nevertheless considered potential threats to this area.

The requirement that Montana, Idaho, and Wyoming each maintain at least 10 breeding pairs and 100 wolves in mid-winter ensures long-term viability of the NRM gray wolf population. The NRM wolf population occupies nearly 100 percent of the recovery areas recommended in the 1987 recovery plan (i.e., the central Idaho, the GYA, and the northwestern Montana recovery areas) (Service 1987) and nearly 100 percent of the primary analysis areas (the areas where suitable habitat was believed to exist and the wolf population would live) analyzed for wolf reintroduction in central Idaho and the GYA (Service 1994).

Potential Threats Affecting Suitable and Currently Occupied Habitat—Establishing a recovered wolf population in the NRMs did not require land-use restrictions or curtailment of traditional land-uses because there was enough suitable habitat, enough wild ungulates, and sufficiently few livestock conflicts to recover wolves under existing conditions (Bangs et al. 2004). We do not believe that any traditional land-use practices in the NRMs need be modified to maintain a recovered NRM wolf population into the foreseeable future. We do not anticipate overall habitat changes in the NRMs occurring at a magnitude that will threaten wolf recovery in the foreseeable future because 70 percent of the suitable habitat is in public ownership that is managed for multiple uses, including maintenance of viable wildlife populations (Carroll et al. 2003; Oakleaf et al. 2006).

The GYA and central Idaho recovery areas, 63,714 km² (24,600 mi²) and 53,613 km² (20,700 mi²), respectively, are primarily composed of public lands (Service 1994) and are the largest contiguous blocks of suitable habitat within Idaho, Montana, and Wyoming. Central Idaho and the GYA provide secure habitat and abundant ungulate populations with about 99,300 ungulates in the GYA and 241,400 in central Idaho (Service 1994). These areas provide optimal suitable habitat to help maintain a viable wolf population (Service 1994). The central Idaho recovery area has 24,281 km² (9,375 mi²) of designated wilderness at its core (Service 1994). The GYA recovery area has a core including over 8,094 km² (3,125 mi²) in YNP and, although less useful to wolves due to high elevation, about 16,187 km² (6,250 mi²) of designated wilderness (Service 1994). These areas are in public ownership, and no foreseeable habitat-related threats would prevent them from anchoring a wolf population that exceeds recovery levels.

While the northwestern Montana recovery area (>49,728 km² [>19,200 mi²]) (Service 1994) also has a core of suitable habitat (Glacier National Park and the Bob Marshal Wilderness Complex), it is not as high quality, as large, or as contiguous as that in either central Idaho or GYA. The primary reason for this is that ungulates do not winter throughout the area because it is higher in elevation. Most wolf packs in northwestern Montana live west of the Continental Divide, where forest habitats are a fractured mix of private and public lands (Service et al. 1999–2006). This exposes wolves to higher levels of human-caused mortality, and thus this area supports smaller and fewer wolf packs. Wolf dispersal into northwestern Montana from the more stable resident packs in the core protected area (largely the North Fork of the Flathead River along the eastern edge of Glacier National Park and the few large river drainages in the Bob Marshall Wilderness Complex) helps to maintain that segment of the NRM wolf population. Wolves also disperse into northwestern Montana from Canada and some packs have trans-boundary territories, helping to maintain the NRM population (Boyd et al. 1995). Conversely, wolf dispersal from northwestern Montana into Canada, where wolves are much less protected, continues to draw some wolves into vacant or low density habitats in Canada where they are subject to legal hunting (Bangs et al. 1998). The trans-boundary movements of wolves and wolf packs led to the establishment of wolves in Montana, and will continue to have an overall positive effect on wolf genetic diversity and demography in the northwest Montana segment of the NRM wolf population.

Within occupied suitable habitat, enough public land exists so that NRM wolf populations can be safely maintained above recovery levels. Important suitable wolf habitat is in public ownership, and the States and Federal land-management agencies are likely to continue to manage habitat that will provide forage and security for high ungulate populations, sufficient cover for wolf security, and low road density. Carroll et al. (2003, 2006) predicted future wolf habitat suitability under several scenarios through 2025, including increased human population growth and road development. Those threats were not predicted to alter wolf habitat suitability in Montana, Idaho, and Wyoming enough to cause the wolf population to fall below recovery levels.

The recovery plan (Service 1987), the metapopulation structure recommended by the 1994 EIS (Service 1994), and subsequent investigations (Bangs 2002) recognize the importance of some

habitat connectivity between northwestern Montana, central Idaho, and the GYA. There appears to be enough habitat connectivity between occupied wolf habitat in Canada, northwestern Montana, Idaho, and (to a lesser extent) the GYA to ensure exchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the NRM wolf metapopulation (Oakleaf et al. 2006; Carroll et al. 2006; Wayne et al., 2005; Boyd et al. in prep.). To date, from radio-telemetry monitoring, we have documented routine wolf movement between Canada and northwestern Montana (Pletscher et al. 1991; Boyd and Pletscher 1999), occasional wolf movement between Idaho and Montana, and at least 11 wolves have traveled into the GYA (Wayne et al., 2005; Boyd et al. 1995; Boyd et al. in prep.). Because we know only about the 30 percent of the wolf population that has been radio-collared, additional dispersal has undoubtedly occurred. This demonstrates that current habitat conditions allow dispersing wolves to occasionally travel from one recovery area to another. Finally, the Montana State plan (the key State regarding connectivity) commits to maintaining natural connectivity to ensure the genetic integrity of the NRM wolf population by promoting land uses, such as traditional ranching, that enhance wildlife habitat and conservation.

Another important factor in maintaining wolf populations is the native ungulate population. Wild ungulate prey in these three areas are composed mainly of elk, white-tailed deer, mule deer (*Odocoileus hemionus*), moose (*Alces alces*), and (only in the GYA) bison (*Bison bison*). Bighorn sheep (*Ovis canadensis*), mountain goats (*Oreamnos americanus*), and pronghorn antelope (*Antilocapra americana*) also are common but not important, at least to date, as wolf prey. In total, 100,000–250,000 wild ungulates are estimated in each NRM State where wolf packs currently exist (Idaho, Montana, and Wyoming) (Service 1994). All three States have managed resident ungulate populations for decades and maintain them at densities that would easily support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to threaten the recovered status of the NRM wolf population.

Cattle and sheep are at least twice as numerous as wild ungulates even on public lands (Service 1994). The only areas large enough to support wolf packs, but lacking livestock grazing, are YNP, Glacier National Park, some adjacent United States Forest Service (USFS) Wilderness areas, and parts of wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle. Every wolf pack outside these areas has interacted with some livestock, primarily cattle. Livestock and livestock carrion are routinely used by wolves, but management discourages chronic use of livestock as prey. Conflict between wolves and livestock has resulted in the annual removal of some wolves (Bangs et al. 1995, 2004, 2005, 2006 in press; Service et al. 2006). This is discussed further under Factors D and E.

Unoccupied Suitable Habitat—Habitat suitability modeling indicates the NRM core recovery areas are atypical of other habitats in the western United States because suitable habitat in those core areas occurs in such large contiguous blocks (Service 1987; Larson 2004; Carroll et al. 2006; Oakleaf et al. 2006). It is likely that without core refugia areas, like YNP and the central Idaho wilderness, that provide a steady influx of dispersing wolves, other potentially suitable wolf habitat would not be capable of sustaining wolf packs. Some habitat that is ranked by models as suitable that is adjacent to core refugia, like central Idaho, may be able to support wolf packs, while some theoretically suitable habitat that is farther away from a strong source of dispersing wolves may not be able to support persistent packs. This fact is important to consider as suitable habitat, as defined by the Carroll (et al. 2006) and Oakleaf (et al. 2006) models, still only has a 50 percent or greater chance of being successfully occupied by wolf packs and significantly contributing to overall population recovery. Therefore, not all habitat predicted by models as suitable habitat can be successfully occupied by wolf packs.

Strips and smaller (less than 2,600 km^2 [1,000 mi^2]) patches of theoretically suitable habitat (Carroll et al. 2006; Oakleaf et al. 2006) (typically isolated mountain ranges) often possess higher mortality risk for wolves because of their enclosure by, and proximity to, areas of high mortality risk. This phenomenon, in which the quality and quantity of suitable habitat is diminished because of interactions with surrounding less-suitable habitat, is known as an edge effect (Mills 1995). Edge effects are exacerbated in small habitat patches with high perimeter-to-area ratios (i.e., those that are long and narrow, like isolated mountain ranges) and in long-distance dispersing species, like wolves, because they are more likely to encounter surrounding unsuitable habitat (Woodroffe and Ginsberg 1998). This suggests that even though some habitat outside the core areas may rank as suitable in models, it is unlikely to actually be successfully occupied by wolf packs. For these reasons, we believe that the NRM wolf population will remain centered around the three recovery areas. These core population segments will continue to provide a constant source of dispersing wolves into surrounding areas, supplementing wolf packs in adjacent but less secure suitable habitat.

Therefore, we do not foresee that impacts to suitable and potentially suitable habitat will occur at levels that will significantly affect wolf numbers or distribution or affect population recovery and long-term viability in the NRMs. Occupied suitable habitat is secured by core recovery areas in northwestern Montana, central Idaho, and the GYA. These areas include Glacier National Park, Teton National Park, YNP, numerous USFS Wilderness areas, and other State and Federal lands. These areas will continue to be managed for high ungulate densities, moderate rates of seasonal livestock grazing, moderate-to-low road densities associated with abundant native prey, low potential for livestock conflicts, and security from excessive unregulated human-caused mortality. The core recovery areas also are within proximity to one another and have enough public land between them to ensure sufficient connectivity.

No significant threats to the suitable habitat in these areas are known to exist. These areas have long been recognized as the most likely areas to successfully support 30 or more breeding pairs of wolves, comprising 300 or more individuals in a metapopulation with some genetic exchange between subpopulations (Service 1980, 1987, 1994; 71 FR 6634). Unsuitable habitat, and small, fragmented areas of suitable habitat away from these core areas, largely represent geographic locations where wolf packs cannot persist. Although such areas may have been historic habitat, these areas are not important or necessary for maintaining a viable, self-sustaining, and evolving representative wolf population in the NRMs into the foreseeable future. These areas are not a significant portion of the range for the NRM wolf population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

As detailed below, overutilization for commercial, recreational, scientific, or educational purposes has not been a significant threat to the NRM wolf population, particularly in Idaho, Montana, and Wyoming. Delisting NRM wolves would not threaten recovery by excessive changes in mortality rates caused by commercial, recreational, scientific, or educational purposes. However, as discussed later in Factor D, there are potential concerns that human-caused mortality associated with management of delisted wolves in Wyoming as predatory animals would exceed sustainable levels.

Since their listing under the ESA, no gray wolves have been legally killed or removed from the wild in the NRMs for commercial, recreational, or educational purposes. In the NRMs, about 3 percent of the wolves captured for scientific research, nonlethal control, and monitoring have been accidentally killed (Service Weekly Reports 1995–2006). Some wolves may have been illegally killed for commercial use of the pelts and other parts, but we believe illegal commercial trafficking in wolf pelts or wolf parts is rare. Illegal capture of wolves for commercial breeding purposes also is possible, but we believe it to be extremely rare. We believe the potential for ''take'' prosecution provided for by the ESA has discouraged and minimized the illegal killing of wolves for commercial or recreational purposes. Although Federal penalties under the ESA will not apply if delisting were to be finalized, other Federal laws will still protect wildlife in National Parks and on other Federal lands (Service 1994). In addition, the States and Tribes have similar laws and regulations that protect game or trophy animals from overutilization for commercial, recreational, scientific, and educational purposes (See Factor D for a more detailed discussion of this issue and weblinks to applicable State laws and regulations). We believe these laws will continue to provide a strong deterrent to illegal killing by the public as they have been effective in State-led conservation programs for other resident wildlife. In addition, the State fish and game agencies, National Parks and other Federal agencies, and most Tribes have well-distributed experienced cadres of professional law enforcement officers to help enforce State, Federal, and Tribal wildlife regulations (See Factor D).

Scientific Research and Monitoring—From 1984 to 2005, the Service and our cooperating partners captured about 814 NRM wolves for monitoring, nonlethal control, and research purposes with 23 accidental deaths. If NRM wolves were delisted, the States, National Parks, and tribes would continue to capture and radio-collar wolves in the NRM area for monitoring and research purposes in accordance with their State wolf management plans (See Factor D). We expect that capture-caused mortality by Federal agencies, universities, States, and tribes conducting wolf monitoring, nonlethal control, and research will remain below 3 percent of the wolves captured, and will be an insignificant source of mortality to the wolf population.

Education—We are unaware of any wolves that have been legally removed from the wild for solely educational purposes in recent years. Wolves that are used for such purposes are usually the captive-reared offspring of wolves that were already in captivity for other reasons. However, States may get requests to place wolves that would otherwise be euthanized in captivity for research or educational purposes. Such requests have been, and will continue to be, rare; would be closely regulated by the State wildlife management agencies through the requirement for State permits for protected species; and would not substantially increase human-caused wolf mortality rates.

Commercial and Recreational Uses—In Idaho and Montana, any legal take after delisting would be regulated by State or tribal law so that it would not jeopardize each State's share of the NRM wolf population (See Factor D). Currently, Wyoming State law does not regulate human-caused mortality to wolves throughout most of Wyoming (see Factor D for a more detailed description of this issue). This was one of the primary reasons the Service did not approve the final Wyoming Plan (WGFD 2003; Williams, 2004). Because wolves are highly territorial, wolf populations in saturated habitat naturally limit further population increases through wolf-to-wolf conflict or dispersal to unoccupied habitat. Wolf populations can maintain themselves despite a sustained human-caused mortality rate of 30 percent or more per year (Keith 1983; Fuller et al. 2003), and human-caused mortality can replace up to 70 percent of natural mortality (Fuller et al. 2003). Wolf pups can be successfully raised by other pack members and breeding individuals quickly replaced by other wolves (Brainerd et al. in prep.). This means that wolf populations are quite resilient to human-caused mortality if it can be regulated. Montana and Idaho would regulate human-caused mortality to manipulate wolf distribution and overall population size to help reduce conflicts with livestock and, in some cases, human hunting of big game, just as they do for other resident species of wildlife. The States (except for Wyoming) and tribes would allow regulated public harvest of surplus wolves in the NRM wolf population for commercial and recreational purposes by regulated private and guided hunting and trapping. Such take and any commercial use of wolf pelts or other parts would be regulated by State or tribal law (See discussion of State laws and plans under Factor D). The regulated take of those surplus wolves would not affect wolf population recovery or viability in the NRM because the States of Montana and Idaho (and Wyoming, if its plan is approved in the future) would allow such take only for wolves that are surplus to achieving the State's commitment to maintaining a recovered population. Regulated hunting and trapping are traditional and effective wildlife management tools that are to be applied to help achieve State and tribal wolf management objectives as needed.

In summary, the States have organizations and regulatory and enforcement systems in place to limit human-caused mortality of resident wildlife (except for wolves in Wyoming). Montana and Idaho's State plans commit these States to regulate all take of wolves, including that for commercial, recreational, scientific, and educational purposes, and will incorporate any tribal harvest as part of the overall level of allowable take to ensure that the wolf population does not fall below the NRM wolf population's numerical and distributional recovery levels. Wyoming's regulatory framework would not adequately regulate human-caused mortality. The States and tribes have humane and professional animal handling protocols and trained personnel that will ensure that population monitoring and research results in few unintentional mortalities. Furthermore, the State permitting process for captive wildlife and animal care will ensure that few, if any wolves, will be removed from the wild solely for educational purposes.

C. Disease or Predation

As discussed in detail below, there are a wide range of diseases that may affect the NRM wolves. However, there are no indications that these diseases are of such magnitude that the population is in danger of extinction, particularly within Idaho, Montana, and Wyoming. Similarly, there are no indications that predation poses a

significant threat to the NRM wolf population. The rates of mortality caused by disease and predation are well within acceptable limits, and there is no reason to expect those rates to change appreciably if NRM wolves were delisted.

Disease—NRM wolves are exposed to a wide variety of diseases and parasites that are common throughout North America. Many diseases (viruses and bacteria, many protozoa and fungi) and parasites (helminthes and arthropods) have been reported for the gray wolf, and several of them have had significant, but temporary impacts during wolf recovery in the 48 conterminous States (Brand et al. 1995; Kreeger 2003). The EIS on gray wolf reintroduction identified disease impact as an issue, but did not evaluate it further, as it appeared to be insignificant (Service 1994). Infectious disease induced by parasitic organisms is a normal feature of the life of wild animals, and the typical wild animal hosts a broad multi-species community of potentially harmful parasitic organisms (Wobeser 2002). We fully anticipate that these diseases and parasites will follow the same pattern seen in other areas of North America (Brand et al. 1995; Bailey et al. 1995; Kreeger 2003) and will not significantly threaten wolf population viability. Nevertheless, because these diseases and parasites, and perhaps others, have the potential to impact wolf population distribution and demographics, careful monitoring (as per the State wolf management plans) will track such events. Should such an outbreak occur, human-caused mortality, except in Wyoming, would be regulated in an area and over an appropriate time period by the State to ensure populations are maintained above recovery levels.

Canine parvovirus (CPV) infects wolves, domestic dogs (*Canis familiaris*), foxes (*Vulpes*), coyotes (*Canis latrans*), skunks (*Mephitis mephitis*), and raccoons (*Procyon lotor*). The population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (Wisconsin Department of Natural Resources 1999). Clinical CPV is characterized by severe hemorrhagic diarrhea and vomiting; debility and subsequent mortality is a result of dehydration, electrolyte imbalances, and shock. CPV has been detected in nearly every wolf population in North America including Alaska (Bailey et al. 1995; Brand et al. 1995; Kreeger 2003), and exposure in wolves is thought to be almost universal. Currently, nearly 100 percent of the wolves handled by MFWP (M. Atkinson, MFWP, pers. comm., 2005) had blood antibodies indicating exposure to CPV. CPV contributed to low pup survival in the northern range of YNP in 1999, and was suspected to have done so again in 2005 (Smith, pers. comm., 2005). However, the impact to the overall NRM wolf population was localized and temporary, as has been documented elsewhere (Bailey et al. 1995; Brand et al. 1995; Kreeger 2003).

Canine distemper is an acute, fever-causing disease of carnivores caused by a paramyxo-virus (Kreeger 2003). It is common in domestic dogs and some wild canids, such as coyotes and foxes in the NRMs (Kreeger 2003). The seroprevalence in North American wolves is about 17 percent (Kreeger 2003). Nearly 85 percent of Montana wolf blood samples analyzed in 2005 had blood antibodies indicating non-lethal exposure to canine distemper (M. Atkinson, pers. comm., 2005). Mortality in wolves has only been documented in Canada (Carbyn 1992), Alaska (Peterson et al. 1984; Bailey et al. 1995), and in a single Wisconsin pup (Wydeven and Wiedenhoeft 2003). Distemper is not a major mortality factor in wolves, because despite exposure to the virus, affected wolf populations demonstrate good recruitment (Brand et al. 1995). Mortality from canine distemper has never been documented in NRM wolves despite the wolves' high exposure to it, but we suspect it contributed to the high pup mortality documented in the northern GYA in spring 2005 (Smith et al. 2006).

Lyme disease, caused by a spirochete bacterium, is spread primarily by deer ticks (*Ixodes dammini*). Host species include humans, horses (*Equus caballus*), dogs, white-tailed deer, mule deer, elk, white-footed mice (*Peromyscus leucopus*), eastern chipmunks (*Tamias striatus*), coyotes, and wolves. Lyme disease has not been reported from wolves beyond the Great Lakes regions (Wisconsin Department of Natural Resources 1999; Johnson et al. 1994). In those populations, it does not appear to cause adult mortality, but might be suppressing population growth by decreasing wolf pup survival.

Sarcoptic mange is caused by a mite (*Sarcoptes scabeii*) that infests the skin. The irritation caused by feeding and burrowing mites results in intense itching, resulting in scratching and severe fur loss, which can lead to mortality from exposure during severe winter weather or secondary infections (Kreeger 2003). Advanced sarcoptic mange can involve the entire body and can cause emaciation, decreased flight distance, staggering, and death (Kreeger 2003). In a long-term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand et al. 1995). Mange has been shown to temporarily affect wolf population growth rates and perhaps wolf distribution (Kreeger 2003).

Mange has been detected in, and caused mortality to, wolves in the NRM, but almost exclusively in the GYA, and primarily east of the Continental Divide (Jimenez et al. in prep.). Those wolves likely contracted mange from coyotes or fox whose populations experience occasional outbreaks. In southwestern Montana, 8 percent of 12 packs in 2003, 24 percent of 17 packs in 2004, and 61 percent of 18 packs in 2005, showed evidence of mange, although not all members of every pack appeared infested (Jimenez et al. in prep.). In Wyoming, east of the YNP, 12.5 percent of 8 packs in 2003, 22 percent of 9 packs in 2003 and 2004, and 0 percent of 13 packs in 2005, showed evidence of mange (Jimenez et al. in prep.). Mange has not been confirmed in wolves from Idaho or northwestern Montana (Jimenez et al. in prep.). In packs with the most severe infestations, pup survival appeared low, and some adults died (Jimenez et al. in prep.). In addition, we euthanized three wolves with severe mange. We predict that mange in the NRMs will act as it has in other parts of North America (Brand et al. 1995; Kreeger 2003) and not threaten wolf population viability. Evidence suggests NRM wolves will not be infested on a chronic population-wide level given the recent response of Wyoming wolf packs that naturally overcame mange infestation.

Dog-biting lice (*Trichodectes canis*) commonly feed on domestic dogs, but can infest coyotes and wolves (Schwartz et al. 1983; Mech et al. 1985). The lice can attain severe infestations, particularly in pups. The worst infestations can result in severe scratching, irritated and raw skin, substantial hair loss particularly in the groin, and poor condition. While no wolf mortality has been confirmed, death from exposure and/or secondary infection following self-inflicted trauma, caused by the inflammation and itching, appears possible. For the first time, we confirmed dog-biting lice on two members of the Battlefield pack in the Big Hole Valley of southwestern Montana in 2005, and on a wolf in south-central Idaho in early 2006, but their infestations were not severe (Service Weekly Wolf Reports 2005–2006). Its source is unknown, but was likely domestic dogs.

Rabies, canine heartworm, blastomycosis, brucellosis, neosporsis, leptospirosis, bovine tuberculosis, canine coronavirus, hookworm, coccidiosis, and canine hepatitis have all been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand et al. 1995; Johnson 1995a, b; Mech and Kurtz 1999; Wisconsin Department of Natural Resources 1999; Kreeger 2003). Canid rabies caused local population declines in Alaska (Ballard and Krausman 1997) and may temporarily limit population growth or distribution where another species, such as arctic foxes, act as a reservoir for the disease. Range expansion could provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, bovine tuberculosis, and possibly new diseases such as chronic wasting disease and West Nile virus, further emphasizing the need for vigilant disease monitoring programs.

Since several of the diseases and parasites are known to be spread by wolf-to-wolf contact, their incidence may increase if wolf densities increase. However, because wolf densities appear to be stabilizing (Service et al. 2006), wolf-to-wolf contacts will not likely lead to a continuing increase in disease prevalence. The wolves' exposure to these types of organisms may be most common outside of the core population areas, where domestic dogs are most common, and lowest in the core population areas because wolves tend to flow out of, not into, saturated habitats. Despite this dynamic, we assume that all NRM wolves have some exposure to all diseases and parasites in the system. Diseases or parasites have not been a significant threat to wolf population recovery in the NRM to date, nor are they likely to be.

In terms of future monitoring, each post-delisting management entity (State, tribal, and Federal) in the NRMs has wildlife agency specialists with sophisticated wildlife health monitoring protocols, including assistance from veterinarians, disease experts, and wildlife health laboratories. Each State has committed to monitor the NRM wolf population for significant disease and parasite problems. These State wildlife health programs often cooperate with Federal agencies and universities and usually have both reactive and proactive wildlife health monitoring protocols. Reactive strategies are the periodic intensive investigations after disease or parasite problems have been detected through routine management practices, such as pelt examination, reports from hunters, research projects, or population monitoring. Proactive strategies often involve ongoing routine investigation of wildlife health information through collection and analysis of blood and tissue samples from all or a sub-sample of wildlife carcasses or live animals that are handled.

Natural Predation—There are no wild animals that routinely prey on gray wolves (Ballard et al. 2003). Occasionally wolves have been killed by large prey such as elk, deer, bison, and moose (Mech and Nelson 1989; Smith et al. 2000, 2006; Mech and Peterson 2003), but those instances are few. Since the 1980s, wolves in the NRM have died from wounds they received while attacking prey on about a dozen occasions (Smith et al. 2006). That level of mortality could not significantly affect wolf population viability or stability.

Since NRM wolves have been monitored, only three wolves have been confirmed killed by other large predators. Two adults were killed by mountain lions, and one pup was killed by a grizzly bear (Jimenez et al. 2006). Wolves in the NRM inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves evolved with other large predators, and no other large predators in North America, except humans, have the potential to significantly impact wolf populations.

Other wolves are the largest cause of natural predation among wolves. Numerous mortalities have resulted from territorial conflicts between wolves and about 3 percent of the wolf population is removed annually by territorial conflict in the NRM wolf population (Smith, pers. comm., 2005). Wherever wolf packs occur, including the NRM, some low level of wolf mortality will result from territorial conflict. Wolf populations tend to regulate their own density. Consequently territorial conflict is highest in saturated habitats. That cause of mortality is infrequent and does not result in a level of mortality that would significantly affect a wolf population's viability in the NRMs (Smith, pers. comm., 2005).

Human-caused Predation—Wolves are very susceptible to human-caused mortality, especially in open habitats such as those that occur in the western United States (Bangs et al. 2004). An active eradication program is the sole reason that wolves were extirpated from the NRM (Weaver 1978). Humans kill wolves for a number of reasons. In all locations where people, livestock, and wolves coexist, some wolves are killed to resolve conflicts with livestock (Fritts et al. 2003). Occasionally, wolf killings are accidental (e.g., wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals) (Service et al. 2005). Some of these accidental killings are reported to State, Tribal, and Federal authorities.

However, many wolf killings are intentional, illegal, and are never reported to authorities. Wolves do not appear particularly wary of people or human activity, and that makes them very vulnerable to human-caused mortality (Mech and Boitani 2003). In the NRM, mountain topography concentrates both wolf and human activity in valley bottoms (Boyd and Pletscher 1999), especially in winter, which increases wolf exposure to human-caused mortality. The number of illegal killings is difficult to estimate and impossible to accurately determine because they generally occur in areas with few witnesses. Often the evidence has decayed by the time the wolf's carcass is discovered or the evidence is destroyed or concealed by the perpetrators. While human-caused mortality, including illegal killing, has not prevented population recovery, it has affected NRM wolf distribution (Bangs et al. 2004). In the past 20 years, no wolf packs have successfully established and persisted solely in open prairie or high desert habitats that are used for intensive agriculture production (Service et al. 2006).

As part of the interagency wolf monitoring program and various research projects, up to 30 percent of the NRM wolf population has been radio-collared since the 1980s (Service Weekly Wolf Reports 1995–2006). The annual survival rate of mature wolves in northwestern Montana and adjacent Canada from 1984–1995 was 80 percent (Pletscher et al. 1997); 84 percent for resident wolves and 66 percent for dispersers. That study found 84 percent of wolf mortality to be human-caused. Bangs et al. (1998) found similar statistics, with humans causing most wolf mortality. Radio-collared wolves in the largest blocks of remote habitat without livestock, such as central Idaho and YNP, had annual survival rates around 80 percent (Smith et al. 2006). Wolves outside of large remote areas had survival rates as low as 54 percent in some years (D. Smith pers. comm., 2006). This is among the lower end of adult wolf survival rates that an isolated population can sustain (Fuller et al. 2003).

These survival rates may be biased. Wolves are more likely to be radio-collared if they come into conflict with people, so the proportion of mortality caused by agency depredation control

actions could be overestimated by radio-telemetry data. People who illegally kill wolves may destroy the radio-collar, so the proportion of illegal mortality could be underestimated. However, wolf populations have continued to expand in the face of ongoing levels of human-caused mortality.

An ongoing preliminary analysis of the survival data among NRM radio-collared wolves (n=716) (D. Smith, pers. comm., 2006) from 1984 through 2004 indicates that about 26 percent of adult-sized wolves die every year, so annual adult survival averages about 74 percent, which typically allows wolf population growth (Keith 1983; Fuller et al. 2003). Humans caused just over 75 percent of all radio-collared wolf deaths (D. Smith, pers. comm., 2005). This type of analysis does not estimate the cause or rate of survival among pups younger than 7 months of age because they are too small to radio-collar. Agency control of problem wolves and illegal killing are the two largest causes of wolf death; combined these causes remove nearly 20 percent of the population annually and are responsible for a majority of all known wolf deaths (Smith et al. 2006).

Wolf mortality from agency control of problem wolves (which includes legal take by private individuals under defense of property regulations in rules promulgated under section 10(j) of the ESA) is estimated to remove around 10 percent of adult radio-collared wolves annually. From 1995–2005, 30 wolves were legally killed by private citizens under Federal defense of property regulations (Service 1994; 70 FR 1285) that, except for Wyoming, are similar to State laws that would take effect and direct take of problem wolves by both the public and agencies if wolves were delisted. Agency control removed 396 problem wolves from 1987–2005, indicating that private citizen take (about 7 percent) under State defense of property laws would not significantly increase the overall rate of problem wolf removal (Bangs et al. 2006). Wolves have been illegally killed by shooting and poisoning, and radio collar tracking data indicate that illegal killing is as common a cause of wolf death as agency control, illegal killing removes around 10 percent the adult wolf population annually (D. Smith, pers. comm. 2006). A comparison of the overall wolf population and the number of problem wolves removed indicates agency control removes, on average, about 7 percent of the overall wolf population annually (Service et al. 2006). Wolf mortality under State and Tribal defense of property regulations incidental to other legal activities, agency control of problem wolves, and legal hunting and trapping would be regulated by the States and Tribes (except in Wyoming) if the ESA's protections were removed. Regulated wolf mortality is to be managed so it would not reduce wolf numbers or distribution below recovery levels. This issue is discussed further below under Factor D.

The overall causes and rates of annual wolf mortality vary based upon a wide number of variables. Wolves in higher quality suitable habitat, such as remote, forested areas with few livestock (like National Parks), have higher survival rates. Wolves in unsuitable habitat and areas without substantial refugia have higher overall mortality rates. Mortality rates also vary depending on whether the wolves are resident pack members or dispersers, if they have a history with livestock depredation, or have been relocated (Bradley et al. 2005). However, overall wolf mortality has been low enough from 1987 until the present time that the wolf population in the NRM has steadily increased. It is now at least twice as numerous as needed to meet recovery levels and is distributed throughout most suitable habitat (Service 1987, 1994).

If the NRM wolf population were to be delisted, State management would likely increase the mortality rate outside National Parks, National Wildlife Refuges, and Tribal reservations, from its current level of about 26 percent annually (D. Smith, pers. comm. 2006). Wolf mortality as high as 50 percent annually may be sustainable (Fuller et al. 2003). The States, except Wyoming, have the regulatory authorization and commitment to regulate human-caused mortality so that the wolf population remains above its numerical and distributional recovery goals. This issue is discussed further below under Factor D.

In summary, human-caused mortality to adult radio-collared wolves in the NRMs, which averages about 20 percent per year (D. Smith, pers. comm. 2006), still allowed for rapid wolf population growth. The protection of wolves under the ESA promoted rapid initial wolf population growth in suitable habitat. The States, except for Wyoming, have committed to continue to regulate human-caused mortality so that it does not reduce the wolf population below recovery levels. Except for Wyoming, the States have adequate laws and regulations (see Factor D). Each post-delisting management entity (State, Tribal, and Federal) has experienced and professional wildlife staff to ensure those commitments can be accomplished.

D. The Adequacy or Inadequacy of Existing Regulatory Mechanisms

To address this factor, we compare the current regulatory mechanisms within Idaho, Montana, and Wyoming to the future mechanisms that would provide the framework for wolf management after delisting. State and Tribal programs are designed to maintain a recovered wolf population while minimizing damage to that population by allowing for removal of wolves in areas of chronic conflict or in unsuitable habitat. The three States have proposed wolf management plans that would govern how wolves are to be managed if delisted. As discussed below, we have approved Idaho's and Montana's plans because these States have proposed management objectives that would likely maintain at least 10 breeding pairs and 100 wolves per State by managing for a safety margin of 15 packs in each State well into the foreseeable future. However, we have been unable to approve the Wyoming law and plan because it does not provide for sustainable levels of protection (Williams 2004).

Current Wolf Management

The 1980 and 1987 NRM wolf recovery plans (Service 1980, 1987) recognized that conflict with livestock was the major reason that wolves were extirpated and that management of conflicts was a necessary component of wolf restoration. The plans also recognized that control of problem wolves was necessary to maintain local public tolerance of wolves and that removal of so few wolves would not prevent the wolf population from achieving recovery. In 1988, the Service developed an interim wolf control plan that applied to Montana and Wyoming (Service 1988); the plan was amended in 1990 to include Idaho and eastern Washington (Service 1990). We analyzed the effectiveness of those plans in 1999, and revised our guidelines for management of problem wolves listed as endangered (Service 1999). Evidence showed that most wolves do not attack livestock, especially larger livestock such as adult horses and cattle, but wolf presence around livestock will result in some level of depredation (Bangs et al. 2005). Therefore, we developed a set of guidelines under which depredating wolves could be harassed, moved, or killed by agency officials (Service 1999). The control plans were based on the premise that agency wolf control actions would affect only a small number of wolves, but would sustain public tolerance for non-depredating wolves, thus enhancing the chances for

successful population recovery (Mech 1995). Our assumptions have proven correct, as wolf depredation on livestock and subsequent agency control actions have remained at low levels, and the wolf population has expanded its distribution and numbers far beyond, and more quickly than, earlier predictions (Service 1994; Service et al. 2006).

The conflict between wolves and livestock has resulted in the average annual removal of 7–10 percent of the wolf population (Bangs et al. 1995, 2004, 2005; Service et al. 2006; D. Smith, pers. comm., 2005). We estimate illegal killing removed another 10 percent of the wolf population, and accidental and unintentional human-caused deaths have removed 1 percent of the population annually (D. Smith pers. comm., 2006). Even with this level of mortality, populations have expanded rapidly (Service et al. 2006).

Wolves within the NRMs are classified as either endangered or members of a nonessential experimental population under section 10(j) of the ESA. Wolf control in the experimental population areas, as directed by the experimental population regulations (59 FR 60252, November 22, 1994; 70 FR 1285, January 6, 2005), is more liberal than in the areas where wolves are listed as endangered. These regulations specify which wolves can be designated as problem animals, what forms of control are allowed, and who can carry out control activities. In the area where wolves are listed as endangered, only designated agencies may conduct control under the conservative protocols established by the Service's (1999) wolf control plan.

Current wolf control consists of the minimum actions believed necessary to reduce further depredations, and includes a wide variety of nonlethal and lethal measures (Bangs and Shivik 2001; Bangs et al. 2004, 2005, 2006 in press; Bradley 2004). However, while helpful, nonlethal methods to reduce wolf-livestock conflict are often only temporarily effective (Bangs and Shivik 2001; Bangs et al. 2004, 2005, 2006 in press; Woodroffe et al. 2005) and, by themselves, do not offer effective long-term solutions to chronic livestock damage. For instance, relocation of problem wolves is typically ineffective at reducing conflicts or allowing problem wolves to contribute to population recovery if vacant suitable habitat is not available (Bradley et al. 2005). Since 2001, all suitable areas for wolves have been filled with resident packs, and consequently most wolves that repeatedly depredate on livestock are now removed from the population (Service et al. 2006). Between 1987 and 2006, we removed 396 wolves and relocated wolves 117 times to reduce the potential for chronic conflicts with livestock (Service et al. 2006).

At the end of 2005, our analysis indicated that most of the suitable wolf habitat in the NRMs was occupied by resident wolf packs (Service et al. 2006). NRM wolf distribution has remained largely unchanged since the end of 2000 (Service et al. 2001–2006). If the wolf population continues to expand, wolves will increasingly disperse into unsuitable areas that are intensively used for livestock production. A higher percentage of wolves in those areas will become involved in conflicts with livestock, and a higher percentage of those wolves will probably be removed to reduce future livestock damage. Human-caused mortality would have to remove 34 percent or more of the wolf population annually before population growth would cease (Fuller et al. 2003). Preliminary wolf survival data from radio-telemetry studies suggests that adult wolf mortality resulting from conflict could be doubled to an average of 14–20 percent annually and still not significantly impact wolf population recovery (D. Smith, pers. comm., 2005). The State management laws and plans would balance the level of wolf mortality with the recovery goals in each State.

One of the most important factors affecting the level of wolf/livestock conflict and the need for wolf control is the availability of wild ungulate prey. Important wild ungulate prey in the NRMs are elk, white-tailed deer, mule deer, moose, and (only in the GYA) bison. A large decline in native ungulate populations could result in an increase in conflicts with livestock and the level of wolf control. However, we do not forecast changes in ungulate populations of a magnitude that could jeopardize wolf recovery. Maintenance of wild ungulate habitat is discussed under Factor A above.

Changes in livestock availability also have changed the rate of livestock depredations by wolves, thus necessitating control actions. Nearly 100,000 wild ungulates were estimated in the GYA and northwestern Montana, and 250,000 in central Idaho where wolf packs currently exist (Service 1994). However, domestic ungulates, primarily cattle and sheep, are typically twice as numerous in those same areas, even on public lands (Service 1994). The only areas large enough to support wolf packs where the prey is mostly wild ungulates are the GYA, Glacier National Park, adjacent USFS Wilderness areas, and parts of Wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle (Bradley 2004). This overlap between wolf pack territories and livestock has led to the conflict between wolves and livestock, but depredation control practices discourage chronic use of livestock as prey.

Other management control tools used for managing wolf conflict are using shoot-on-site permits to private landowners and allowing take of wolves in the act of attacking or molesting livestock, pets, or other domestic animals. Since 1995, only 30 experimental population wolves (7–8 percent of the 396 wolves removed for livestock depredations from 1987 to 2005) were legally shot by private landowners under shoot-on-sight permits in areas of chronic livestock depredation or as they attacked or harassed livestock (Bangs et al. 2006).

In the NRM wolf recovery area, reports of suspected wolf-caused damage to livestock are investigated by the United States Department of Agriculture's Animal and Plant Health Inspection Service, Wildlife Services (USDA–WS) specialists using standard techniques (Roy and Dorrance 1976; Fritts et al. 1992; Paul and Gipson 1994). If the investigation confirms wolf involvement, USDA–WS specialists conduct the wolf control measures that we specify. If the incident occurs in Idaho, USDA–WS also coordinates with Nez Perce Tribal personnel. Since the beginning of 2005, USDA–WS has coordinated and conducted wolf control in cooperation with MFWP and, since the beginning of 2006, with IDFG, who lead wolf management in their States under a cooperative agreement and a Memorandum of Agreement with the Service, respectively. All investigations of suspected wolf damage on Tribal lands and wolf control are conducted in full cooperation with, and under approval by, the affected Tribe. A private program has compensated ranchers full market value for confirmed, and one-half market value for probable, wolf kills of livestock and livestock guard animals (Defenders 2006; Fischer 1989). That program paid an average of about $75,000 annually from 2000 to 2005 (Defenders 2006).

Regulatory Assurances Within Montana, Idaho, and Wyoming

In 1999, the Governors of Montana, Idaho, and Wyoming agreed that regional coordination in wolf management planning among the States, Tribes, and other jurisdictions would be necessary to ensure timely delisting.

They signed a Memorandum of Understanding to facilitate cooperation among the three States in developing adequate State wolf management plans so that delisting could proceed. In this agreement, all three States committed to maintain at least 10 breeding pairs and 100 wolves per State by managing for a safety margin of 15 packs in each State. The States were to develop their pack definitions to approximate the current breeding pair definition. Governors from the three States renewed that agreement in April 2002.

The wolf population in the NRM achieved its numerical and distributional recovery goals at the end of 2000. The temporal portion of the recovery goal was achieved at the end of 2002. Because the primary threat to the wolf population (human predation and other take) still has the potential to significantly impact wolf populations if not adequately managed, the Service needs regulatory assurances that the States will manage for sustainable mortality levels before we can remove ESA protections. Therefore, we requested that the States of Montana, Idaho, and Wyoming prepare State wolf management plans to demonstrate how they would manage wolves after the protections of the ESA were removed. The Service provided varying degrees of funding and assistance to the States while they developed their wolf management plans.

To provide the necessary regulatory assurances after delisting, we encouraged Montana, Idaho, and Wyoming to regulate human-caused mortality of wolves. Several issues key to our approval of State plans included: Regulations that would allow regulatory control of take; a pack definition biologically consistent with the Service's definition of a breeding pair; and the ability to realistically manage State wolf populations and the number of pairs/packs above recovery levels.

The final Service determination of the adequacy of those three State management plans was based on the combination of Service knowledge of State law, the State management plans, wolf biology, our experience managing wolves for the last 20 years, peer review of the State plans, and the States' response to peer review. Those State plans can be viewed at *http://westerngraywolf.fws.gov/*. After our analysis of the State laws, the State plans, and other factors, the Service determined that Montana and Idaho's laws and wolf management plans were adequate to assure the Service that their share of the NRM wolf population would be maintained above recovery levels. Therefore, we approved those two State plans. However, we determined that problems with the Wyoming legislation and plan, and inconsistencies between the law and management plan, did not allow us to approve Wyoming's approach to wolf management (Williams, 2004).

Montana—The gray wolf was listed under the Montana Nongame and Endangered Species Conservation Act of 1973 (87–5–101 MCA). Senate Bill 163, passed by the Montana Legislature and signed into law by the Governor in 2001, establishes the current legal status for wolves in Montana. Upon Federal delisting, wolves would be classified and protected under Montana law as a ''Species in Need of Management'' (87–5–101 to 87–5–123). Such species are primarily managed through regulation of all forms of human-caused mortality in a manner similar to trophy game animals like mountain lions and black bears. The MFWP and the Commission would then finalize more detailed administrative rules, as is typically done for other resident wildlife, but they must be consistent with the approved Montana wolf plan and State law. Classification as a ''Species in Need of Management'' and the associated administrative rules under Montana State law create the legal mechanism to protect wolves and regulate human-caused mortality beyond the immediate defense of life/property situations. Some illegal human-caused mortality would still occur, but is to be prosecuted under State law and Commission regulations, which would tend to minimize any potential effect on the wolf population.

In 2001, the Governor of Montana appointed the Montana Wolf Management Advisory Council to advise MFWP regarding wolf management after the species is removed from the lists of Federal and State-protected species. In August 2003, MFWP completed a final EIS and recommended that the Updated Advisory Council alternative be selected as Montana's Final Gray Wolf Conservation and Management Plan (Montana 2003). See *http://www.fwp.state.mt.us* to view the MFWP Final EIS and the Montana Gray Wolf Conservation and Management Plan.

Under the MFWP management plan, the wolf population would be maintained above the recovery level of 10 breeding pairs in Montana by managing for a safety margin of 15 packs. Montana would manage problem wolves in a manner similar to the control program currently being utilized in the experimental population area in southern Montana, whereby landowners and livestock producers on public land can shoot wolves seen attacking livestock or dogs, and agency control of problem wolves is incremental and in response to confirmed depredations. State management of conflicts would become more protective of wolves and no public hunting would be allowed when there were fewer than 15 packs. Wolves would not be deliberately confined to any specific areas of Montana, but their distribution and numbers would be managed adaptively based on ecological factors, wolf population status, conflict mitigation, and human social tolerance. The MFWP plan commits to implement its management framework in a manner that encourages connectivity among wolf populations in Canada, Idaho, GYA, and Montana to maintain the overall metapopulation structure. Montana's plan (Montana 2003) predicts that under State management, the wolf population would increase to between 328 and 657 wolves with approximately 27 to 54 breeding pairs by 2015.

An important ecological factor determining wolf distribution in Montana is the availability and distribution of wild ungulates. Montana has a rich, diverse, and widely distributed prey base on both public and private lands. The MFWP has and will continue to manage wild ungulates according to Commission-approved policy direction and species management plans. The plans typically describe a management philosophy that protects the long-term sustainability of the ungulate populations, allows recreational hunting of surplus game, and aims to keep the population within management objectives based on ecological and social considerations. The MFWP takes a proactive approach to integrate management of ungulates and carnivores. Ungulate harvest is to be balanced with maintaining sufficient prey populations to sustain Montana's segment of a recovered wolf population. Ongoing efforts to monitor populations of both ungulates and wolves will provide credible, scientific information for wildlife management decisions.

Wolves would be managed in the same manner as other resident wildlife designated as trophy game, whereby human-caused mortality would be regulated by methods of take, seasons, bag limits, areas, and conditions under which defense of property take could occur. In addition all agency control of problem wolves would be directed by MFWP. All forms of wolf take would be more restricted when there are 15 or fewer packs in the State and less restricted when there are more than 15 packs. By managing for 15 packs, MFWP would maintain a safety margin to assure that the Montana segment of the wolf population would be maintained

above the 10 breeding pair and 100 wolf minimum population goal. Wolf management would include population monitoring, routine analysis of population health, management in concert with prey populations, law enforcement, control of domestic animal/human conflicts, consideration of a wolf-damage compensation program, research, and information and public outreach.

State regulations would allow agency management of problem wolves by MFWP and USDA–WS; take by private citizens in defense of private property; and, when the population is above 15 packs, some regulated hunting of wolves. Montana wildlife regulations allowing take in defense of private property are similar to the 2005 experimental population regulations, whereby landowners and livestock grazing permittees can shoot wolves seen attacking or molesting livestock or pets as long as such incidents are reported promptly and subsequent investigations confirm that livestock were being attacked by wolves. The MFWP has enlisted and directed USDA–WS in problem wolf management, just as the Service has done since 1987.

When the Service reviewed and approved the Montana wolf plan, we stated that Montana's wolf management plan would maintain a recovered wolf population and minimize conflicts with other traditional activities in Montana's landscape. The Service has every confidence that Montana would implement the commitments it has made in its current laws, regulations, and wolf plan. In June 2005, MFWP signed a Cooperative Agreement with the Service, and it now manages all wolves in Montana subject to general oversight by the Service.

Idaho—The Idaho Fish and Game Commission (Idaho Commission) has authority to classify wildlife under Idaho Code 36–104(b) and 36–201. The gray wolf was classified as endangered until March 2005, when the Idaho Commission reclassified the species as a big game animal under Idaho Administrative Procedures Act 13.01.06.100.01.d. The big game classification would take effect upon Federal delisting, and until then, wolves will be managed under Federal status. As a big game animal, State regulations would adjust human-caused wolf mortality to ensure recovery levels are exceeded. Title 36 of the Idaho statutes currently has penalties associated with illegal take of big game animals. These rules are consistent with the legislatively adopted Idaho Wolf Conservation and Management Plan (IWCMP) (IWCMP 2002) and big game hunting restrictions currently in place. The IWCMP states that wolves will be protected against illegal take as a big game animal under Idaho Code 36–1402, 36–1404, and 36–202(h).

The IWCMP was written with the assistance and leadership of the Wolf Oversight Committee established in 1992 by the Idaho Legislature. Many special interest groups including legislators, sportsmen, livestock producers, conservationists, and IDFG personnel were involved in the development of the IWCMP. The Service provided technical advice to the Committee and reviewed numerous drafts before the IWCMP was finalized. In March 2002, the IWCMP was adopted by joint resolution of the Idaho Legislature. The IWCMP can be found at: *http://www.fishandgame.idaho.gov/cms/wildlife/wolves/wolf_plan.pdf.*

The IWCMP calls for IDFG to be the primary manager of wolves after delisting; like Montana, to maintain a minimum of 15 packs of wolves to maintain a substantial margin of safety over the 10 breeding pair minimum; and to manage them as a viable self-sustaining population that will never require relisting under the ESA. Wolf take would be more liberal if there are more than 15 packs and more conservative if there are fewer than 15 packs in Idaho. The wolf population would be managed by defense of property regulations similar to those now in effect under the ESA. Public harvest would be incorporated as a management tool when there are 15 or more packs in Idaho to help mitigate conflicts with livestock producers or big game populations that outfitters, guides, and others hunt. The IWCMP allows IDFG to classify the wolf as a big game animal or furbearer, or to assign a special classification of predator, so that human-caused mortality can be regulated. In March 2005, the Idaho Commission proposed that, upon delisting, the wolf would be classified as a big game animal with the intent of managing wolves similar to black bears and mountain lions, including regulated public harvest when populations are above 15 packs. The IWCMP calls for the State to coordinate with USDA–WS to manage depredating wolves depending on the number of wolves in the State. It also calls for a balanced educational effort.

Elk and deer populations are managed to meet biological and social objectives for each herd unit according to the State's species management plans. The IDFG will manage both ungulates and carnivores, including wolves, to maintain viable populations of each. Ungulate harvest would be focused on maintaining sufficient prey populations to sustain viable wolf and other carnivore populations and hunting. IDFG has conducted research to better understand the impacts of wolves and their relationships to ungulate population sizes and distribution so that regulated take of wolves can be used to assist in management of ungulate populations and vice versa.

The Mule Deer Initiative in southeast Idaho was implemented by IDFG in 2005, to restore and improve mule deer populations. Though most of the initiative lies outside current wolf range and suitable wolf habitat in Idaho, improving ungulate populations and hunter success will decrease negative attitudes toward wolves. When mule deer increase, some wolves may move into the areas that are being highlighted under the initiative. Habitat improvements within much of southeast Idaho would focus on improving mule deer conditions. The Clearwater Elk Initiative also is an attempt to improve elk numbers in the area of the Clearwater Region in north Idaho where currently IDFG has concerns about the health of that once abundant elk herd.

Wolves are currently classified as endangered under Idaho State law, but if delisted under the ESA, they would be classified and protected as big game under Idaho fish and game code. Human-caused mortality would be regulated as directed by the IWCMP to maintain a recovered wolf population. The Service has every confidence Idaho would implement the commitments it has made in its current laws, regulations, and wolf plan. In January 2006, the Governor of Idaho signed a Memorandum of Understanding with the Secretary of the Interior that provided the IDFG the power to manage all Idaho wolves.

Wyoming—In 2003, Wyoming passed a very specific and detailed State law that would designate wolves as ''trophy game'' in YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, and the adjacent USFS designated Wilderness areas (Wyoming House Bill 0229) once the wolf is delisted from the ESA. A large portion of the area permanently designated as ''trophy game'' actually has little to no value to wolf packs because it is not suitable habitat for wolves and, thus, is rarely used (GYA wilderness, and much of eastern and southern YNP) (Jimenez 2006). Many of the wilderness areas, for example, are rarely used by wolves because of their high elevation, deep snow, and low ungulate productivity. The ''trophy game'' status would allow the Wyoming Game and Fish

Commission (Wyoming Commission) and Wyoming Game and Fish Department (WGFD) to regulate methods of take, hunting seasons, types of allowed take, and numbers of wolves that could be killed. Wolves in other parts of Wyoming could be classified as trophy game only when populations dipped below 7 packs outside of the National Park/Wilderness units and there were fewer than 15 packs in Wyoming. In this case, the Wyoming Commission would determine how large an area to designate as trophy game in order to reasonably ensure seven packs are located in Wyoming, primarily outside the National Park/Wilderness units, at the end of the calendar year.

The State law requires that when there are 7 or more wolf packs in Wyoming 'primarily' (this term is undefined) outside of National Park/Wilderness areas or there are 15 or more wolf packs anywhere in Wyoming, all wolves in Wyoming outside of the National Park/Wilderness units would be classified as predatory animals. When wolves are classified as a ''predatory animal'' they are under the jurisdiction of the Wyoming Department of Agriculture and may be taken by anyone, anywhere in the predatory animal area, at any time, without limit, and by any means (including shoot-on-sight; baiting; possible limited use of poisons; bounties and wolf-killing contests; locating and killing pups in dens including use of explosives and gas cartridges; trapping; snaring; aerial gunning; and use of other mechanized vehicles to locate or chase wolves down). Wolves are very susceptible to unregulated human-caused mortality, which would be the situation if they were to be designated as predatory animals. Wolves are unlike coyotes in that wolf behavior and reproductive biology results in wolves being extirpated in the face of extensive human-caused mortality. These types and levels of take would most likely prevent wolf packs from persisting in areas of Wyoming where they are classified as predatory, even in otherwise suitable habitat. Moreover, because many southern and eastern YNP packs leave the National Park/Wilderness areas in winter and regularly utilize habitat on non-wilderness public lands and some private lands, these packs would be subject to unregulated and unlimited human-caused mortality to the extent wolves are classified as predatory in these lands.

The above restrictions present the very real possibility that Wyoming would not be able to maintain its share of a recovered wolf population. For example, in 2004, under Wyoming Law, the YNP wolf population (171 wolves in 16 confirmed breeding pairs) would have triggered predatory status outside the National Parks/Wilderness areas and allowed for possible elimination of all wolf packs outside YNP (89 wolves in 8 breeding pairs) (Service et al. 2005). In 2005, disease and other factors caused a natural reduction of the YNP wolf population to 118 wolves in 7 breeding pairs (Service et al. 2006). The year 2005 marked the first time successful wolf packs outside the National Park/Wilderness areas (134 wolves in 9 breeding pairs) contributed more to Wyoming's overall share of the recovered NRM wolf population than those in YNP (118 wolves in 7 breeding pairs) (Service et al. 2005, 2006). However, if all wolves outside the National Parks/Wilderness areas had been eliminated in 2004 or early 2005, the Wyoming segment of the NRM wolf population would have fallen 3 breeding pairs below the 10 breeding pair recovery level in Wyoming by the end of 2005 (Service et al. 2006).

The State law and plan calls for intensive monitoring using standard methods and a review of the Wyoming wolf population's status every 90 days. While WGFD would have authority to manage wolves when they are classified as trophy game, that authority would end if the number of packs increased to 15 in the State or if there were 7 packs primarily outside the National Park/Wilderness units (even if there were fewer than 15 packs in the State). In essence, as soon as WGFD met their management objective, their management authority would be removed by State law within a maximum of 90 days. Every time the wolf population exceeded the minimum levels, all wolves outside the National Park/Wilderness units would be designated as predatory animals and and would be subjected to unregulated human-caused mortality which could drive the wolf population back down to, or below, the minimum level. We believe the real potential for flipping back and forth between predatory animal status and trophy game status would result in a program that would be nearly impossible to administer and enforce because of widespread public confusion about the changing wolf status.

Additionally, despite assurances that WGFD would regulate human-caused mortality if wolf populations fell below minimum levels, WGFD likely would still control problem wolves and their efforts at regulating human-caused mortality under those circumstances, particularly with the likely public confusion over the status of the wolf, do not seem likely to be highly effective. In other words, whenever the wolf population would became low enough that WGFD would have the legal authority to regulate some forms of wolf mortality, WGFD would have a limited ability to prevent further declines in the wolf population. Attempting to manage a wolf population that is constantly maintained at minimum levels would likely result in the wolf population falling below recovery levels due to factors beyond WGFD's control.

An essential element to achieving the Service's recovery goal is our definition of a breeding pair: An adult male and an adult female wolf that have produced at least two pups during the previous breeding season that survived until December 31 of that year. Wyoming State law defined a pack as simply five wolves traveling together regardless of the group's composition. According to this definition, these wolves could be with or without offspring and could be traveling together at any time of year. The Wyoming plan adopted the same definition of pack that is in State law. Wyoming's State law and management plan also allows a pack of 10 or more wolves with 2 or 3 breeding females to count as 2 or 3 packs, respectively. The Wyoming definition of a pack and the 90-day evaluation of population status is inconsistent with wolf biology and how the Service has, and will, measure wolf population recovery. Wolf packs only breed and produce young once a year (April), so a wolf population can only increase once a year. If a pack's breeding adults are killed between February and April, the pack will not produce young for at least another year. If pups are killed, no more will be produced for another year. The Wyoming definition of a wolf pack would lead to greater use of the predatory animal designation and a minimal wolf population going into summer, when diseases and most human-caused wolf mortality occur, including that which WGFD could not regulate (control and illegal killing) even under trophy game status. For instance, there might be 15 groups of 5 or more wolves (which may or may not be ''breeding pairs'') going into summer, but as human-mortality and other mortality factors continued to operate, the population could decline below recovery levels at a time when the only opportunity for the population to recover that year had passed. In addition, 15 groups of 5 wolves of unknown status that are traveling together in winter is only equal to 8.4 breeding pairs because Wyoming data show that groups of 5 wolves traveling

together in winter only have a 0.56 probability of being a breeding pair in Wyoming (Ausband 2006).

Consider the following examples. First, in 1999 and 2005, pup production and survival declined significantly (Service et al. 2000, 2006). Because few pups survived, five wolves traveling together in winter would not have equated to an adult male and female with two pups on December 31. Second, from 2002 to 2005, mange infested some packs in Montana and Wyoming causing them to not survive the winter. In this situation, if five wolves traveling together in summer or fall were known to have mange, it would be incorrect to rely on them as a breeding pair since they would be unlikely to survive until December 31. Third, at the end of 2005, there were 16 breeding pairs in Wyoming under the current Service definition (discussed in the Recovery by State section above). But, under Wyoming's definition, even if it were used in mid-winter, there would have been 24 packs counted as breeding pairs, an overestimate of 50 percent. If Wyoming had been managing for 15 ''packs'' as they define them, there could have been fewer than 10 actual ''breeding pairs'' in Wyoming.

The State wolf management plan generally attempts to implement the State law, with some notable exceptions. Those exceptions make the plan appear more likely to conserve the wolf population above recovery levels than the law allows. Recognizing these inconsistencies, the WGFD Director requested that the Wyoming Attorney General's Office review Wyoming law regarding the classification of gray wolves as trophy game animals (Wyoming Attorney General in litt. 2003). The Attorney General's response stated that ''the plain language of the Enrolled Act is in conflict and thus suffers from internal ambiguity.'' The letter states:

> The noted ambiguities arise when there are either: (1) Less than seven (7) packs outside of the Parks, but at least fifteen (15) packs in the state, including the Parks; or, (2) at least seven (7) packs outside the Parks, but less than fifteen (15) packs in the state, including the Parks. W.S. § 23–1–304(b)(ii) states that the Commission shall maintain so-called ''dual'' classification, that is, maintain classification of the gray wolf as a predatory animal ''if it determines there were at least seven (7) packs of gray wolves * * * primarily outside of [the Parks] * * * or at least fifteen (15) packs within this state, including [the Parks] * * *.'' (Emphasis added). If this sentence is read without consideration of the stated legislative goals, the following scenarios can occur: Scenario #1: 10 packs inside the Parks & 5 packs outside the Parks. Classify as a predatory animal because at least 15 packs in the state. *This scenario leaves less than 7 packs outside of the Parks.* Scenario #2: 3 packs inside the Parks & 10 packs outside the Parks. Classify as a predatory animal because at least 7 packs outside the Parks. *This scenario leaves less than 15 packs total in the state.* These scenarios defeat the clearly identified legislative goals of maintenance of fifteen (15) packs in the state and maintenance of seven (7) packs outside the Parks.

The letter concludes:

> The goals specified by the legislation may be preserved if W.S. 23–1–304(b) is construed in light of those legislatively defined goals. Stated another way, the language of W.S. 23–1–304(b) must not be read so restrictively as to prevent the Game and Fish Department from crafting a state management plan for gray wolves which achieves delisting and satisfies the other stated legislative goals. The alternative interpretation, constructing the language of W.S. 23–1–304(b) in its most restrictive light, will defeat these clearly identified legislative goals. Such a result would be contrary to Wyoming law.

The Wyoming Attorney General's Office thus determined that the Wyoming State law is internally inconsistent as a key operative provision (the requirement in § 23–1–304(b)(ii)) to classify gray wolves as predatory if there are at least seven packs primarily outside the Parks or at least 15 packs within the entire state) conflicts with the legislative purpose of providing appropriate management to facilitate delisting of the wolf. The Attorney General's Office concluded that § 23–1–304(b) should be construed in light of this legislative goal to allow WGFD to craft a management plan that is inconsistent with the predatory animal classification requirements of § 304(b) if that is what is needed to prepare a plan that would achieve delisting. Notwithstanding the Attorney General's opinion, we are concerned that WGFD would have no authority to act contrary to the categorical requirements of an operative provision of the state law.

Furthermore, in the fall of 2003, the Service, in cooperation with the affected States, selected 12 recognized North American experts in wolf biology and management to review the Montana, Idaho, and Wyoming State wolf management plans. Eleven reviews were completed. While Wyoming's Plan was thought to be the most extreme in terms of wolf control and minimizing wolf numbers and distribution, some reviewers thought it was adequate, primarily because they assumed in error that the Wyoming definition of a pack was equivalent to the Service's current breeding pair standard (Ausband 2006), thought that YNP was likely to carry most of Wyoming's share of the wolf population, and assumed that the commitments in the Plan could be implemented under State law. As noted above, the Service now views these three assumptions as unrealistic. Other important developments since these peer reviews include recent Federal District court rulings in Oregon and Vermont emphasizing the importance of suitable habitat in calculating the significant portion of the range occupied by wolves prior to changing the listing status, the decline of wolves in YNP, and an improved method of estimating wolf population status that demonstrated that earlier attempts to correlate pack size in winter with the probability of being a breeding pair were mathematically incorrect and are clearly inconsistent with the both Service's previous and current breeding pair standards.

The potential success of the current Wyoming law and wolf plan to maintain its share of wolves in the NRM is greatly dependant on YNP having at least eight breeding pairs. However, recent experience tells us this is an unrealistic expectation. In 2005, wolf numbers substantially declined in YNP (Service et al. 2006). CPV and/or distemper are suspected of causing low pup survival in the Park, and pack conflicts over territory appear to have reduced the number of wolves and packs in YNP from 16 breeding pairs and 171 wolves in 2004, to 7 breeding pairs and 118 wolves in 2005 (Service et al. 2006). In 2005, if each group of 5 or more wolves had been counted as a pack as Wyoming law defines a pack, there would have been a total of 24 ''packs'' in Wyoming, 11 inside YNP, and 13 outside YNP. It is likely that predatory animal status, if it had been implemented prior to the end of 2005, would have quickly reduced or eliminated the number and size of wolf packs outside YNP going into the summer and fall of 2005. The Wyoming segment of the wolf population would most likely have fallen below 10 breeding pairs (to only the 7 breeding pairs in YNP), and the distribution of wolf packs in suitable habitat in Wyoming outside the National Park/Wilderness units would have been significantly reduced. This could have occurred because the State definition of five wolves traveling together as constituting a pack would have prevented the WGFD Commission from enlarging the area designated as trophy game even though there could have been only 7 breeding pairs in the state. Also, Wyoming would have counted most wolf packs in YNP as breeding pairs even though they were

not because they experienced reproductive failure in 2005.

Wyoming State law allows no regulation of human-caused mortality until the population falls below 7 packs outside the Parks and there are less than 15 packs in Wyoming. The Wyoming Petition's claim that such extensive removal of wolves is unlikely, even if they receive no legal protection, is not supported given the past history of wolf extirpation. The WGFD needs to be given the regulatory authority to adaptively manage the species throughout suitable habitat in Wyoming, outside of the National Park/Wilderness units, to account for wide fluctuations in wolf population levels.

In conclusion, Wyoming State law defines a wolf pack in a manner that has little biological relationship to wolf recovery goals or population viability, minimizes opportunities for adaptive professional wildlife management by WGFD, confines wolf packs primarily to YNP, depends on at least eight National Park/Wilderness wolf packs to constitute most of the wolves in Wyoming, minimizes the number and distribution of wolves and wolf packs outside the National Park/Wilderness areas, and could lead the Wyoming wolf population to quickly slide below recovery goals. Additionally, Wyoming State law would prohibit WGFD from responding in a timely and effective manner should modification in State management of wolves be needed to prevent the population from falling below the recovery levels of at least 10 breeding pairs and 100 wolves for each of the 3 core States. Based on these inadequacies, the Service cannot reasonably be assured that Wyoming's State law would allow its wolf management plan to maintain the Wyoming segment of the wolf population above recovery levels or maintain an adequate distribution of the Wyoming segment of the tri-State wolf population.

Tribal Plans—Currently no wolf packs live on, or are entirely dependent on, Tribal lands for their existence in the NRMs. About 4,696 km^2 (1,813 mi^2) (2 percent) of all occupied habitat in the NRMs is Tribal land (Service 2006). Therefore, while Tribal lands can contribute some habitat for wolf packs in the NRM, they will be relatively unimportant to maintaining a recovered wolf population in the NRMs. Many wolf packs live in areas of public land where Tribes have various treaty rights, such as wildlife harvest. Montana and Idaho propose to incorporate Tribal harvest into their assessment of the potential surplus of wolves available for public harvest in each State, each year, to assure that the wolf population is maintained above recovery levels. Utilization of those Tribal treaty rights will not significantly impact the wolf population or reduce it below recovery levels because a small portion of the wolf population could be affected by Tribal harvest or lives in areas subject to Tribal harvest rights.

The overall regulatory framework analyzed depends entirely on State-led management of wolves that are primarily on lands where resident wildlife is traditionally managed primarily by the States. Any wolves that may establish themselves on Tribal lands will be in addition to those managed by the States outside Tribal reservations. At this point in time, only the Nez Perce Tribe has a wolf management plan that was approved by the Service, but that plan only applied to listed wolves, and it was reviewed so that the Service could determine whether the Tribe could take a portion of the responsibility for wolf monitoring and management in Idaho under the 1994 special regulation under section 10(j) of the ESA. No other Tribe has submitted a wolf management plan. In November 2005, the Service requested information from all the Tribes in the NRMs regarding their Tribal regulations and any other relevant information regarding Tribal management or concerns about wolves (Bangs November 17, 2004). All responses were reviewed, and Tribal comments were incorporated into this notice.

Summary—Montana and Idaho have proposed to regulate wolf mortality over conflicts with livestock after delisting in a manner similar to that used by the Service to reduce conflicts with private property, and that would assure that the wolf population would be maintained above recovery levels. These two State plans have committed to using a definition of a wolf pack that would approximate the Service's current breeding pair definition. Based on that definition, they have committed to maintaining at least 10 breeding pairs and 100 wolves per State by managing for a safety margin of 15 packs in each State. These States would control problem wolves in a manner similar to that currently used by the Service (1987, 1994, 1999; 70 FR 1285) and use adaptive management principles to regulate and balance wolf population size and distribution with livestock conflict and public tolerance. When wolf populations are above State management objectives for 15 packs, wolf control measures may be more liberal. When wolf populations are below 15 packs, wolf control as directed by each State would be more conservative.

Private take of problem wolves under State regulations in Montana and Idaho would replace some agency control, but we believe this would not dramatically increase the overall numbers of problem wolves killed each year because of conflicts with livestock. Under Wyoming State law, the predatory animal status allows all wolves, including pups, to be killed by any means (except most poisons), anywhere in the predatory animal area, without limit, at any time, for any reason, and regardless of any direct or potential threat to livestock. Such unregulated take could eliminate wolves from some otherwise suitable habitat in northwestern Wyoming and reduce population levels to a point at which wolves in the NRMs are, within the foreseeable future, likely to become in danger of extinction throughout a significant portion of their range.

In contrast to the Service recovery program, currently approved State and Tribal management programs are able to incorporate regulated public harvest. Only when wolf populations in Montana and Idaho are safely above recovery levels of 15 or more packs, will regulated harvest be utilized to help manage wolf distribution and numbers to minimize conflicts with humans. Wyoming State law and management also should meet this requirement. Each of the three core States routinely uses regulated public harvest to help successfully manage and conserve other large predators and wild ungulates under their authority, and should use similar programs to manage wolf populations safely above recovery levels when there are more than 15 packs in their State.

The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintain them at densities that would easily support a recovered wolf population. They, and Federal land management agencies, will continue to manage for high ungulate populations in the foreseeable future. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population.

In accordance with the requirements of the ESA, the Service carefully reviewed Wyoming's July 2005 petition to delist; its defense of Wyoming's regulatory framework and the reasons why Wyoming believes we should consider Wyoming State law and its wolf plan as an adequate regulatory mechanism to propose delisting; a May 22, 2003, letter from the Wyoming

Office of the Attorney General regarding the relationship between the law and the plan; public comments; Wyoming's further defense of these issues in its April 6, 2006, comments on the Service's ANPR (71 FR 6634); and all other available information on this issue. At this time, we continue to determine that current State law and the State wolf plan in Wyoming do not provide adequate regulatory assurances that Wyoming's share of the NRM wolf population would be maintained into the foreseeable future and thus that the overall wolf population's distribution and numbers would be maintained above recovery levels. However, if Wyoming modified its State law and its wolf management plan to address the inadequacies described above and the Service approved them, we would then reevaluate whether to propose the delisting of wolves throughout the NRMs.

We are confident that liberal WGFD-regulated public hunting and trapping seasons alone could prevent wolf packs from forming throughout most of the unsuitable habitat in Wyoming, thus alleviating the State concerns expressed in the petition concerning excessive livestock damage, compensation for livestock damage, or conflicts with other wildlife management objectives. Because wolves occur at low density, are fairly visible, and travel in groups, entire packs are very susceptible to being killed by people. Legal authority under a trophy game status would allow WGFD to regulate human-caused mortality throughout unsuitable wolf habitat and provide a remedy for Service concerns about WGFD's authority to manage for wolf numbers and distribution above numerical and distributional recovery levels.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Public Attitudes Toward the Gray Wolf—The primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are largely based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding the threat to pets, the conviction that the species should never be subject to sport hunting or trapping, and the wolf traditions of Native American tribes.

In recent decades, national support has been evident for wolf recovery and reintroduction in the NRM (Service 1999). With the continued help of private conservation organizations, the States and tribes can continue to foster public support to maintain viable wolf populations in the NRMs. We believe that the State management regulations that will go into effect if wolves in the NRMs are removed from the ESA's protections will further enhance public support for wolf recovery. State management provides a larger and more effective local organization and a more familiar means for dealing with these conflicts (Bangs et al. 2004; Williams et al. 2002; Mech 1995). State wildlife organizations have specific departments and staff dedicated to providing accurate and science-based public education, information, and outreach. Each State plan has committed to provide balanced wolf outreach programs.

Genetics—Genetic diversity in the GYA segment of the NRMs is extremely high (Wayne et al. in prep.). A recent study of wolf genetics among wolves in northwestern Montana and the reintroduced populations found that wolves in those areas were as genetically diverse as their source populations in Canada and that inadequate genetic diversity was not a wolf conservation issue in the NRM at this time (Forbes and Boyd 1997; B. Vonholdt et al., UCLA, pers. comm.). Because of the long dispersal distances and the relative speed of natural wolf movement between Montana, Idaho, and Wyoming (discussed under Factor A), we anticipate that NRM wolves will continue to maintain high genetic diversity. However, should it become necessary sometime in the distant future, all of the three State plans recognize relocation as a potentially valid wildlife management tool.

In conclusion, we reviewed other manmade and natural factors that might threaten wolf population recovery in the foreseeable future. Public attitudes towards wolves have improved greatly over the past 30 years, and we expect that, given adequate continued management of conflicts, those attitudes will continue to support wolf restoration. The State wildlife agencies have professional education, information, and outreach components and are to present balanced science-based information to the public that will continue to foster general public support for wolf restoration and the necessity of conflict resolution to maintain public tolerance of wolves. Additionally, there are no concerns related to wolf genetic viability or interbreeding coefficients that would suggest inadequate connectivity among the recovery areas that could affect wolf population viability in the foreseeable future. If significant genetic concerns do arise at some point in the future, our experience with wolf relocation shows that the States could effectively remedy those concerns with occasional wolf relocation (Bradley et al. 2005) actions, but it is highly unlikely such management action would ever be required.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment period following our 90-day petition finding. This finding reflects and incorporates information we received during the public comment period and responds to significant issues. We also consulted with recognized gray wolf experts and State, Federal and tribal resource agencies. Based on this review, we find that (1) there is a NRM population of gray wolves that is both discrete from other wolf populations and significant to the taxon, (2) delisting of that NRM population is not warranted due to the lack of effective regulatory mechanisms in Wyoming, and (3) the NRM population of gray wolves should remain listed under the ESA and should not be proposed for delisting at this time.

In making this determination we have followed the procedures set forth in section 4(a)(1) of the ESA and regulations implementing the listing provisions of the ESA (50 CFR part 424). As required by the ESA, we considered the five potential threat factors to assess whether the NRM population of wolves are threatened or endangered throughout all or a significant portion of their range and, therefore, whether the NRM wolf population should remain listed. In regard to the NRM wolf population, the significant portions of the gray wolf's range are those areas that are important or necessary for maintaining a viable, self-sustaining, and evolving representative metapopulation in order for the NRM wolf population to persist into the foreseeable future. We have determined that an essential part of achieving recovery in all significant portions of the range is a well-distributed number of wolf packs and individual wolves among the three States and the three recovery zones.

The large amount and distribution of suitable habitat in public ownership and the presence of three large protected

core areas that contain highly suitable habitats assures the Service that threats to the NRM wolf population's habitat have been reduced or eliminated in all significant portions of its range for the foreseeable future. Unsuitable habitat and small, fragmented suitable habitat away from these core areas within the NRMs, largely represent geographic locations where wolf packs cannot persist and are not significant to the species. Disease, which would be carefully monitored by the States, and natural predation do not threaten wolf population recovery in any significant portion of the species' range, nor are they likely to within the foreseeable future. Additionally, we believe that other relevant natural or manmade factors (i.e., public attitudes and genetics) are not significant conservation issues that threaten the wolf population in any significant portion of its range within the foreseeable future.

Managing human-caused mortality remains the primary challenge to maintaining a recovered wolf population in the foreseeable future. We have determined that both the Montana and Idaho wolf management plans are adequate to regulate human-caused mortality and that Montana and Idaho would maintain their share and distribution of the tri-State wolf population above recovery levels if the NRM wolf DPS were delisted.

At this time, however, we continue to determine that current State law and the State wolf plan in Wyoming do not provide adequate regulatory assurances that Wyoming's share of the NRM wolf population, and thus the overall NRM wolf population, would not become in danger of extinction throughout a significant portion of its range within the foreseeable future. Therefore, we find that the petitioned action is not warranted.

References Cited

A complete list of all references cited in this document is available upon request from the Western Gray Wolf Recovery Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this document is the Western Gray Wolf Recovery Coordinator, Montana Ecological Services Office (see **ADDRESSES**).

Authority

The authority for this action is the ESA of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: July 18, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 06–6595 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 147

Tuesday, August 1, 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

Farm Service Agency

Information Collection: Highly Erodible Land Conservation and Wetland Conservation

AGENCIES: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection associated with Highly Erodible Land Conservation and Wetland Conservation certification requirements. This information is collected in support of the conservation provisions of Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990, the Federal Agriculture, Improvement and Reform Act of 1996, and the Farm Security and Rural Investment Act of 2002 (the Statute).

DATES: Comments on this notice must be received on or before October 2, 2006 to be assured consideration.

Additional Information or Comments: Comments concerning this notice should be addressed to Jan Jamrog, Program Manager, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, (202) 690–0926, facsimile (202) 720–4941. Comments should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by writing to Jan Jamrog at the above address. Comments may be also submitted by e-mail to *Jan.Jamrog@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Highly Erodible Land Conservation and Wetland Conservation Certification.

OMB Control Number: 0560–0185.

Expiration Date of Approval: October 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The collection of this information is necessary to determine payment eligibility of individuals and entities for various programs administered by the USDA including Conservation Programs, Price Support Programs, Direct and Counter Cyclical Program, Noninsured Assistance Program, Disaster Programs and Farm Loan Programs. Regulations governing those requirements under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990, the Federal Agriculture, Improvement and Reform Act of 1996, and the Farm Security and Rural Investment Act of 2002 relating to highly erodible lands and wetlands are codified in 7 CFR part 12. In order to ensure that persons who request program participation or benefits subject to conservation restrictions obtain the necessary technical assistance and are informed regarding the compliance requirements on their land, information is collected with regard to their intended activities on their land which could affect their eligibility for requested USDA benefits or programs. Producers are required to certify that they will comply with the conservation requirements on their land to maintain their eligibility for certain benefits or programs. Persons may request that certain activities be exempt according to provisions of the Statute. Information is collected from those who seek these exemptions for the purpose of evaluating whether the exempted conditions will be met. Forms AD–1026, AD–1026B, AD–1026–C, AD–1026D, AD–1068, AD–1069, CCC–21, and FSA–492 are being used for making determinations in this information collection. The forms are not required to be completed on an annual basis.

Estimate of Annual Burden Hours: 1.223 average time to respond.

Respondents: Individuals and entities.

Estimated Number Respondents: 262,782.

Estimated Total Annual Burden Hours: 321,537.

Comments are invited on: (a) Whether the collection information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (b) the accuracy of the agency's estimate of the burden of the collection of information (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 25, 2006.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency.

[FR Doc. E6–12264 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0021]

Codex Alimentarius Commission: 23rd Session of the Codex Committee on Processed Fruits and Vegetables

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS) are sponsoring a public meeting on September 7, 2006 to provide draft U.S. positions and receive public comments on agenda items that will be discussed at the 23rd Session of the Codex Committee on Processed Fruits and Vegetables (CCPFV) of the Codex Alimentarius Commission (Codex), which will be held in Arlington, VA, on October 16–21, 2006. The Under Secretary and AMS recognize the

importance of providing interested parties the opportunity to comment on the agenda items that will be debated at this forthcoming Session of the CCPFV.

DATES: The public meeting is scheduled for Thursday, September 7, 2006, from 10 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3074, USDA, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. Documents related to the 23rd Session of the CCPFV 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–2006–0021 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, 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–2006–0021.

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 23rd Session of the CCPFV Contact: U.S. Delegate, Dorian Lafond, International Standards Coordinator, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 690–4944, Fax: (202) 720–0016, E-mail: *Dorian.Lafond@usda.gov.*

For Further Information About The Public Meeting Contact: Ellen Matten, International Issues Analyst, U.S. Codex Office, USDA, FSIS, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. E-mail: *ellen.matten@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (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 protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, the Food and Drug Administration, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex Committee on Processed Fruits and Vegetables elaborates world wide standards for various processed fruits and vegetables including certain dried and canned products. This committee does not cover standards for fruit and vegetable juices. The Commission has also allocated to this Committee the work of revision of standards for quick frozen fruits and vegetables. The Committee is chaired by the United States of America.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 23rd Session of CCPFV will be discussed during the public meeting:

- Matters referred to the Committee from other Codex bodies.
- Proposed Layout for Codex Standards for Processed Fruits and Vegetables.
- Draft Codex Standard for Pickled Fruits and Vegetables.
- Draft Codex Standard for Processed Tomato Concentrates.
- Draft Codex Standard for Preserved (Canned) Tomatoes.
- Draft Codex Standard for Certain Canned Citrus Fruits.
- Proposed draft Codex Standard for Certain Canned Vegetables (including provisions for packing media).
- Proposed Draft Standard for Jams, Jellies, and Marmalades.
- Proposals for Amendments to the Priority List for the Standardization of Processed Fruits and Vegetables.
- Methods of Analysis and Sampling for Processed Fruits and Vegetables.

Each issue listed will be fully described in documents distributed, or to be distributed, by the United States Secretariat 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 September 7, 2006 public meeting, draft U.S. positions on these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 23rd Session of CCPFV, Dorian Lafond (see *For Further Information About The 23rd Session Of The CCPFV Contact*). Written comments should state that they relate to activities of the 23rd Session of the CCPFV.

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 e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: July 27, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–12337 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Presentation of Project Proposals/Voting on Proposals, (5) (6) Chairman's Perspective, (7) General Discussion, (8) Next Agenda.

DATES: The meeting will be held on August 10, 2006 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Tricia Christofferson, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written request by August 8, 2006 will have the opportunity to address the committee at those sessions.

Dated: July 25, 2006.

Tricia Christofferson,

Acting Designated Federal Official.

[FR Doc. 06–6598 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–11–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, August 16, 2006, beginning at 10:30 a.m.

ADDRESSES: Valley County Courthouse, 219 North Main Street, Cascade, Idaho.

SUPPLEMENTARY INFORMATION: Agenda 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: July 26, 2006.

Lana S. Thurston,

Administrative Officer, Boise National Forest.

[FR Doc. 06–6601 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

[RIN 0596–AC46]

Small Business Timber Sale Set-Aside Program Share Recomputation

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy directive; request for public comment.

SUMMARY: The Forest Service proposes to remove structural change recomputation direction contained in Forest Service Timber Sale Preparation Handbook (FSH) 2409.18 (applicable in Forest Service Regions 1 through 6 only) as one of the means of recomputing timber sale set-aside market share allocation to small business mills within a market area. This change is needed to make the recomputation process as accurate as possible by making market shares more reflective of current market conditions, in terms of volume and business capacity, as well as to simplify the process by which market share is determined. The direction on scheduled recomputation of market shares and special recomputations would be retained. Additionally, the Forest Service is proposing to include volumes sold or disposed of via stewardship contracting (Integrated Resource Contract, 2400–13 & 13T) in the volumes used to calculate market shares pursuant to the small business timber sale set-aside program.

DATES: Comments must be received in writing by October 2, 2006.

ADDRESSES: The full text of FSH 2409.18, chapter 90 is available electronically on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Assistant Director, Forest Management Staff, by telephone at (202) 205–1753 or by Internet at *rfitzgerald@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Developed in cooperation with the Small Business Administration, the Forest Service Small Business Timber Sale Set-aside Program is designed to ensure that qualifying small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale. The current Small Business Timber Sale Set-aside Program was adopted July 26, 1990 (55 FR 30485). Direction that guides Forest Service employees in administering the Small Business Timber Sale Set-aside Program is issued in the Forest Service Manual (FSM), Chapter 2430, and in Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18).

According to the guidelines of the set-aside program, the Forest Service recomputes the shares of timber sales to be set aside for bidding by qualifying small businesses every 5 years. The share percentage is based on the actual volume of sawtimber that has been purchased and/or harvested by small businesses during a 5-year period. In addition to the 5-year scheduled recomputation requirement, in Forest Service Regions 1 through 6, small business shares currently must be recomputed whenever a structural change occurs (see FSH 2409.18, chapter 90, section 91.22).

Structural change (*applicable to Regions 1 through 6 only*) is defined at FSH 2409.18, chapter 90, section 90.5, paragraph 8b as a change that ''may occur during a recomputation period when a small or large business firm that purchased at least 10 percent of the total sawlog volume during the last recomputation period discontinues operations or changes its size status

through the sale or purchase of manufacturing capacity. When a structural change occurs, the small business share must be recomputed in accordance with the procedure set out in section 91.22b.''

In the past, the adjustment of market shares, based on scheduled recomputations and structural change recomputation where warranted, functioned acceptably, when the timber sale program operated at its historic levels of annual sell volume. However, in the past 15 years, annual volume of timber sold in all Forest Service regions has declined substantially. For example, the annual volume of Forest Service timber offered for sale has decreased from 12 billion board feet in fiscal year 1990 to around 2 billion board feet in fiscal year 2004.

Presently, nearly half of the National Forest timber volume sold has been salvaged from areas damaged by fire and other catastrophic events. The current annual timber sale program is characterized by this increase in salvage timber, a much reduced number of advertisements of timber for sale, a relatively sporadic release of the available timber sales for bidding, and the overall substantial decline in saw timber volume for sale.

Structural change recomputations, which occur at unpredictable times, may be (and have been) followed by years of minimal or no timber volume offered for sale by the Forest Service that is suitable for purchase by qualified small businesses in a market area. This results in a significantly distorted database in a 3-year period on which to base a structural change share recomputation. The problem is compounded by existing set-aside guidelines which place no limit on the amount of share change that may occur as a result of a structural change recomputation. Establishment of a new small business share through a structural change recomputation can lock in a share change based on distorted data for an inordinate period of time.

The procedure for recomputation of shares following a structural change is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides for a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop (FSH 2409.18, chapter 90, section 91.22b). With changes in the timber sale program and the amount and type of timber offered for sale, structural change recomputations no longer appear to adequately accomplish these goals.

Thus, the Forest Service proposes to drop the structural change recomputation from the direction in FSH 2409.18. Any structural changes which were previously announced and are underway would be dropped. When a 5-year recomputation was skipped because of the structural change, the 5-year recomputation would be completed and the results made retroactive to the normal 5-year recomputation schedule.

Special recomputations of market share, as defined at FSH 2409.18, chapter 90, section 91.23, would remain in effect to deal with unique and unforeseen circumstances which may require departure from established procedure.

The directive text being proposed for removal (FSH 2409.18, chapter 90) includes section 90.5, paragraph 8b (definition for structural change) and section 90.41, paragraphs 4 and 9 (Forest Supervisor responsibilities), as well as references to structural changes in sections 91.17, 91.22, 91.22a, 91.22b, and 91.3.

The directive text being proposed for removal may be found on the World Wide Web/Internet at *http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?2409.18/* in the file named 2409.18_90.doc.

Section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (as contained in section 101(e) of division A of Public Law 105–277), as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (as contained in division F of Public Law 108–7; 16 U.S.C. note), authorizes the Forest Service (FS) and the Bureau of Land Management (BLM), until September 30, 2013, to enter into stewardship contracting projects (stewardship projects) with private persons or public or private entities, by contract or by agreement, to perform services to achieve land management goals for the national forests or public lands that meet local and rural community needs.

The land management goals for stewardship projects may include treatments to improve, maintain, or restore forest or rangeland health; restore or maintain water quality; improve fish and wildlife habitat; and reduce hazardous fuels that pose risks to communities and ecosystem values, reestablish native plant species, or other land management objectives. Stewardship projects are not a replacement for agencies' existing timber sale programs. Stewardship contracting may differ from other contracting authorities in the following manner:

—A source for performance of contracts shall be selected on a best value basis;
—Contract length may exceed 5 years but may not exceed 10 years;
—The agencies may apply the value of timber or other forest products removed as an offset against the costs of any services received;
—The agencies may collect monies from a stewardship contract so long as the collection is a secondary objective of negotiating contracts that best achieve the purposes of section 347, as amended by section 323;
—Monies received from the sale of timber, forest products, or vegetation via a stewardship contract may be retained by the agencies and available for expenditure at the project site or at another stewardship project site without further appropriation;
—A multiparty monitoring and evaluation process is required.

The Forest Service has issued guidance in Forest Service Handbook 2409.19, chapter 60. Stewardship projects are authorized on all Forest Service units. Forest Supervisors select the projects for their respective units and Regional Foresters provide oversight of the program.

The Forest Service has sold some sawlog volume from stewardship projects on National Forest System lands under its integrated resource contracts (IRC). Sawlog volume from the IRC was tracked, but not included in the volumes used to calculate the small business timber sale set-aside program for the recomputation period ending in 2005. Some sawlogs disposed of via stewardship contracts have been purchased by small and large timber industry businesses.

The Forest Service has four IRCs. Two are designed for use when the value of the timber to be disposed of in the project exceeds the value of the services received in the project (2400–13 & 13T). These two contracts are generally referred to as integrated resource timber contracts (IRTC). The other two contracts used for stewardship are used when the value of the services received exceeds the value of the timber to be disposed, and are generally referred to as integrated resource service contracts (IRSC). These contracts are primarily considered procurement contracts and include contract provisions required by the Federal Acquisition Regulations and other procurement related laws and regulations. However, the IRSC also contains some provisions necessary to govern the disposal of the timber.

The amount of timber volume offered under traditional timber sale contracts has declined significantly over the past

decade. Consequently, the sawlog volumes used to calculate market shares also have declined. In light of these significant declines and the need to adequately and fully consider sawlog volumes disposed of via contracts with the timber industry, the Forest Service proposes to include sawlog volumes from IRTC (2400–13 & 13T) in the volumes used to calculate market shares pursuant to the small business timber sale set-aside program. Since new market shares recently have been recomputed and announced for the 5-year period ending in 2010, the Forest Service proposes to include volumes sold via the IRTC in the operation of the regular set-aside program for the 2005–2010 period. The volumes will be tracked and used to establish new market shares at the end of the 2010 period, as well as for special recomputations that may occur prior to scheduled recomputations.

The Forest Service is proposing to include only the IRTCs in the set-aside program as these are the contracts that have significant timber volumes and the logs generally are of sufficient size to produce sawlogs, the primary focus of the set-aside program. The Forest Service does not propose to include the IRTCs as they generally have lesser quantities of timber volume and they are governed by the Federal Acquisition Regulation and other procurement related statutes and regulations, as well as the laws and regulations governing set asides for small businesses seeking procurement contracts. The Department of Agriculture already has requirements for small business consideration for service contracts; therefore, there is no need to include the IRSCs in the small business timber sale set-aside program.

New market shares recently have been recomputed and announced for the next 5-year period ending in 2010. The Forest Service believes it now is appropriate to include stewardship contract sawlog volumes from 2400–13 and 13T contracts in the implementation of the small business timber sale set-aside program for 2005–2010, and including the results of these sales along with the regular timber sale program results when recomputing market shares for the period ending 2015.

The 70/30 rule for traditional timber sale contracts requires that at least 70 percent of the sawlog volume sold via a timber sale contract be processed by a small business manufacturer (FSH 2409.18, chapter 90). Because of unique aspects of stewardship contracting (such as offsetting the costs of services received by the value of timber or forest products contained in a stewardship contract; and the nature of stewardship contracting which makes collection of money from a stewardship contract a secondary objective), it would not be appropriate to include the 70/30 requirement in the small business timber sale set-aside program.

Thus, the Forest Service proposes to amend the direction in FSH 2409.18, chapter 90 (the direction for the timber sale set-aside program) and the direction in FSH 2409.19, chapter 60—Stewardship Contracting, to include the sawlog volumes from projects sold as integrated resource contracts 2400–13 and 13T in the small business timber sale set-aside program. Further, disposal of the logs from IRCs would not be subject to the 70/30 processing requirement.

Regulatory Certifications

Regulatory Impact

This proposed directive change has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy. This proposed change will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed policy will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this policy is not subject to OMB review under Executive Order 12866.

Moreover, this proposed directive change has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.'' The agency's assessment is that this proposed directive change falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed policy on State, local, and tribal governments and the private sector. This proposed directive change 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 Act is not required.

Controlling Paperwork Burdens on the Public

This proposed directive change does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

No Takings Implications

This proposed directive change has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that it would not pose the risk of a taking of private property as they are limited to the revision of administrative procedures.

Civil Justice Reform

This proposed directive change has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed change will direct the work of Forest Service employees and is not intended to preempt any State and local laws and regulations that might be in conflict or that would impede full implementation of this directive. The change would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of administrative proceedings before parties may file suit in court challenging its provisions.

Dated: June 21, 2006.

Dale N. Bosworth,

Chief.

[FR Doc. E6–12310 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Statements, Availability

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Natural Resources Conservation Service (NRCS) has prepared a Draft Areawide Environmental Impact Statement consistent with the National Environmental Policy Act of 1969, as amended, to disclose potential effects to the human environment.

The Watershed Plan and Areawide Environmental Impact Statement (EIS) for the Cape Cod Water Resources Restoration Project are combined into a single document. The purposes of the Project are to restore degraded salt marshes, restore anadromous fish passages, and improve water quality for shellfishing areas. Specifically, sponsors wish to:

1. Improve tidal flushing in salt marshes where man-made obstructions (i.e., road culverts) have restricted tidal flow. This will help restore native plant and animal communities in salt marshes, and improve biotic integrity.

2. Restore fish ladders and other fish passages that have deteriorated. This will allow greater numbers of anadromous fish (which spend most of their adult lives in salt water and migrate to freshwater streams, rivers, and lakes to reproduce; for example, alewife, blueback herring) to gain access to spawning areas, and support greater populations of other species (for example, striped bass, bluefish, weakfish, largemouth bass, chain pickerel) that depend on them for food.

3. Maintain and improve water quality affecting shellfish beds by treating stormwater runoff. This will help ensure that shellfish beds which are threatened with closure remain open, and maintain or extend the current shellfishing season for beds whose use is restricted during certain times of year.

This Project is needed because human activity on Cape Cod has degraded its natural resources, including salt marshes, anadromous fish runs, and water quality over shellfish beds. The development of Cape Cod has required the construction of extensive road and railroad networks. Along the coast, culverts or bridges were needed for these networks to cross tidal marshes, and many of the openings through these structures are not large enough to allow adequate tidal flushing. When the culverts or bridges constrict flow, the tidal regime changes, which results in vegetation changes over time; what was once a thriving salt marsh can become a brackish or fresh water wetland dominated by invasive species. Together with funding from the Massachusetts Office of Coastal Zone Management (CZM), the Cape Cod Commission and the Buzzards Bay Project National Estuary Program identified over 182 sites where salt marshes have been altered by human activity.

Human activity on Cape Cod has also resulted in damming or diverting streams, causing anadromous fish to lose access to spawning grounds. In addition, water flow may have been altered by cranberry growers and other farmers. Fish ladders and other fish passage facilities have been built to help ensure that fish get access to spawning areas, but these structures deteriorate over time (end of design life), or they may be of obsolete design and need replacement to function properly. The Massachusetts Division of Marine Fisheries (DMF) identified 93 fish passage obstructions on Cape Cod.

Cape Cod's economy depends on good water quality. Shellfishing, a multi-million dollar industry on the Cape, is only allowed in areas with excellent water quality. As land is developed, and more areas are paved, stormwater runoff may become contaminated with nutrients, metals, fertilizers, bacteria, etc. This runoff may carry enough fecal coliform bacteria to affect water quality in shellfishing areas, thus leading to closure of shellfishing areas, or restrictions on the periods when the beds can remain open. DMF and town officials identified over 160 stormwater discharge points into shellfishing areas. By controlling sources of runoff, separating clean water from contamination sources, and capturing and treating the most heavily contaminated runoff through a variety of measures (e.g., infiltration, constructed wetlands).

Two alternatives were considered: Proposed Action/Recommended Plan and the No action alternative.

No Action would continue the declining trend of water quality of shellfish waters, impaired anadromous fish runs and degraded salt marshes.

The recommended plan is the Proposed Action (Cape Cod Water Resources Restoration Project) because it maximizes ecological benefits and is the National Ecosystem Restoration (NER) Plan. The Recommended Plan achieves the desired level of improvement for the least cost. For each project type (shellfish, fish passage, and salt marsh), the Restoration Project would provide a greater number of habitat units and greater other environmental benefits than the No Action Alternative. NRCS has developed a list of 76 projects that will meet the sponsors' objectives. All of these projects have received a planning-level analysis to ensure that they appear feasible and capable of providing the habitat benefits sought through this areawide Project. When the Project is authorized and funded, the sponsors will propose specific projects to NRCS. NRCS will review each project in more detail to determine the most cost-effective practice for that site and to verify that the habitat objectives will be achieved.

The recommended plan would help to maintain or improve water quality in up to 26 shellfish areas affecting 7,300 acres of shellfish beds. Current laws and regulations require stormwater management for all new developments, which prevents or minimizes new development from causing the same water quality impairments that occurred in the past. The Project is expected to improve tidal flushing at 26 sites enhancing 1,500 acres of salt marsh. Current design guidelines prevent or minimize road or railroad construction from causing the same hydrological restrictions that occurred in the past. And through this Project it is expected that 24 fish passages on Cape Cod would be restored to full function improving access to 4,200 acres of spawning habitat.

Written comments regarding this Draft Areawide EIS should be mailed to: Cecil B. Currin, Cape Cod Water Resources Restoration Project EIS, USDA–NRCS, 451 West Street, Amherst, MA 01002. Comments may also be submitted by sending a facsimile to (413) 253–4395 or by e-mail to *cecil.currin@ma.usda.gov.* Please include CCWRRP in the subject line.

Project information is also available on the Internet at *http://www.ma.nrcs.usda.gov/programs/CCWRRP.*

DATES: Comments must be received no later than 45 days after this notice is published.

FOR FURTHER INFORMATION CONTACT: Cecil B. Currin, State Conservationist, USDA Natural Resources Conservation Service, 451 West Street, Amherst, MA

01002, (413) 253–4350. Project information is also available on the Internet at: *http://www.ma.nrcs.usda.gov/programs/CCWRRP.*

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS are available by request at the address above. Basic data maybe viewed by contacting Carl Gustafson, State Conservation Engineer, USDA Natural Resources Conservation Service, 451 West Street, Amherst, MA 01002, (413) 253–4362, *carl.gustafson@ma.usda.gov.*

Signed in Amherst, Massachusetts, on July 19, 2006.

Bruce Thompson,

Acting State Conservationist.

[FR Doc. E6–12354 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Construction in the Matanuska River of Spur Dike #5, at Circleview Estates, Palmer, AK

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, Robert Jones, State Conservationist, finds that neither the proposed action nor any of the alternatives is a major federal action significantly affecting the quality of the human environment, and determine that an environmental impact statement is not needed for the Construction in the Matanuska River of Spur Dike #5, at Circleview Estates, Palmer, AK.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones, State Conservationist, Natural Resources Conservation Service, Alaska State Office, 800 West Evergreen Avenue, Suite 100, Palmer, AK 99645–6539; Phone: 907–761–7760; Fax: 907–761–7790.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, the preparation and review of an environmental impact statement are not needed for this project.

The Matanuska River is a glacially fed river system with highly braided channels. Severe bank erosion in the Circle View Estates area has been addressed previously through the installation of rock and earthen spur dikes. Erosion has continued downstream of the dikes, threatening adjacent bank and personal property (homes, buildings, appurtenances) and public infrastructure. The purpose of the project is to protect river bank, private homes and public infrastructure from loss to the erosive forces of the river at this subdivision site.

The preferred alternative is to install a barb-head spur dike, having river-directing flow features, which is believed to be potentially more fish-friendly than the previous adjacent dike designs. Completion of the project will reduce the risk of personal property loss, extend downstream protection of the existing four dikes, reduce emergency requests and response (as well as associated capital expenditures) by local government units, reduce potential harm or loss of human life, and protect public infrastructure in the area of influence of the dikes protection.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other interested parties. A limited number of copies of the Environmental Assessment and the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Finding of No Significant Impact for the Construction of the Matanuska River, Spur Dike #5 at Circle View Estates, Palmer, AK

Introduction

The Construction of the Matanuska River, Spur Dike #5 at Circle View Estates, Palmer, AK is a Federally assisted action authorized through funding under the Watershed Protection and Flood Prevention Act (PL–83–566) 1954. An environmental assessment was undertaken in conjunction with the development of the implementation plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Alaska State Office, 800 West Evergreen Avenue, Suite 100, Palmer, AK 99645–6539, Phone: 907–761–7760, Fax: 907–761–7790.

Recommended Action

The Matanuska River is a glacially fed river system with highly braided channels. Severe bank erosion in the Circle View Estates area has been addressed previously through the installation of rock and earthen spur dikes. Erosion has continued downstream of the dikes, threatening adjacent bank and personal property (homes, buildings, appurtenances) and public infrastructure. The purpose of the project is to protect river bank, private homes and public infrastructure from loss to the erosive forces of the river at this subdivision site.

The preferred alternative is to install a barb-head spur dike, having river-directing flow features, which is believed to be potentially more fish-friendly than the previous adjacent dike designs. Completion of the project will reduce the risk of personal property loss, extend downstream protection of the existing four dikes, reduce emergency requests and response (as well as associated capital expenditures) by local government units, reduce potential harm or loss of human life, and protect public infrastructure in the area of influence of the dikes protection.

Alternatives

Two alternatives were not carried forward for additional development. These are nonstructural and combined actions. The nonstructural approach cannot be achieved by the proposed project as this requires state and/or local public policy changes. As the nonstructural approach is not being brought forward, the combined actions alternative cannot be further evaluated either.

Two alternatives were brought forward for further development. These are the bank protection alternative and no action alternative.

The preferred alternative selected is the installation of the barb-headed version of an additional spur dike. The proposed spur dike with barb head is a composite structure, consisting of a spur dike shank with the head of the dike designed as an overtopping barb. This design incorporates the overtopping feature of the barbs that work well in small streams and is considered more fish-friendly than the round-headed spur dike that has been shown to

function in the braided channel. Barbs are built at an angle into the flow of water to redirect flows away from the bank and back towards the center of the channel, whereas the rounded spur dike head may direct flow back towards the bank between dikes. However, building a full barb structure into the Matanuska River would require a large amount of material and land due to the long distance from the shore to where the channel is being directed. The composite structure is intended to minimize rock fill requirements in the river while presenting a more fish-friendly approach to bank protection in a challenging braided river system.

Effect of Recommended Action

1. The spur dike is a proven bank protection technology on this stretch of river. The existing four spur dikes have protected the bank in their area of influence.

2. The modification to the head of the spur dike is expected to provide a more fish-friendly migration pathway than the round-head style currently on site. The barb-headed spur dike design allows the water to move differentially across the submerged portion of the dike head and thus adjust to flows. At higher flow rates, the barb-head design spreads the flow out and slows the velocity.

3. The affects of the spur dike are expected to be localized to the project area.

4. Approximately 0.5 to 1 acre of recovered riparian area for the spur dike will be established. Natural revegetation will occur along the bank and is expected to consist of locally available grasses, shrubs, and trees.

5. Reduce loss of land (approximately 1–4 acres) over next 50 years.

6. Reduction of long term maintenance and repair costs of lost infrastructure and residential structures (estimated at $0.5–1 million).

7. The new spur dikes will have minor effects on navigation in the river. The barb head design alternative features a submerged weir tip which is designed to overtop. This should not pose a significant hazard to navigation, however, because only shallow draft river boats will typically be present in the river, and the boaters are accustomed to shallow conditions which prevail in many areas of the river.

8. While there are initial capital and annual O&M costs for construction of the spur dike, these could be outweighed by the short and long-term costs to the community for loss of land, structures, infrastructure, and utilities.

General effects on the river will include:

9. Local diversion of the thalweg upstream and downstream of the spur dikes away from the river bank. Based on observations of this river and conventional experience with spur dikes, the influence zone is roughly 500 feet up and downstream of each dike. Beyond this distance, the Matanuska River could easily swing into the bank again.

10. Increase in erosive effects at or near structures due to increased flow velocities near tip of structures.

11. Possible increase of bank erosion immediately upstream or downstream of structures due to repositioning of thalweg.

There are no threatened and endangered species or state species of concern, known in the project area. However the river represents an important migratory corridor for five species of salmon. There are no known sole source aquifers, prime and unique farmlands, wild and scenic rivers or wilderness areas designated in the project area.

There will be no irretrievable and irreversible loss of natural resources, except for fossil fuel during construction activities and portions of needed equipment and materials which have no recycling potential. No impacts to cultural or historic resources will occur. No environmental justice issues are at risk.

No significant environmental impacts will result from installation of the proposed measures.

Consultation—Public Participation

An ongoing series of monthly meetings are held open to the public by the Circleview and Stampede Estates Erosion Service Area. The Draft Environmental Assessment for the project was published May 26, 2006. No comments or questions were received by the NRCS or the project sponsors.

A pre-application meeting was held on August 24, 2005 to discuss both the permitting and EA for this project. The purpose of this meeting was to introduce the project to the agency personnel who will be reviewing the permit applications and to ensure that their comments and concerns were incorporated into the EA and permit application.

Other agency contact includes several e-mails and phone calls between the Borough hired consultant and the agencies regarding structures or methodologies the agencies recommended for review.

At the request of NRCS, the consultant contacted via phone and e-mails the following Alaska native villages:

1. Chickaloon Village, Angie Wade.
2. Knikatnu Corp, Jennifer Raschke.
3. Native Village of Eklutna, Marc Lamoreaux.

An interdisciplinary group including the Matanuska-Susitna Borough Project Planning and Land Development Staff, PND Consulting Engineers, USDA Natural Resources Conservation Service (NRCS), biologists, engineers, environmental specialist, cultural resources coordinator, resource conservationist, and others helped gather basic project information, developed the preliminary determinations of the environmental and social effects of the alternatives, and provided input for the development of this document. Local area residents, as well as other private individuals and agencies, were contacted during plan development to provide needed information and coordinate activities.

Agency consultation and public participation to date have shown no unresolved significant conflicts with implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I determine neither the proposed action nor any of the alternatives is a major federal action significantly affecting the quality of the human environment, and that an environmental impact statement is not needed for the Construction in the Matanuska River of Spur Dike #5, at Palmer, Alaska.

Dated: July 20, 2006.

Thomas Hedt,

Assistant State Conservationist—Programs, NRCS.

[FR Doc. E6–12349 Filed 7–31–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Dynamics of Economic Well-Being System

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting to discuss the re-engineering of the Survey of Income and Program Participation (SIPP)—specifically, the content of the new survey.

DATES: August 24, 2006. The meeting will begin at approximately 10 a.m. and adjourn at approximately 12 noon.

ADDRESSES: The meeting will be held in the Gannett/Hollerith conference rooms at the U.S. Census Bureau Headquarters, 4700 Silver Hill Road, Suitland, Maryland 20746–8500.

FOR FURTHER INFORMATION CONTACT: David Johnson, Chief, Housing and Household Economics Statistics Division, Department of Commerce, U.S. Census Bureau, Room 1071, Federal Building 3, Washington, DC 20233. His telephone number is (301) 763–6443.

SUPPLEMENTARY INFORMATION: The SIPP has been the primary data source used by policymakers to evaluate the effectiveness of government programs and to analyze the impacts of options for modifying them. The SIPP's longitudinal design has many advantages, but imposes considerable burden on respondents and makes review and data processing difficult and time-consuming. The re-engineered system, to be known as the dynamics of economic well-being system, is expected to reduce respondent burden and attrition and deliver data on a timely basis. Although it will not supply the same level of detail as the SIPP, its design must offer policymakers and researchers data that address the same basic issues.

The dynamics of economic well-being system will use data from current demographic surveys and administrative records to identify a population cohort that will be measured longitudinally by using administrative data, combined with a new demographic survey instrument. A major goal of this new system is to develop monthly estimates of whether and how much individuals participate in cash-assistance programs and to include a longitudinal component.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing, at least three days before the meeting, to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-serve basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be sent via e-mail to Mary Chin (*mary.p.chin@census.gov*) at least two weeks prior to the meeting.

Dated: July 26, 2006.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E6–12329 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of August 2006,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina:	
Oil Country Tubular Goods, A–357–810	8/1/05–7/31/06
Seamless Line and Pressure Pipe, A–357–809	8/1/05–7/31/06
Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803	8/1/05–7/31/06
Belgium: Cut-to-Length Carbon Steel Plate, A–423–805	8/1/05–7/31/06
Brazil:	
Cut-to-Length Carbon Steel Plate, A–351–817	8/1/05–7/31/06
Seamless Line and Pressure Pipe, A–351–826	8/1/05–7/31/06
Canada: Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/05–7/31/06
Czech Republic: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–851–802	8/1/05–8/13/05
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/05–7/31/06
France:	
Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/05–7/31/06
Stainless Steel Sheet and Strip in Coils[2], A–427–814	7/1/05–6/30/06
Germany:	
Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/05–7/31/06
Cut-to-Length Carbon Steel Plate, A–428–816	8/1/05–7/31/06
Seamless Line and Pressure Pipe, A–428–820	8/1/05–7/31/06
Italy:	
Grain Oriented Electrical Steel, A–475–811	8/1/05–3/13/06
Oil Country Tubular Goods, A–475–816	8/1/05–7/31/06
Granular Polytetrafluoroethylene Resin, A–475–703	8/1/05–7/31/06

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
Japan:	
Brass Sheet & Strip, A–588–704	8/1/05–7/31/06
Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/05–7/31/06
Oil Country Tubular Goods, A–588–835	8/1/05–7/31/06
Granular Polytetrafluoroethylene Resin, A–588–707	8/1/05–7/31/06
Tin Mill Products, A–588–854	8/1/05–7/31/06
Malaysia:	
Polyethylene Retail Carrier Bags, A–557–813	8/1/05–7/31/06
Mexico:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–201–827	8/1/05–8/10/05
Gray Portland Cement and Cement Clinker, A–201–802	8/1/05–7/31/06
Cut-to-Length Carbon Steel Plate, A–201–809	8/1/05–7/31/06
Oil Country Tubular Goods, A–201–817	8/1/05–7/31/06
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/05–7/31/06
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/05–7/31/06
Oil Country Tubular Goods, A–580–825	8/1/05–7/31/06
Structural Steel Beams, A–580–841	8/1/05–8/17/05
Romania:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–485–805	8/1/05–7/31/06
Cut-to-Length Carbon Steel Plate, A–485–803	8/1/05–7/31/06
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/05–7/31/06
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/05–7/31/06
Thailand: Polyethylene Retail Carrier Bags, A–549–821	8/1/05–7/31/06
The Peoples Republic of China:	
Floor Standing Metal-Top Ironing Tables and Parts Thereof, A–570–888	8/1/05–7/31/06
Petroleum Wax Candles, A–570–504	8/1/05–7/31/06
Polyethylene Retail Carrier Bags, A–570–886	8/1/05–7/31/06
Sulfanilic Acid, A–570–815	8/1/05–7/31/06
Tetrahydrofurfuryl Alcohol, A–570–887	8/1/05–7/31/06
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/05–7/31/06
Vietnam: Frozen Fish Fillets, A–552–801	8/1/05–7/31/06
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/05–12/31/05
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/05–12/31/05
Canada:	
Pure Magnesium, C–122–815	1/1/05–8/15/05
Alloy Magnesium, C–122–815	1/1/05–8/15/05
France: Corrosion-Resistant Carbon Steel Flat Products, C–427–810	1/1/05–12/31/05
Italy: Oil Country Tubular Goods, C–475–817	1/1/05–12/31/05
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/05–12/31/05
Republic of Korea:	
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/05–12/31/05
Dynamic Random Access Memory Semiconductors, C–580–851	1/1/05–12/31/05
Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/05–12/31/05
Structural Steel Beams, C–580–842	1/1/05–8/13/05
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/05–12/31/05
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/05–12/31/05
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/05–12/31/05

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International

[2] On July 3, 2006 (71 FR 37890), this order was inadvertently listed in the opportunity notice for July cases. This order has been revoked and the effective date of the revocation is 7/27/2004.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2006. If the Department does not receive, by the last day of August 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 26, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–12366 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury. As a courtesy, the Department provides advance notice of these cases that are scheduled for sunset reviews one month before those reviews are initiated.

FOR FURTHER INFORMATION CONTACT: Zev Primor, Office 4, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–4114.

Upcoming Sunset Reviews

There are no sunset reviews scheduled for initiation in September, 2006.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3, ''Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders;'' Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in sunset reviews.

Dated: July 19, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–12412 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers these same order.

EFFECTIVE DATE: August 1, 2006.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–862	731–TA–894	PRC	Foundry Coke	Jim Nunno(202) 482–0783
A–823–810	731–TA–891	Ukraine	Solid Agricultural Grade Ammonium Nitrate	Brandon Farlander (202) 482–0182
A–357–814	731–TA–898	Argentina	Certain Hot–Rolled Carbon Steel Flat Products	Zev Primor (202) 482–4114
A–570–865	731–TA–899	PRC	Certain Hot–Rolled Carbon Steel Flat Products	Zev Primor (202) 482–4114
A–533–820	731–TA–900	India	Certain Hot–Rolled Carbon Steel Flat Products	Zev Primor (202) 482–4114

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–560–812	731–TA–901	Indonesia	Certain Hot–Rolled Carbon Steel Flat Products	Zev Primor (202) 482–4114
A–834–806	731–TA–902	Kazakhstan	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
A–421–807	731–TA–903	Netherlands	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
A–485–806	731–TA–904	Romania	Certain Hot–Rolled Carbon Steel Flat Products	Zev Primor (202) 482–4114
A–791–809	731–TA–905	South Africa	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
A–583–835	731–TA–906	Taiwan	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
A–549–817	731–TA–907	Thailand	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
A–823–811	731–TA–908	Ukraine	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
A–822–804	731–TA–873	Belarus	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–570–860	731–TA–874	PRC	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–560–811	731–TA–875	Indonesia	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–449–804	731–TA–878	Latvia	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–841–804	731–TA–879	Moldova	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–455–803	731–TA–880	Poland	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–580–844	731–TA–877	South Korea	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
A–823–809	731–TA–882	Ukraine	Steel Concrete Reinforcing Bars	Brandon Farlander (202) 482–0182
Countervailing Duty Proceedings.				
C–357–815	701–TA–404	Argentina	Certain Hot–Rolled Carbon Steel Flat Products	Brandon Farlander (202) 482–0182
C–533–821	701–TA–405	India	Certain Hot–Rolled Carbon Steel Flat Products	Brandon Farlander (202) 482–0182
C–560–813	701–TA–406	Indonesia	Certain Hot–Rolled Carbon Steel Flat Products	Brandon Farlander (202) 482–0182
C–791–810	701–TA–407	South Africa	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391
C–549–818	701–TA–408	Thailand	Certain Hot–Rolled Carbon Steel Flat Products	Dana Mermelstein (202) 482–1391

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding Sunset Reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of Sunset Reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet website at the following address: ''http://ia.ita.doc.gov/sunset/.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements.[1] Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 27, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–12339 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–501)

Notice of Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

SUMMARY: On April 26, 2006, the Department of Commerce (''the Department'') published the preliminary results of its new shipper review of the antidumping duty order on certain welded carbon steel pipe and tube (''welded pipe and tube'') from Turkey. This review covers one producer/exporter of the subject merchandise. The period of review (''POR'') is May 1, 2004, through April 30, 2005. On June 2, 2006, we received a case brief from petitioner.[1] On June 9, 2006, we received a rebuttal brief from respondent.[2] Based on the Department's analysis of the issues, these final results have not changed from the preliminary results. The final results are listed in the section below entitled ''Final Results of Review.''

EFFECTIVE DATE: August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075, or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2006, the Department published in the **Federal Register** the preliminary results of this new shipper review and invited interested parties to comment on those results.[3] Consequently, the Department received comments from petitioner and respondent. However, the Department did not receive a request for a hearing from interested parties.

Scope of the Order

The products covered by this order include circular welded non–alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold–drawn or cold–rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum for the Final Results of the New Shipper Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipe and Tube from Turkey'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated July 25, 2006 (''Decision Memorandum''), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are addressed in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in the Decision 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 Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

We calculated export price (''EP'') and normal value (''NV'') based on the same methodology used in the preliminary results.

Cost of Production

We calculated the cost of production (''COP'') for the merchandise based on the same methodology used in the preliminary results.

Final Results of Review

As a result of our review, we determine that the following weighted–average percentage margins exist for the period May 1, 2004, through April 30, 2005:

Manufacturer/Exporter	Margin (percent)
Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and its affiliated export trading company, Tosyali Dis Ticaret A.S.	0.00 percent

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer–specific assessment rate is zero or *de minimis*. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

[1] The petitioners are Allied Tube and Conduit Corporation, IPSCO Tubulars, Inc., Sharon Tube Company, and Wheatland Tube Company (collectively, ''petitioner'').

[2] The respondent is Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and its affiliated export trading company, Tosyali Dis Ticaret A.S. (collectively, ''Toscelik'').

[3] *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 71 FR 26043 (May 3, 2006) (''*Preliminary Results*'').

Cash Deposits Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Toscelik of subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. The following cash deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results for this new shipper review, as provided for by section 751(a)(1) of the Act, as amended: (1) The cash deposit rates for Toscelik (*i.e.*, for subject merchandise both manufactured and exported by Toscelik) will be zero; (2) the cash deposit rate for exporters who received a rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for entries of subject merchandise exported by Toscelik but not manufactured by Toscelik will continue to be the ''All Others'' rate (*i.e.*, 14.74 percent) or the rate applicable to the manufacturer, if so established; and (4) if neither the exporter nor the producer is a firm covered in this review or a prior segment of the proceeding, the cash deposit rate will be 14.74 percent, the ''All Others'' rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. There are no changes to the rates applicable to any other companies under this antidumping duty order.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and countervailing 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 and countervailing duties occurred, and in the subsequent assessment of antidumping duties increased by the amount of antidumping and/or countervailing duties reimbursed.

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 25, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

Comment 1: *Bona Fides* of Toscelik's U.S. Sale

[FR Doc. E6–12372 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606J]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application from the University of New Hampshire (UNH) for an exemption from the days-at-sea (DAS) requirements of the Northeast (NE) Multispecies Fishery Management Plan (FMP), for the purpose of testing the ability of specific fish traps to catch haddock, contains all of the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue an EFP that would allow vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before August 16, 2006.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA6__210@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on UNH Haddock Trap (DA6–210).'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNH Haddock Trap (DA6–210).'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Management Specialist, phone: (978) 281–9218, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted by Dr. Ken La Valley of the University of New Hampshire, on July 7, 2006. The EFP would exempt one federally permitted commercial fishing vessel from the following requirement of the FMP: NE multispecies DAS requirements, specified at 50 CFR 648.82(a). This project is funded by the Northeast Consortium.

UNH has requested an exemption from the DAS requirements in order to test the effectiveness of two demersal fish trap designs, i.e., Pacific and Norwegian cod pots, modified for catching Atlantic haddock of a larger size and condition for use in the live fish market. A DAS exemption is requested in order to allow the exempted fishing vessel to economically assist in this research, because no fish will be retained or landed.

The Norwegian two-chamber fish pot has two fairly wide entrance funnels leading into the lower chamber, with a narrow entrance leading to an upper chamber. Typically, a bait bag is fixed with squid for cod on a string or longline at varying depths. This fish trap would be modified to use vertical mounted triggers to allow easy entrance while providing an increased internal volume available for fish compared to the Norwegian design. The Pacific cod pot is a 6 ft x 6 ft x 3 ft (1.83 m x 1.83 m x .91 m) design that has triggers on three sides of the pot to allow increased opportunities to enter the trap, with shallow leads leading to the tunnel eye. The Pacific trap would be modified to a collapsible version that would also

incorporate vertical mounted triggers instead of horizontal triggers typically used for cod.

Haddock specific baits would also be tested during the project. In addition, an underwater video camera would be used to document haddock behavior in and around each trap design. The camera would be deployed with an onboard auxiliary group from a significant distance from test site, so as not to influence behavior with the lights.

A total of 12 traps would be deployed, and 10–14 hauls would be made, with an average soak time of 24 hrs, over 10 days. The gear testing would take place in the Gulf of Maine (GOM), northeast of the Western GOM Closure Area.

The researchers intend to target haddock, but anticipate some incidental catch of Atlantic cod, pollock, redfish, and spiny dogfish. Once caught, fish would be sorted by species, measured, weighed, and returned to the water. No fish, shellfish, or other animals would be retained. The researchers estimate that less than 1,000 lb (453.59 kg) of haddock and less than 500 lb (226.80 kg) of all incidental species would be collected and returned to the water. The intent is for this project to take place between August and November 2006.

The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impact of the initially approved EFP request. In accordance with NOAA Administrative Order 216–6, a Categorical Exclusion or other appropriate NEPA document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register**, the EFP, if approved, may become effective following a 15-day public comment period.

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

Dated: July 26, 2006.

James P. Burgess,

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

[FR Doc. E6–12271 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050906238–5238–01; I.D. 090705E]

RIN 0648–ZB68

2006 Monkfish Research Set-aside Program

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

ACTION: Notice; reallocation of set-aside days-at-sea.

SUMMARY: NMFS notifies the public of the reallocation of monkfish research days-at-sea (DAS) as exempted DAS. These are DAS that were set aside under the 2006 Monkfish Research Set-Aside (RSA) Program, but were not distributed through the NOAA grant process. These exempted DAS may be used for the conduct of monkfish related research activities during fishing year (FY) 2006 (May 1, 2006, through April 30, 2007). Requests for a monkfish DAS exemption must be submitted with a complete application for an exempted fishing permit (EFP).

DATES: Projects involving the use of exempted DAS under this program must be completed prior to the end of FY 2006, on April 30, 2007.

ADDRESSES: Applications for an EFP must be sent to the Regional Administrator (RA), NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, by phone 978–281–9103, by fax 978–281–9135, or by e-mail at *allison.ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Amendment 2 to the Monkfish Fishery Management Plan (FMP) (70 FR 21927, April 28, 2005), established the Monkfish RSA Program, which annually sets aside 500 monkfish DAS from the total number of monkfish DAS allocated to limited access monkfish vessels to be used for cooperative monkfish research programs. Amendment 2 also established a Monkfish Exemption Program, which requires the RA to reallocate as exempted DAS any monkfish research DAS not allocated through the Monkfish RSA Program. These exempted DAS may be then used by vessels for the conduct of monkfish research activities during the current fishing year (e.g., FY 2006).

On September 13, 2005, NMFS published a notice in the **Federal Register** announcing the 2006 Monkfish RSA Program (70 FR 54028), and solicited proposals for monkfish research activities to be conducted under this RSA program. Three proposals were received as part of this solicitation, and two were granted awards totaling 137.5 monkfish research DAS. As a result, there are 362.5 DAS available to be reallocated as exempted DAS during FY 2006. Therefore, the RA, pursuant to the regulations governing the monkfish fishery at 50 CFR 648.92(c)(1)(v), reallocates these unused research DAS from the FY 2006 Monkfish RSA Program, as exempted DAS, that may be used for the conduct of monkfish research projects during FY 2006.

All requests for monkfish DAS exemptions under the Monkfish DAS Exemption Program must be submitted to the RA along with a complete application for an EFP. The requirements for submitting a complete EFP application are provided in the regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act at § 600.745(b).

Classification

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

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The information requested in an EFP application has been approved under Office of Management and Budget (OMB) Control number 0648–0309. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

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

Dated: July 26, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–12365 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060724199–6199–01]

Virginia Sea Grant Institutional Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability of funds.

SUMMARY: NOAA's Office of Oceanic and Atmospheric Research (OAR), National Sea Grant College Program invites applications to establish an Institutional Sea Grant Program for the Commonwealth of Virginia beginning in FY 2007. Anticipated start date is February 1, 2007. Applicants should provide a four-year plan for an institutional program that will be part of the larger National Sea Grant network, a partnership between the federal government and universities to conduct integrated research, education and outreach in fields related to ocean, coastal and Great Lakes resources. Applicants must comply with all requirements contained in the full funding opportunity announcement.

DATES: Proposals must be received no later than 5 p.m. Eastern Standard Time, September 15, 2006.

ADDRESSES: Proposals should be submitted through Grants.Gov, following the directions in **Electronic Access**, below. Proposals from those that do not have access to Internet should be sent to: Geraldine Taylor, NOAA R/SG; 1315 East-West Highway, Bldg SSMC 3, Room 11828, Silver Spring, MD 20910–3283, tel. 301–713–2435.

This **Federal Register** notice may be found at the Grants.gov Web site, *http://www.grants.gov,* and at the NOAA Sea Grant Web site (*http://www.seagrant.noaa.gov*) by clicking on the ''View Requests for Proposals'' button.

No e-mail or facsimile proposal submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: For a copy of the full funding opportunity announcement and/or application kit, access it at Grants.gov, via NOAA Sea Grant's Web site, or by contacting Ms. Jamie Krauk, NOAA R/SG, 1315 East West Highway, Silver Spring, MD 20910–3283, telephone: 301–713–2431 x129, e-mail: *jamie.krauk@noaa.gov.*

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the full funding opportunity announcement. This notice describes funding opportunities for the NOAA Office of Oceanic and Atmospheric Research, National Sea Grant College Program.

Background

The National Sea Grant College Program (NSGCP) was established by Congress to promote responsible use and conservation of the nation's marine and Great Lakes resources by conducting integrated research and outreach through a stable national infrastructure of state Sea Grant programs. The mission of the NSGCP is to ''Enhance the practical use and conservation of coastal, marine and Great Lakes resources to create a sustainable economy and environment.'' To accomplish this mission, the NSGCP is soliciting applications for a new Sea Grant institutional program for the Commonwealth of Virginia.

Electronic Access

As has been the case since October 1, 2004, applicants can access, download and submit electronic grant applications for NOAA Programs through the Grants.gov Web site at *http://www.Grants.gov.* Applicants without Internet access may contact program officials for applications and submission instructions. The closing dates for applications filed through Grants.gov are the same as for the paper submissions noted in this announcement. For applicants filing through Grants.gov, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process. Registration may take up to 10 business days.

Funding Availability

NOAA expects that about $1.4M will be available from the NSGCP to establish a new Sea Grant institutional program for the Commonwealth of Virginia beginning in FY 2007. NOAA anticipates continuing support at that level from FY 2008–FY 2010 if funds are available.

Funding Opportunity Number: OAR–SG–2007–2000807.

Statutory Authority: 33 U.S.C. 1121–1131.

CFDA: 11.417, Sea Grant Support.

Eligibility

Proposals may be submitted by institutions of higher education, or confederations of such institutions in the state of Virginia.

Cost Sharing Requirements

To be eligible for the NSGCP funds, a match of 50% of the requested Federal funds (direct and indirect costs) is needed. Sea Grant requires that funds be matched with at least one non-Federal dollar for every two Federal dollars.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation Criteria and Review and Selection Procedures

A. Evaluation Criteria

Applicants must be rated highly (7 or greater on a scale of 1–10) in each of the following qualifying areas:

(1) *Leadership.* Is the candidate an intellectual and practical leader in marine science, engineering, education, and advisory service in its state and region? (10 points)

(2) *Organization.* Has the candidate created the necessary management organization to carry on a viable and productive Sea Grant Program, and does the candidate have backing of its administration at a sufficiently high level to fulfill its multidisciplinary and multifaceted mandate? (10 points)

(3) *Relevance.* Is the candidate's program relevant to local, State, regional, or National opportunities and problems in the marine environment? Important factors in evaluating relevance are the presence of an emphasis on marine resources, and the extent to which capabilities have been developed to be responsive to that need. (10 points)

(4) *Programmed team approach.* Does the candidate have a programmed team approach to solving marine problems, which includes relevant, high quality, multidisciplinary research with associated educational and advisory services capable of producing identifiable results? (10 points)

(5) *Education and training.* Is education and training clearly relevant to National, regional, State and local needs in fields related to ocean, Great Lakes, and coastal resources? (Education may include pre-college, college, post-graduate, public and adult levels.) (10 points)

(6) *Advisory services.* Does the candidate have a strong program through which information, techniques and research results from any reliable source, domestic or international, are communicated to, and utilized by, user communities? In addition to the educational and information dissemination role, does the advisory service program aid in the identification and communication of user communities' research and educational needs? (10 points)

(7) *Relationships.* Does the candidate have close ties with Federal agencies, State agencies and administrations, local authorities, business and industry, and other educational institutions? Do these ties: (i) Ensure the relevance of its programs, (ii) give assistance to the broadest possible audience, (iii) involve a broad pool of talent in providing assistance and (iv) assist others in developing research and management competence? (The extent and quality of an institution's relationships are critical factors in evaluating the institutional program) (10 points)

(8) *Productivity.* Does the candidate have substantial strength in the three basic Sea Grant activities: Research, education and training, and advisory services? (10 points)

(9) *Support.* Does the candidate have the ability to obtain matching funds from non-Federal sources, such as state legislatures, university management, state agencies, business, and industry? A diversity of matching fund sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars. (10 points)

(10) *Continuity of high performance.* Does the candidate demonstrate the ability to continue the pursuit of excellence and sustain the following? (i) high performance in marine research, education, training, and advisory services; (ii) leadership in marine activities including coordinated planning and cooperative work with local, state, regional, and Federal agencies, other Sea Grant programs, and non-Sea Grant universities; (iii) effective management framework and application of institutional resources to the achievement of Sea Grant objectives; (iv) long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives; (v) furtherance of the Sea Grant concept and the full development of its potential within the institution and the state; (vi) adequate and stable matching financial support for the program from non-Federal sources; and (vii) effective system to control the quality of its Sea Grant programs. (10 points)

B. Review and Selection Process

An initial administrative review/screening will be conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned scale of the above evaluation criteria by an independent peer panel review. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, all panelists will submit individual reviews and not a consensus opinion. The reviewers' ratings will be used to rank the proposals in order. The Director of the NSGCP will make the final selection after considering the panel reviews. If an award is made, the Director will award in rank order.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, (69 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet *http://www.dunandbradstreet.com.*

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals that are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toclceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of fiscal year 2007 appropriations. In no event will NOAA or the Department of Commerce be responsible for application preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 27, 2006.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E6–12286 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050306A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey of the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge, Arctic Ocean, July – August, 2006

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to University of Texas at Austin Institute for Geophysics (UTIG) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B Harassment, incidental to conducting a marine seismic survey in the Arctic Ocean from approximately July 15 – August 29, 2006.

DATES: Effective from July 15, 2006 through August 29, 2006.

ADDRESSES: A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 8, 2006, NMFS received an application from UTIG for the taking, by harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a marine seismic survey in the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge of the Arctic Ocean during July through August, 2006. The seismic survey will be operated in conjunction with a sediment coring project, which will obtain data regarding crustal structure. The purpose of this study is to collect seismic reflection and refraction data and sediment cores that reveal the crustal structure and composition of submarine plateaus in the western Amerasia Basin in the Arctic Ocean. Past studies have led many researchers to support the idea that the Amerasia Basin opened about a pivot point near the Mackenzie Delta. However, the crustal character of the Chukchi Borderlands could determine whether that scenario is correct, or whether more complicated tectonic scenarios must be devised to explain the presence of the Amerasia Basin. These data will assist in the determination of the tectonic evolution of the Amerasia Basin and Canada Basin which is fundamental to such basic concerns as sea level fluctuations and paleoclimate in the Mesozoic era.

Description of the Activity

The *Healy*, a U.S. Coast Guard (USCG) Cutter ice-breaker, will rendezvous with the science party off Barrow on or around 15 July. The Healy will then sail north and arrive at the beginning of the seismic survey, which will start >150 km (93 mi) north of Barrow. The cruise will last for approximately 40 days, and it is estimated that the total seismic survey time will be approximately 30 days depending on ice conditions. Seismic survey work is scheduled to terminate west of Barrow about 25 August. The vessel will then sail south to Nome where the science party will disembark.

The seismic survey and coring activities will take place in the Arctic Ocean. The overall area within which the seismic survey will occur is located approximately between 71°36′ and 79°25′ N., and between 151°57′ E. and

177°24′ E. The bulk of the seismic survey will not be conducted in any country's territorial waters. The survey will occur within the Exclusive Economic Zone (EEZ) of the U.S. for approximately 563 km (350 mi).

The *Healy* will use a portable Multi-Channel Seismic (MCS) system to conduct the seismic survey. A cluster of eight airguns will be used as the energy source during most of the cruise, especially in deep water areas. The airgun array will have four 500–in^3 Bolt airguns and four 210–in^3 G. guns for a total discharge volume of 2840 in^3. In shallow water, occurring during the first and last portions of the cruise, a four 105 in^3 GI gun array with a total discharge volume of 420 in*3* will be used. Other sound sources (see below) will also be employed during the cruise. The seismic operations during the survey will be used to obtain information on the history of the ridges and basins that make up the Arctic Ocean.

The *Healy* will also tow a hydrophone streamer 100–150 m (328–492 ft) behind the ship, depending on ice conditions. The hydrophone streamer will be up to 200 m (656 ft) long. As the source operates along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals. In addition to the hydrophone streamer, sea ice seismometers (SIS) will be deployed on ice floes ahead of the ship using a vessel-based helicopter, and then retrieved from behind the ship once it has passed the SIS locations. SISs will be deployed as much as 120 km (74 mi) ahead of the ship, and recovered when as much as 120 km (74 mi) behind the ship. The seismometers will be placed on top of ice floes with a hydrophone lowered into the water through a small hole drilled in the ice. These instruments will allow seismic refraction data to be collected in the heavily ice-covered waters of the region.

The program will consist of a total of approximately 3625 km (2252 mi) of surveys, not including transits when the airguns are not operating, plus scientific coring at least seven locations. Water depths within the study area are 40–3858 m (131–12,657 ft). Little more than 8 percent of the survey (approximately 300 km (186 mi)) will occur in water depths <100 m (328 ft), 23 percent of the survey (approximately 838 km (520 mi)) will be conducted in water 100–1000 m (328–3280 ft) deep, and most (69 percent) of the survey (approximately 2486 km (1,544 mi)) will occur in water deeper than 1000 m (3280 ft). There will be additional seismic operations associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard. In addition to the airgun array, a multibeam sonar and sub-bottom profiler will be used during the seismic profiling and continuously when underway. A pinger may be used during coring to help direct the core bit.

The coring operations will be conducted in conjunction with the seismic study from the *Healy*. Seismic operations will be suspended while the USCG Healy is on site for coring. Several more coring sites may be identified and sampled depending on the ability to deploy SISs given ice and weather conditions. The plan is to extract one core from six of the seven identified sample locations along the seismic survey, and two cores at the last site on the Chukchi Cap. The coring system to be used is a piston corer that is lowered to the sea floor via a deep sea winch. Coring is expected to occur in 400–4000–m (1,312–13,120–ft) water depths. The piston corer recovers a sample in PVC tubes of 10 cm (3.9–in) diameter. Most of the cores will be approximately (approximately) 5–10 m long (16.4–32.8 ft); maximum possible length will be approximately 24 m (79 ft). The core is designed to leave nothing in the ocean after recovery.

Vessel Specifications

The *Healy* has a length of 128 m (420 ft), a beam of 25 m (82 ft), and a full load draft of 8.9 m (29 ft). The Healy is capable of traveling at 5.6 km/h (3 knots) through 1.4 m (4.6 ft) of ice. A ''Central Power Plant'', four Sultzer 12Z AU40S diesel generators, provides electric power for propulsion and ship's services through a 60 Hz, 3–phase common bus distribution system. Propulsion power is provided by two electric AC Synchronous, 11.2 MW drive motors, fed from the common bus through a Cycloconverter system, that turn two fixed-pitch, four-bladed propellers. The operation speed during seismic acquisition is expected to be approximately 6.5 km/h (3.5 knots). When not towing seismic survey gear or breaking ice, the *Healy* cruises at 22 km/h (12 knots) and has a maximum speed of 31.5 km/h (17 knots). It has a normal operating range of about 29,650 km (18,423 mi) at 23.2 km/hr (12.5 knots).

Seismic Source Description

A portable MCS system will be installed on the Healy for this cruise. The source vessel will tow along predetermined lines one of two different airgun arrays (an 8–airgun array with a total discharge volume of 2840 in3 or a four GI gun array with a total discharge volume of 420 in3), as well as a hydrophone streamer. Seismic pulses will be emitted at intervals of approximately 60 s and recorded at a 2 ms sampling rate. The 60–second spacing corresponds to a shot interval of approximately 120 m (394 t) at the anticipated typical cruise speed.

As the airgun array is towed along the survey line, the towed hydrophone array receives the reflected signals and transfers the data to the on-board processing system. The SISs will store returning signals on an internal datalogger and also relay them in real-time to the Healy via a radio transmitter, where they will be recorded and processed.

The 8–airgun array will be configured as a four-G. gun cluster with a total discharge volume of 840 in^3 and a four Bolt airgun cluster with a total discharge volume of 2000 in^3. The source output is from 246–253 dB re 1 μPa m. The two clusters are four meters apart. The clusters will be operated simultaneously for a total discharge volume of 2840 in^3. The 4–GI gun array will be configured the same as the four G. gun portion of the 8–airgun array. The energy source (source level 239–245 dB re 1 μPa m) will be towed as close to the stern as possible to minimize ice interference. The 8–airgun array will be towed below a depressor bird at a depth of 7–20 m (23–66 ft) depending on ice conditions; the preferred depth is 8–10 m (26–33 ft).

The highest sound level measurable at any location in the water from the airgun arrays would be slightly less than the nominal source level because the actual source is a distributed source rather than a point source. The depth at which the source is towed has a major impact on the maximum near-field output, and on the shape of its frequency spectrum. In this case, the source is expected to be towed at a relatively deep depth of up to 9 m (30 ft).

The rms (root mean square) received sound levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airguns. The measurement units used to describe airgun sources, peak or peak-to-peak dB, are always higher than the rms dB referred to in much of the biological literature. A measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*, 1998, 2000). The precise difference between rms and peak or peak-to-peak

values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source. Additional discussion of the characteristics of airgun pulses is included in Appendix A of UTIG's application.

Safety Radii

NMFS has determined that for acoustic effects, using acoustic thresholds in combination with corresponding safety radii is the most effective way to consistently both apply measures to avoid or minimize the impacts of an action and to quantitatively estimate the effects of an action. Thresholds are used in two ways: (1) To establish a mitigation shut-down or power down zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is powered down or shut down; and (2) to calculate take, in that a model may be used to calculate the area around the sound source that will be ensonified to that level or above, then, based on the estimated density of animals and the distance that the sound source moves, NMFS can estimate the number of marine mammals that may be ''taken''. NMFS believes that to avoid permanent physiological damage (Level A Harassment), cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). NMFS also assumes that cetaceans or pinnipeds exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B Harassment.

In order to implement shut-down zones, or to estimate how many animals may potentially be exposed to a particular sound level using the acoustic thresholds described above, it is necessary to understand how sound will propagate in a particular situation. Models may be used to estimate at what distance from the sound source the water will be ensonified to a particular level. Safety radii represent the estimated distance from the sound source at which the received level of sound would correspond to the acoustic thresholds of 190, 180, and 160 dB. Many models have been field tested in the water. Field verification has shown that some of the predictions are close to being accurate, and some are not.

UTIG originally proposed to base the safety radii for the Healy cruise on a model created by the Lamont-Doherty Earth Observatory and field tested in the Gulf of Mexico. Subsequently, UTIG proposed to enlarge some of the safety radii that relate to shut-down zones to provide further protection for marine mammals that may be in the area during seismic operations. The model utilized by UTIG to develop their safety radii is described below.

Safety Radii Proposed by UTIG

Received sound fields have been modeled by Lamont-Doherty Earth Observatory (L-DEO) for the 8–airgun and 4–GI gun arrays that will be used during this survey. Predicted sound fields were modeled using sound exposure level (SEL) units (dB re 1 μPa^2 s), because a model based on those units tends to produce more stable output when dealing with mixed-gun arrays like the one to be used during this survey. The predicted SEL values can be converted to rms received pressure levels, in dB re 1 μPa (as used in NMFS' impact criteria for pulsed sounds) by adding approximately 15 dB to the SEL value (Greene, 1997; McCauley *et al.*, 1998, 2000). The rms pressure is an average over the pulse duration. This is the measure commonly used in studies of marine mammal reactions to airgun sounds, and in NMFS guidelines concerning levels above which ''taking'' might occur. The rms level of a seismic pulse is typically about 10 dB less than its peak level.

The empirical data concerning 190, 180, and 160 dB (rms) distances in deep and shallow water acquired for various airgun array configurations during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico. Tolstoy *et al.*, (2004a, b) demonstrate that L-DEO's model tends to overestimate the distances applied in deep water. UTIG's study area will occur mainly in water approximately 40–3858 m (131–12,657 ft) deep, with only approximately 8 percent of the survey lines in shallow (<100 m (<328 ft)) water and approximately 23 percent of the trackline in intermediate water depths (100–1000 m (328–3,280 ft)). The calibration-study results showed that radii around the airguns where the received level would be 180 dB re 1 μPa (rms), the safety criterion applicable to cetaceans (NMFS 2000), vary with water depth. Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds.

UTIG has applied the empirical data collected during the Gulf of Mexico verification study to the L-DEO model in the manner described below to develop the safety radii listed in Table 1:

- The empirical data indicate that, for deep water (≤1000 m), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004a,b). However, to be precautionary pending acquisition of additional empirical data, UTIG will use the values predicted by L-DEO's modeling in deep water, after conversion from SEL to rms (Table 1).
- Empirical measurements were not conducted for intermediate depths (100–1000 m). On the expectation that results would be intermediate between those from shallow and deep water, a 1.5 correction factor is applied to the estimates provided by the model for deep water situations
- Empirical measurements were not made for the 4 GI guns that will be employed during the proposed survey in shallow water (<100 m). (The 8–airgun array will not be used in shallow water.) The empirical data on operations of two 105 in^3 GI guns in shallow water showed that modeled values underestimated the distance to the actual 160 dB sound level radii in shallow water by a factor of approximately 3 (Tolstoy *et al.*, 2004b). Sound level measurements for the 2 GI guns were not available for distances <0.5 km (.31 mi)(from the source. The radii estimated here for the 4 GI guns operating in shallow water are derived from the L-DEO model, with the same adjustments for depth-related differences between modeled and measured sound levels as were used for 2 GI guns in earlier applications. Correction factors for the different sound level radii are approximately 12x the model estimate for the 190 dB radius in shallow water, approximately 7x for the 180 dB radius and approximately 4x for the 170 dB radius [Tolstoy 2004a,b]).

As mentioned previously, subsequent to the submission of their application, UTIG proposed expanded safety radii, as they apply to the powerdown and shutdown zones for marine mammals, and these will be used in this project and are indicated in Table 1.

Other Acoustic Devices

Along with the airgun operations, additional acoustical systems will be operated during much of or the entire cruise. The ocean floor will be mapped with a multibeam sonar, and a sub-bottom profiler will be used. These two systems are commonly operated simultaneously with an airgun system. An acoustic Doppler current profiler will also be used through the course of the project, as well as a pinger.

Multibeam Echosounder (SeaBeam 2112)

A SeaBeam 2112 multibeam 12 kHz bathymetric sonar system will be used on the Healy, with a maximum source output of 237 dB re 1 μPa at one meter.

The transmit frequency is a very narrow band, less than 200 Hz, and centered at 12 kHz. Pulse lengths range from less than one millisecond to 12 ms. The transmit interval ranges from 1.5 s to 20 s, depending on the water depth, and is longer in deeper water. The SeaBeam system consists of a set of underhull projectors and hydrophones. The transmitted beam is narrow (approximately 2°) in the fore-aft direction but broad (approximately 132°) in the cross-track direction. The system combines this transmitted beam with the input from an array of receiving hydrophones oriented perpendicular to the array of source transducers, and calculates bathymetric data (sea floor depth and some indications about the character of the seafloor) with an effective 2° by 2° foot print on the seafloor. The SeaBeam 2112 system on the *Healy* produces a useable swath width of slightly

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Table 1. Estimated distances to which sound levels > 190, 180, and 160 dB re 1 miPa (rms) might be received from the various gun-types used during the 2006 Healy Arctic cruise and expanded precautionary shutdown zones for airguns

* The Healy will powerdown airguns whenever a cetacean is seen at any distance while operating the smaller (420 cubic inch) array in shallow or intermediate depth water.

		Estimated Distances for Received Levels (m)		
Seismic Source Volume	Water depth	**190 dB** (shut-down criterion for pinnipeds)	**180 dB** (shut-down criterion for cetaceans)	**160 dB** (assumed onset of behavioral harassment)
105 in^3	>1000 m	10	27	275
GI gun	100–1000 m	15 (500)	41 (500)*	413
	<100 m	125 (1000)	200 (1000)*	750
210 in^3	>1000 m	20	78	698
G. gun	100–1000 m	30 (500)	117 (500)*	1047
	<100 m	250 (1000)	578 (1000)*	1904
420 in^3	>1000 m	75	246	2441
(4-GI gun array)	100–1000 m	113 (500)	369 (1000)*	3662
	<100 m	938 (1000)	1822 (2000)*	6657
2840 in^3	>1000 m	230	716	7097
(8-airgun array)	100–1000 m	345 (500)	1074 (max. vis., 2-3 km)	10646
	<100 m	NA	NA	NA

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more than 2 times the water depth. This is narrower than normal because of the ice-protection features incorporated into the system on the Healy.

Hydrographic Sub-bottom Profiler (Knudsen 320BR)

The Knudsen 320BR will provide information on sedimentary layering, down to between 20 and 70 m, depending on bottom type and slope. It will be operated with the multibeam bathymetric sonar system that will simultaneously map the bottom topography.

The Knudsen 320BR sub-bottom profiler is a dual-frequency system with operating frequencies of 3.5 and 12 kHz:

Low frequency - Maximum output power into the transducer array, as wired on the Healy (125 ohms), at 3.5 kHz is approximately 6000 watts (electrical), which results in a maximum source level of 221 dB re 1 μPa at 1 m downward. Pulse lengths range from 1.5 to 24 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a 1–percent duty cycle. Typical repetition rate is between 1/2 second (in shallow water) to 8 seconds in deep water.

High frequency - The Knudsen 320BR is capable of operating at 12 kHz; but the higher frequency is rarely used because it interferes with the SeaBeam 2112 multibeam sonar, which also operates at 12 kHz. The calculated maximum source level (downward) is 215 dB re 1 μPa at 1 m (3.28 ft). The pulse duration is typically 1.5 to 5 ms with the same limitations and typical characteristics as the low frequency channel.

A single 12 kHz transducer and one 3.5 kHz, low frequency (sub-bottom) transducer array, consisting of 16 elements in a 4 by 4 array will be used for the Knudsen 320BR. The 12 kHz transducer (TC–12/34) emits a conical beam with a width of 30° and the 3.5 kHz transducer (TR109) emits a conical beam with a width of 26°.

12–kHz Pinger (Benthos 2216)

A Benthos 12–kHz pinger may be used during coring operations, to monitor the depth of the corer relative to the sea floor. The pinger is a battery-powered acoustic beacon that is attached to the coring mechanism. The pinger produces an omnidirectional 12 kHz signal with a source output of approximately 192 dB re 1 μPa m at a one pulse per second rate. The pinger produces a single pulse of 0.5, 2 or 10 ms duration (hardware selectable within the unit) every second.

Acoustic Doppler Current Profiler (150 kHz)

The 150 kHz acoustic Doppler current profiler (ADCP) has a minimum ping rate of 0.65 ms. There are four beam sectors, and each beamwidth is 3°. The pointing angle for each beam is 30° off from vertical with one each to port, starboard, forward and aft. The four beams do not overlap. The 150 kHz ADCP's maximum depth range is 300 m.

Acoustic Doppler Current Profiler (RD Instruments Ocean Surveyor 75)

The Ocean Surveyor 75 is an ADCP operating at a frequency of 75 kHz, producing a ping every 1.4 s. The system is a four-beam phased array with a beam angle of 30°. Each beam has a width of 4°, and there is no overlap. Maximum output power is 1 kW with a maximum depth range of 700 m (2,297 ft).

Description of Habitat and Marine Mammals Affected by the Activity

A description of the Beaufort and Chukchi sea ecosystems and their associated marine mammals can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 2006, 1996 and 1992). MMS' Programmatic Environmental Assessment (PEA) - Arctic Ocean Outer Continental Shelf Seismic Surveys – 2006 may be viewed at: *http://www.mms.gov/alaska/*.

Marine Mammals

A total of 8 cetacean species, 4 species of pinnipeds, and 1 marine carnivore are known to or may occur in or near UTIG's study area (Table 2). Two of these species, the bowhead and fin whale, are listed as ''Endangered'' under the ESA, but the fin whale is unlikely to be encountered along the planned trackline.

The marine mammals that occur in the survey area belong to three taxonomic groups: odontocetes (toothed cetaceans, such as beluga whale and narwhal whale), mysticetes (baleen whales), and carnivora (pinnipeds and polar bears). Cetaceans and pinnipeds (except walrus) are the subject of the IHA Application to NMFS; in the U.S., the walrus and polar bear are managed by the USFWS.

The marine mammal species most likely to be encountered during the seismic survey include one or perhaps two cetacean species (beluga and perhaps bowhead whale), three pinniped species (ringed seal, bearded seal, and walrus), and the polar bear. However, most of these will occur in low numbers and encounters with most species are likely to be most common within 100 km (62 mi) of shore where no seismic work is planned to take place. The marine mammal most likely to be encountered throughout the cruise is the ringed seal. Concentrations of walruses might also be encountered in certain areas, depending on the location of the edge of the pack ice relative to their favored shallow-water foraging habitat. The most widely distributed marine mammals are expected to be the beluga, ringed seal, and polar bear.

Three additional cetacean species, the gray whale, minke whale and fin whale, could occur in the project area. It is unlikely that gray whales will be encountered near the trackline; if encountered at all, gray whales would be found closer to the Alaska coastline where no seismic work is planned. Minke and fin whales are extralimital in the Chukchi Sea and will not likely be encountered as the trackline borders their known range. Two additional pinniped species, the harbor and spotted seal, are also unlikely to be seen.

Table 2 also shows the estimated abundance and densities of the marine mammals likely to be encountered during the Healy's Arctic cruise. Additional information regarding the distribution of these species and how the estimated densities were calculated may be found in UTIG's application and NMFS' Updated Species Reports at: (*http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/2005alaskasummarySARs.pdf*).

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Table 2. Estimated abundance and density of marine mammals likely to be encountered during the Healy's Arctic seismic survey Authorized take for each species, based on estimated exposures > 160 dB and maximum density, is also included.
* Listed as endangered under the U.S. Endangered Species Act
**Adjusted take estimates/authorizations based on recommendations based on public comments from local biologists.

Species	Habitat	Abundance	ESTIMATED DENSITIES Offshore Barrow Average	Offshore Barrow Maximum	Polar Pack Ice Average	Polar Pack Ice Maximum	Take Authorization Max (Best)
Odontocetes							
Beluga whale (*Delphinapterus leucas*)	Offshore, Coastal Ice edges	50,000 (W. Alaska) 39257 (Beaufort)	0.0034	0.0135	0.0003	0.0014	200** 134 (33)
Narwhal (*Monodon monoceros*)	Offshore, Ice edge	Rare	0	0.0001	0	0.0001	5
Killer whale (*Orcinus orca*)	Widely distributed	Rare	0	0	Not	Present	10
Harbor Porpoise (*Phocoena phocoena*)	Coastal, inland waters	Extralimital	0	0.0002	Not	Present	5
Mysticetes							
Bowhead whale* (*Balaena mysticetus*)	Pack ice & coastal	10545 (near Barrow)	0.0032	0.0064	0.0003	0.0006	31
Gray whale (*Eschrichtius robustus*) (eastern Pacific population)	Coastal, lagoons	488 (S.Chukchi/N.Bering) 17500 (N. Pacific)	0.0022	0.0045	0	0	29 (14)
Minke whale (*Balaenoptera acutorostrata*)	Shelf, coastal	0	0	0	0	0	0
Fin whale* (*Balaenoptera physalus*)	Slope, mostly pelagic	0	0	0	0	0	0
Pinnipeds							
Walrus (*Odobenus rosmarus*)	Coastal, pack ice, ice	188316 (Pacific)	0.0731	0.6169	0	0.0001	N/A
Bearded seal (*Erignathus barbatus*)	Pack ice	300,000-450,000 (Alaska) 4863 (E. Chukchi)	0.0128	0.0256	0.0013	0.0023	487 (127)
Spotted seal (*Phoca largha*)	Pack ice	1000	0.0001	0.0005	0	0	20** 5
Ringed seal (*Pusa hispida*)	Landfast & pack ice	Up to 3.6 million (Alaska) 245048 (Bering/Chukchi) 326500 (Alaskan Beaufort)	0.251	1.004	0.0251	0.1004	7934 (1984)
Carnivora							
Polar bear (*Ursus maritimus*)	Coastal, ice	>2500 (Amstrup et al.) 15000 (NWT W&F)	0.0016	0.004	0.0002	0.0004	N/A

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Potential Effects on Marine Mammals

Potential Effects of Airguns

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and at least in theory, temporary or permanent hearing impairment, or non-auditory physical effects (Richardson *et al.*, 1995). Because the airgun sources planned for use during the present project involve only 4 or 8 airguns, the effects are anticipated to be less than would be the case with a large array of airguns. It is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to relatively short distances.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (see Appendix A (e) of application). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds, small odontocetes, and sea otters seem to be more tolerant of exposure to airgun pulses than are baleen whales.

Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data of relevance. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent

work in the Gulf of Mexico (Tyack *et al.*, 2003). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds. For more information on masking effects, see Appendix A (d) of the application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or the species as a whole. Alternatively, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals are most likely significant. There are some uncertainties in predicting the quantity and types of impacts of noise on marine mammals. When attempting to quantify potential take for an authorization, NMFS estimates how many mammals were likely within a certain distance of sound level that equates to the received sound level.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, and bowhead whales, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, small toothed whales, and sea otters.

Baleen Whales: Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix A (e) of the application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4.5 to 14.5 km (2.8–9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies reviewed in Appendix A (e) of the application have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re 1 μPa rms. Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20–30 km (12.4–18.6 mi) from a medium-sized airgun source (Miller *et al.*, 1999; Richardson *et al.*, 1999). More recent research on bowhead whales (Miller *et al.*, 2005), however, suggests that during the summer feeding season (during which the project will take place) bowheads are not nearly as sensitive to seismic sources and can be expected to react to the more typical 160–170 dB re 1 Pa rms range.

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast.

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Appendix A in Malme *et al.*,1984). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*,1987). Populations of both gray whales and bowhead whales grew substantially during this time. In any event, the brief exposures to sound pulses from the Healy's airgun source are highly unlikely to result in prolonged effects.

Toothed Whales: Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and in Appendix A of the application have been reported for toothed whales. However, systematic work on sperm whales is underway (Tyack *et al.*, 2003), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004).

Seismic operators sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away, or maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.*, 2005).

Similarly, captive bottlenose dolphins and (of some relevance in this project) beluga whales exhibit changes in

behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002). However, the animals tolerated high received levels of sound (pk-pk level >200 dB re 1 μPa) before exhibiting aversive behaviors. With the presently-planned source, such levels would be found within approximately 400 m (1,312 ft) of the 4 GI guns operating in shallow water.

Odontocete reactions to large arrays of airguns are variable and, at least for small odontocetes, seem to be confined to a smaller radius than has been observed for mysticetes. UTIG proposed using a 170–dB acoustic threshold for behavioral disturbance of delphinids and pinnipeds in lieu of the 160–dB NMFS currently uses as the standard threshold. However, NMFS does not believe there is enough data to support changing the threshold at this time and will utilize the 160 dB safety radii. NMFS is currently developing new taxa-specific acoustic criteria and they are scheduled to be made available to the public within the next two years.

Pinnipeds: Pinnipeds are not likely to show a strong avoidance reaction to the medium-sized airgun sources that will be used. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior-see Appendix A (e) of the application. Those studies show that pinnipeds frequently do not avoid the area within a few hundred meters of operating airgun arrays (e.g., Miller *et al.*, 2005; Harris *et al.*, 2001). However, initial telemetry work suggests that avoidance and other behavioral reactions to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses. Current NMFS practice regarding exposure of marine mammals to high-level sounds is to establish mitgation that will avoid cetaceans and pinnipeds exposure to impulsive sounds 180 and 190 dB re 1 Pa (rms), respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut down) radii planned for UTIG's seismic survey. As summarized here,

- The 180 dB criterion for cetaceans may be lower than necessary to avoid temporary threshold shift (TTS), let alone permanent auditory injury, at least for belugas and delphinids.
- The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.
- The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

NMFS is presently developing new noise exposure criteria for marine mammals that account for the now-available scientific data on TTS and other relevant factors in marine and terrestrial mammals.

Several aspects of the required monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airguns (and multi-beam bathymetric sonar), and to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (see Mitigation). In addition, many cetaceans are likely to show some avoidance of the area with high received levels of airgun sound (see above). In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects might also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns and beaked whales do not occur in the present study area. It is unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal, and the planned monitoring and mitigation measures (see below). The following subsections discuss in somewhat more detail the possibilities of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS: TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2005, 2002). Given the available data, the received level of a single seismic pulse might need to be approximately 210 dB re 1 Pa rms (approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200–205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Seismic pulses with received levels of 200–205 dB or more are usually restricted to a radius of no more than 200 m around a seismic vessel operating a large array of airguns.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. However, no cases of TTS are expected given the moderate size of the source, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; cf. Au *et al.*, 2000).

A marine mammal within a radius of 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of 205 dB, and possibly more pulses if the mammal moved with the

seismic vessel. The sound level radius would be similar (100 m) around the 8–airgun array while surveying in intermediate depths (100–1000 m). This would occur for <23 percent (approximately 838 km (520 mi)) of the survey when the survey will be conducted in intermediate depths. Also, the PIs propose using the 4 GI guns for some of the intermediate-depth survey, which would greatly reduce the 205 dB sound radius. (As noted above, most cetacean species tend to avoid operating airguns, although not all individuals do so.) However, several of the considerations that are relevant in assessing the impact of typical seismic surveys with arrays of airguns are not directly applicable here:

- ''Ramping up'' (soft start) is standard operational protocol during startup of large airgun arrays. Ramping up involves starting the airguns in sequence, usually commencing with a single airgun and gradually adding additional airguns. This practice will be employed when either airgun array is operated.
- It is unlikely that cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. In this project, most of the seismic survey will be in deep water where the radius of influence and duration of exposure to strong pulses is smaller.
- With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. In the present project, the anticipated 180–dB distances in deep and intermediate-depth water are 716 m (2,349 ft) and 1074 m (3,524 ft), respectively, for the 8–airgun gun system (Table 1) and 246 m (840 ft) and 369 m (1,207 ft), respectively for the 4–GI gun system. The waterline at the bow of the Healy will be approximately 123 m (404 ft) ahead of the airgun. However, no species that occur within the project area are expected to bow-ride.

The predicted 180 and 190 dB distances for the airguns operated by UTIG vary with water depth. They are estimated to be 716 m (2,349 ft) and 230 m (754 ft), respectively, in deep water for the 8–airgun system, and 246 m (807 ft) and 75 m (246 ft), respectively, in deep water for the 4–GI gun system. In intermediate depths, these distances are predicted to increase to 1074 m (3,523 ft) and 345 m (1,131 ft), respectively for the 8–airgun system, and 369 m (1,210 ft) and 113 m (371 ft), respectively for the 4–GI gun system. The predicted 180 and 190 dB distances for the 4–GI gun system in shallow water are 1822 m (5,978 ft) and 938 m (3,077 ft), respectively (Table 1). The 8–airgun array will not be operated in shallow water. Shallow water (<100 m (328 ft)) will occur along only 300 km (186 mi) (approximately 8 percent) of the planned trackline. Furthermore, those sound levels are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to airgun pulses much stronger than 180 dB re 1 ~Pa rms and since no bow-riding species occur in the study area, it is unlikely such exposures will occur.

PTS: When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to the strong sound pulses with very rapid rise time-see Appendix A (f) of the application.

It is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during a project employing the medium-sized airgun sources planned here. In UTIG's project, marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, as they would probably need to be within 100–200 m (328–656 ft) of the airguns for that to occur. Given the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. In fact, even the levels immediately adjacent to the airgun may not be sufficient to induce PTS, especially because a mammal would not be exposed to more than one strong pulse unless it swam immediately alongside the airgun for a period longer than the inter-pulse interval. Baleen whales generally avoid the immediate area around operating seismic vessels. The planned monitoring and mitigation measures, including visual monitoring, power downs, and shut downs of the airguns when mammals are seen within the ''safety radii'', will minimize the already-minimal probability of exposure of marine mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects: Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, and other types of organ or tissue damage. However, studies examining such effects are very limited. If any such effects do occur, they probably would be limited to unusual situations when animals might be exposed at close range for unusually long periods. It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of this project where the airgun configuration is moderately sized, the ship is moving at 3–4 knots (5.5–7.4 km/hr), and for the most part, the tracklines will not ''double back'' through the same area.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. This possibility was first explored at a workshop (Gentry [ed.], 2002) held to discuss whether the stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to bubble formation in tissues caused by exposure to noise from naval sonar. However, the opinions were inconclusive. Jepson *et al.* (2003) first suggested a possible link between mid-frequency sonar activity and acute and chronic tissue damage that results from the formation in vivo of gas bubbles, based on the beaked whale stranding in the Canary Islands in 2002 during naval exercises. Fernandez *et al.* (2005a) showed those beaked whales did indeed have gas bubble-associated lesions as well as fat embolisms. Fernandez *et al.* (2005b) also found evidence of fat embolism in three beaked whales that stranded 100 km north of the Canaries in 2004 during naval exercises. Examinations of several other stranded

species have also revealed evidence of gas and fat embolisms (e.g., Arbelo *et al.*, 2005; Jepson *et al.*, 2005a; Mendez *et al.*, 2005). Most of the afflicted species were deep divers. There is speculation that gas and fat embolisms may occur if cetaceans ascend unusually quickly when exposed to aversive sounds, or if sound in the environment causes the destabilization of existing bubble nuclei (Potter, 2004; Arbelo *et al.*, 2005; Fernandez *et al.*, 2005a; Jepson *et al.*, 2005b). Even if gas and fat embolisms can occur during exposure to mid-frequency sonar, there is no evidence that that type of effect occurs in response to airgun sounds. Also, most evidence for such effects have been in beaked whales, which do not occur in UTIG's study area.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances and probably to projects involving large arrays of airguns. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur auditory impairment or other physical effects. Also, the planned monitoring and mitigation measures include shut downs of the airguns, which will reduce any such effects that might otherwise occur.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L-DEO seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Appendix A (g) of the application provides additional details.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and mortality (NOAA and USN, 2001; Jepson *et al.*, 2003; Fernandez *et al.*, 2005a), even if only indirectly, suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In May 1996, 12 Cuvier's beaked whales stranded along the coasts of Kyparissiakos Gulf in the Mediterranean Sea. That stranding was subsequently linked to the use of low- and medium-frequency active sonar by a North Atlantic Treaty Organization (NATO) research vessel in the region (Frantzis, 1998). In March 2000, a population of Cuvier's beaked whales being studied in the Bahamas disappeared after a U.S. Navy task force using mid-frequency tactical sonars passed through the area; some beaked whales stranded (Balcomb and Claridge, 2001; NOAA and USN, 2001).

In September 2002, a total of 14 beaked whales of various species stranded coincident with naval exercises in the Canary Islands (Martel, n.d.; Jepson *et al.*, 2003; Fernandez *et al.*, 2003). Also in September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L-DEO vessel Maurice Ewing was operating a 20 airgun, 8490 in^3 array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that plus the incidents involving beaked whale strandings near naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales. However, no beaked whales are found within this project area and the planned monitoring and mitigation measures are expected to minimize any possibility for mortality of other species.

Potential Effects of Other Acoustic Devices

Bathymetric Sonar Signals

A SeaBeam 2112 multibeam 12 kHz bathymetric sonar system will be operated from the source vessel essentially continuously during the planned study. Sounds from the multibeam are very short pulses, depending on water depth. Most of the energy in the sound pulses emitted by the multibeam is at moderately high frequencies, centered at 12 kHz. The beam is narrow (approximately 2°) in fore-aft extent and wide (approximately 130°) in the cross-track extent. Any given mammal at depth near the trackline would be in the main beam for only a fraction of a second. Therefore, marine mammals that encounter the SeaBeam 2112 at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses. Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a multibeam sonar emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to be subjected to sound levels that could cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the SeaBeam 2112 sonar, (2) have a longer pulse duration, (3) are directed close to horizontally vs. downward for the SeaBeam 2112, and (4) have a wider beam width. The area of possible influence of the bathymetric sonar is much smaller, a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the bathymetric sonar at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only small amounts of pulse energy because of the short pulses. In assessing the possible impacts of a similar multibeam system (the 15.5 kHz Atlas Hydrosweep multibeam bathymetric sonar), Boebel *et al.* (2004) noted that the critical sound pressure level at which TTS may occur is 203.2 dB re 1 μPa (rms). The critical region included an area of 43 m (141 ft) in depth, 46 m (151 ft) wide athwartship, and 1 m (3.3 ft) fore-and-aft (Boebel *et al.*, 2004). In the more distant parts of that (small) critical region, only slight TTS could potentially be incurred. This area is included within the 160 dB isopleth for airguns, in which Level B Harassment is already assumed to occur when th airguns are operating.

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal

by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. During exposure to a 21–25 kHz whale-finding sonar with a source level of 215 dB re 1 μPa m, gray whales showed slight avoidance (approximately 200 m (656 ft)) behavior (Frankel, 2005).

However, all of those observations are of limited relevance to the present situation. Pulse durations from the Navy sonars were much longer than those of the bathymetric sonars to be used during this study, and a given mammal would have received many pulses from the naval sonars. During UTIG's operations, the individual pulses will be very short, and a given mammal would rarely receive more than one of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 second of pulsed sounds at frequencies similar to those that will be emitted by the bathymetric sonar to be used by UTIG, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from a bathymetric sonar.

We are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the multibeam sonar (12 kHz). Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions to the sonar sounds are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

Sub-bottom Profiler Signals

A Knudsen 320BR sub-bottom profiler will be operated from the source vessel at nearly all times during the planned study. The Knudsen 320BR produces sound pulses with lengths of up to 24 ms every 0.5 to approximately 8 s, depending on water depth. The energy in the sound pulses emitted by this sub-bottom profiler is at mid- to moderately high frequency, depending on whether the 3.5 or 12 kHz transducer is operating. The conical beamwidth is either 26°, for the 3.5 kHz transducer, or 30°, for the 12 kHz transducer, and is directed downward.

Source levels for the Knudsen 320 operating at 3.5 and 12 kHz have been measured as a maximum of 221 and 215 dB re 1 Pa m, respectively. Received levels would diminish rapidly with increasing depth. Assuming circular spreading, received level directly below the transducer(s) would diminish to 180 dB re 1 μPa at distances of about 112 m (367 ft) when operating at 3.5 kHz, and 56 m when operating at 12 kHz. The 180 dB distances in the horizontal direction (outside the downward-directed beam) would be substantially less. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small, and if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could potentially cause TTS.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the sub-bottom profiler (see Appendix A in the application). In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Pinger Signals

A pinger will be operated during all coring, to monitor the depth of the core relative to the sea floor. Sounds from the pinger are very short pulses, occurring for 0.5, 2 or 10 ms once every second, with source level approximately 192 dB re 1 μPa m at a one pulse per second rate. Most of the energy in the sound pulses emitted by this pinger is at mid frequencies, centered at 12 kHz. The signal is omnidirectional. The pinger produces sounds that are within the range of frequencies used by small odontocetes and pinnipeds that occur or may occur in the area of the planned survey.

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the pinger are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the pinger are much weaker than those from the bathymetric sonars and from the airgun. Therefore, neither behavioral responses nor TTS would potentially occur unless marine mammals were to get very close to the source, which is unlikely due to the fact that animals will probably move away from the ship in response to the louder sounds from the other sources operating and the vessel itself, and the fact that the required mitigation and monitoring measures will be implemented during the operation of the airguns.

Effects of Helicopter Activities

Collection of seismic refraction data requires the deployment of hydrophones at great distances from the source vessel. In order to accomplish this in the ice-covered waters of the Arctic Ocean, the science party plans to deploy SISs along seismic lines in front of the Healy and then retrieve them off the ice once the vessel has passed. Vessel-based helicopters will be used to shuttle SISs along seismic track lines. Deployment and recovery of SISs every 10–15 km (6.2–9.3 mi) along the track line and as far as 120 km a(75 mi) head or behind the vessel will require as many as 24 on-ice landings per 24–hr period during seismic shooting.

Levels and duration of sounds received underwater from a passing helicopter are a function of the type of helicopter used, orientation of the helicopter, the depth of the marine mammal, and water depth. A civilian helicopter service will be providing air support for this project and we do not yet know what type of helicopter will be used. Helicopter sounds are detectable underwater at greater distances when the receiver is at shallow depths. Generally, sound levels received underwater decrease as the altitude of the helicopter increases (Richardson *et al.*, 1995). Helicopter sounds are audible for much greater distances in air than in water.

Cetaceans

The nature of sounds produced by helicopter activities above the surface of the water does not pose a direct threat to the hearing of marine mammals that are in the water; however minor and short-term behavioral responses of cetaceans to helicopters have been documented in several locations, including the Beaufort Sea (Richardson *et al.*, 1985a,b; Patenaude *et al.*, 2002). Cetacean reactions to helicopters depend on several variables including the animal's behavioral state, activity, group size, habitat, and the flight patterns used, among other variables (Richardson *et al.*, 1995). During spring migration in the Beaufort Sea, beluga whales reacted to helicopter noise more frequently and at greater distances than did bowhead whales (38 percent vs.14

percent of observations, respectively). Most reaction occurred when the helicopter passed within 250 m (820 ft) lateral distance at altitudes <150 m (492 ft). Neither species exhibited noticeable reactions to single passes at altitudes >150 m (492 ft). Belugas within 250 m (820 ft) of stationary helicopters on the ice with the engine running showed the most overt reactions (Patenaude *et al.*, 2002). Whales were observed to make only minor changes in direction in response to sounds produced by helicopters, so all reactions to helicopters were considered brief and minor. Cetacean reactions to helicopter disturbance are difficult to predict and may range from no reaction at all to minor changes in course or (infrequently) leaving the immediate area of the activity.

Pinnipeds

Few systematic studies of pinniped reactions to aircraft overflights have been completed. Documented reactions range from simply becoming alert and raising the head to escape behavior such as hauled out animals rushing to the water. Ringed seals hauled out on the surface of the ice have shown behavioral responses to aircraft overflights with escape responses most probable at lateral distances <200 m (656 ft) and overhead distances <150 m (492 ft) (Born *et al.*, 1999). Although specific details of altitude and horizontal distances are lacking from many largely anecdotal reports, escape reactions to a low flying helicopter (<150 m (492 ft) altitude) can be expected from all four species of pinnipeds potentially encountered during the proposed operations. These responses would likely be relatively minor and brief in nature. Whether any response would occur when a helicopter is at the higher suggested operational altitudes (below) is difficult to predict and probably a function of several other variables including wind chill, relative wind chill, and time of day (Born *et al.*, 1999).

In order to limit behavioral reactions of marine mammals during deployment of SISs, helicopters will maintain a minimum altitude of 1000 ft (304 m) above the sea ice except when taking off or landing. Sea-ice landings within 1000 ft (304 m) of any observed marine mammal will not occur, and the helicopter flight path will remain along the seismic track line. Three or four SIS units will be deployed/retrieved before the helicopter returns to the vessel. This should minimize the number of disturbances caused by repeated over-flights.

Comments and Responses

On May 15, 2006 (71 FR 27997), NMFS published a notice of a proposed IHA for UTIG's request to take marine mammals incidental to conducting a marine geophysical seismic survey in the Arctic Ocean, and requested comments, information and suggestions concerning the request. During the 30–day public comment period, NMFS received comments from two private citizens, NSF, the Marine Mammal Commission (MMC), The North Slope Borough (NSB) Department of Wildlife Management, the Alaska Eskimo Whaling Commission and the Center for Biological Diversity (CBD) (which were also on behalf of Pacific Environment and Oceana.

Comment 1: One commenter recommends NMFS deny an IHA to UTIG unless and until NMFS can ensure that mitigation measures are in place to truly avoid adverse impacts to all species and their habitats.

Response: The requirements of the MMPA are that impacts be reduced to the lowest level practicable, not that no adverse impacts be allowed. NMFS believes that the mitigation measures required under Shell's IHA will reduce levels to the lowest level practicable.

Comment 2: The CBD states that NMFS' failure to address the scientific literature linking seismic surveys with marine mammal stranding events, and the threat of serious injury or mortality renders NMFS' conclusionary determination that serious injury or mortality will not occur from UTIG's activities arbitrary and capricious.

Response: First, the evidence linking marine mammal strandings and seismic surveys remains inconclusive at best. Two papers, Taylor *et al.* (2004) and Engel *et al.* (2004) reference seismic signals as a possible cause for a marine mammal stranding. Taylor *et al.* (2004) noted two beaked whale stranding incidents related to seismic surveys. The statement in Taylor *et al.* (2004) was that the seismic vessel was firing its airguns at 1300 hrs on September 24, 2004 and that between 1400 and 1600 hrs, local fishermen found live-stranded beaked whales some 22 km (12 nm) from the ship's location. A review of the vessel's trackline indicated that the closest approach of the seismic vessel and the beaked whales stranding location was 18 nm (33 km) at 1430 hrs. At 1300 hrs, the seismic vessel was located 25 nm (46 km) from the stranding location. What is unknown is the location of the beaked whales prior to the stranding in relation to the seismic vessel, but the close timing of events indicates that the distance was not less than 18 nm (33 km). No physical evidence for a link between the seismic survey and the stranding was obtained. In addition, Taylor *et al.* (2004) indicates that the same seismic vessel was operating 500 km (270 nm) from the site of the Galapagos Island stranding in 2000. Whether the 2004 seismic survey caused to beaked whales to strand is a matter of considerable debate (see Cox *et al.*, 2004). NMFS believes that scientifically, these events do not constitute evidence that seismic surveys have an effect similar to that of mid-frequency tactical sonar. However, these incidents do point to the need to look for such effects during future seismic surveys. To date, follow-up observations on several scientific seismic survey cruises have not indicated any beaked whale stranding incidents.

Engel *et al.* (2004), in a paper presented to the International Whaling Commission (IWC) in 2004 (SC/56/E28), mentioned a possible link between oil and gas seismic activities and the stranding of 8 humpback whales (7 off the Bahia or Espirito Santo States and 1 off Rio de Janeiro, Brazil). Concerns about the linkage between this stranding event and seismic activity were raised by the International Association of Geophysical Contractors (IAGC). The IAGC (2004) argues that not enough evidence is presented in Engel *et al.* (2004) to assess whether or not the relatively high proportion of adult strandings in 2002 is anomalous. The IAGC contends that the data do not establish a clear record of what might be a ''natural'' adult stranding rate, nor is any attempt made to characterize other natural factors that may influence strandings. As stated previously, NMFS remains concerned that the Engel *et al.* (2004) article appears to compare stranding rates made by opportunistic sightings in the past with organized aerial surveys beginning in 2001. If so, then the data are suspect.

Second, strandings have not been recorded for those marine mammal species expected to be harassed by seismic in the Arctic Ocean. Beaked whales and humpback whales, the two species linked in the literature with stranding events with a seismic component, are not located in the Chukchi Sea seismic survey area. Finally, if bowhead and gray whales react to sounds at very low levels by making minor course corrections to avoid seismic noise and mitigation measures require UTIG to ramp-up the seismic array to avoid a startle effect, strandings are highly unlikely to occur in the Arctic Ocean. In conclusion, NMFS does not expect any marine

mammals will incur injury or mortality as a result of Arctic Ocean seismic surveys in 2006.

Comment 3: One commenter refers to the effects of high explosive detonations, mid-frequency sonar, and seismic airguns in an argument to show that serious injury, stranding, or mortality is likely to result from this activity. This commenter cites a statement in the proposed IHA that says ''marine mammals close to underwater detonations of high explosive can be killed or severely injured'', but then doubts the veracity of the followup statement, which says ''airgun pulses are less energetic and have slower rise times and there is no proof that they can cause serious injury, stranding, or death.'' Similarly, the commenter cites examples from strandings that scientists have concluded were associated with mid-frequency sonar.

Response: Explosive detonations are known to have physical characteristics that are more likely than airguns to result in the damage of ear tissue. Mid-frequency sonar and seismic airguns produce physically different sounds that elicit different reactions from cetaceans, so their effects cannot be directly compared and, as mentioned above, there is no proof that airguns can cause serious injury, stranding, or death.

Comment 4: Several commenters list concerns regarding cumulative effects (including the scheduled oil and gas seismic surveys and global warming, among other things) and the extent to which they were considered in NMFS' negligible impact determination for this IHA.

Response: Under section 101(a)(5)(D) of the MMPA, ''the Secretary shall authorize... taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned (I) will have a negligible impact on such species or stock, and (II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.'' NMFS cannot make a negligible impact determination for an IHA under this provision of the MMPA based on the cumulative effects of other actions.

Cumulative impact assessments are NMFS' responsibility under NEPA, not the MMPA. Cumulative impacts refer to the impacts on the environment that result from a combination of past, existing, and imminent projects and human activities. Human activities in the Arctic Ocean include whaling and sealing, commercial fishing, oil and gas development, and vessel traffic. NSF addresses these issues in the EA and, with the exception of the oil and gas surveys, these activities occur predominantly within 20 km of shore, whereas the *Healy* does not begin conducting seismic activities until it is more than 150 km from shore. For the majority of the proposed trackline, the *Healy* is unlikely to encounter any additional human activities, and thus the degree of cumulative impact will be minimal. Any such effects related to the cumulation of human activities near the start and end of the trackline will not be significant.

Some commenters expressed concerns about the cumulative effects of the noise from the Healy in concert with the noise from the oil and gas surveys in the Beaufort and Chukchi Seas during the same time period. NMFS does not believe that the effects of the *Healy* are related to these actions or that they contribute to cumulatively significant impacts for the following reasons: the majority of the *Healy*'s seismic surveys (and all of them using the larger airgun array) take place from 200 – 800 km north (mostly in the ice pack) of the outer edges of the area where the oil and gas surveys are being conducted; during the brief time that the *Healy* passes through the area (in one straight line) where oil and gas surveys may be being conducted, the Healy is only operating their smaller airgun array (420 in3 as compared to the 3300 in^3 guns operated by Conoco, for example); the *Healy* cruise is scheduled to avoid the fall bowhead whale migration; and, last, the monitoring reports from the Arctic cruise that the *Healy* conducted last year, which went through the same area (though it finished in Norway) at the same general time of year, indicated that the crew saw 0 cetaceans during the entire cruise and just over 100 pinnipeds.

Commenters also noted the potential cumulative effects from climate change in the Arctic Ocean. While NMFS fully acknowledges the importance of global climate change and the need for further analysis on this topic, NMFS does not believe that this action is related to global climate change in a way that will cause cumulatively significant impacts. The *Healy*'s Arctic cruise is not adding measurably to climate change. Additionally, climate change is not an ''action'', it is an effect resulting from many causes, some anthropogenic, and some potentially not. Also, NMFS does not believe that the short-term behavioral effects anticipated to result from this action will combine with the effects of global climate change on pinniped habitat to have substantial effects on Arctic pinnipeds. The effects of global climate change will be incorporated into the MMPA authorization process through NMFS' use of stock assessments and other literature that reflects the changes in the distribution and abundance of the species affected by the phenomenom.

Comment 5: One commenter says that NMFS does not have evidence to support a finding of no unmitigable adverse impact to subsistence hunting. Another commenter points out that some people rely on fishing for a livelihood and that loud noises scare fish.

Response: The Healy activities will begin more than 150 km from shore, the majority will occur at least 600 km from shore, and cruise will be finished prior to the beginning of the fall bowhead migration. The AEWC has stated that they do not believe that the *Healy* cruise will affect the subsistence hunt. NMFS does not believe the *Healy* cruise will have an unmitigable adverse effect on the availability of marine mammal stocks for subsistence uses.

Though loud noises may scare fish, the *Healy* is very unlikely to run into any other human activities at the distance from shore that their activities are planned to take place and is therefore unlikely to affect the catch of any fishers.

Comment 6: Pursuant to Section 7 of the ESA, NMFS may only authorize incidental take of the bowhead whale where such take occurs while ''carrying out an otherwise lawful activity''. One commenter contends that NMFS is not in compliance with the MMPA or NEPA due to some of the issues addressed above and that NMFS is therefore also in violation of the ESA.

Response: For the reasons stated above and throughout the text of this notice, NMFS believes we are in compliance with both the MMPA and NEPA.

Comment 7: The CBD states that the tables in the proposed IHA notice provide no support for NMFS' ''conclusion'' on small numbers and negligible impact.

Response: The estimated take in the proposed IHA is based on the maximum estimated density of marine mammals in the area and the width and length of the seismic trackline, it does not take into consideration the effectiveness of the required mitigation measures or the fact that some animals will avoid the the ensonified area. During the *Healy* cruise last year, which went through the same area and was conducted at approximately the same time of year, zero cetaceans and just over 100 pinnipeds were detected by a

combination of visual observation and passive acoustic detection. The maximum take estimates for this activity (which NMFS believes are overestimates) indicate that no more than 2.5 percent of the gray whale and ringed seal populations would be harassed, and no more than 1 percent of any of the other affected stocks. NMFS considers these numbers small, relative to the population sizes.

Comment 8: Commenters recommended that NMFS require UTIG to conduct all practicable mitigation and monitoring measures to ensure the least practicable adverse impact to marine mammals, including the use of passive acoustic monitoring to increase detection, especially during low-visibility times such as fog or nighttime, and the reduction of source levels. Another commenter further suggests that NSF is already deploying hydrophones and SISs and that these could be modified to collect marine mammal data both in realtime and for baseline marine mammal data.

Response: NMFS believes that we have included the monitoring and mitigation measures necessary to ensure the least practicable adverse impact to marine mammals.

Last year, at considerable expense, the applicants utilizing the *Healy* for a similar Arctic survey implemented passive acoustic monitoring by modifying the sonobuoys they were already planning to use and developing software for those specific sonobuoys to allow them to monitor realtime marine mammal presence/absence. These sonobuoys were monitored for about one third of the time that airguns were operated during the cruise. During that cruise (including both the time airguns were operated and the time they were not that MMOs were on duty) zero cetaceans were detected by visual detection or passive acoustics. For the following reasons NMFS believes that it is not necessary for the Healy to implement a passive acoustic program: the majority of the *Healy*'s operation of airguns will occur deep into the ice pack where the likelihood of encountering cetaceans is low, the Healy utilizes the smaller airgun array in the majority of the area where they are more likely to encounter a cetacean, and the *Healy* will not encounter darkness except possibly at the very end of the cruise. Additionally, though both NMFS and NSF believe that the collection of baseline marine mammal data in the Arctic is an important goal, the cost in both money and man-power of implementing an effective passive acoustic program is not practicable for this activity.

It is NMFS' opinion that once a safety zone is determined visually to be free of marine mammals, seismic may continue into periods of poor visibility. Mitigation measures include both ramp-up of the source and ensuring that the prescribed safety zone is free of marine mammals for 30 minutes prior to start up. Marine mammals potentially affected by seismic noise would have ample time to move away from the source, as evidenced by bowhead, beluga and gray whale avoidance behavior. For pinnipeds, NMFS believes that because they are not likely to even react to seismic sounds unless the received levels are >170 dB re 1 μPa (rms), hearing impairment is also unlikely at an SPL as low as 190 dB. Therefore, it is unlikely that marine mammals will be harmed as a result of continuing seismic into periods of poor visibility in Arctic waters.

Regarding source reduction, UTIG elected to use a much smaller array during the portion of the study that occurs across the area where cetaceans are more likely to be encountered and where oil and gas surveys could potentially be operating in the same area. Additionally, UTIG suggested, and NMFS adopted, expanded powerdown and shutdown radii, which effectively reduce the source level whenever marine mammals are in the area.

Comment 9: CBD states that harassment of marine mammals can occur at levels below the 160 dB threshold for Level B harassment, and that NMFS should reassess its harassment thresholds for acoustic impacts. To support this recommendation, the commenter cites the fact that bowhead whales have been shown to exhibit avoidance of seismic airguns at 120 dB and that harbor porpoises have been reported to avoid a broad range of sounds at very low SPLs, between 100 and 140 dB.

Response: As discussed in reference to bowhead whale reactions, NMFS does not believe that all types of avoidance necessarily rise to the level of MMPA harassment.

The 160–dB rms isopleth is based on work by Malme *et al.* (1984) for migrating gray whales along the California coast. Clark *et al.* (2000), replicating the work by Malme *et al.* (1984), indicated that this response is context dependent, as gray whales did not respond to simulated airgun noise when the acoustic source was removed from the gray whale migratory corridor. This indicates to NMFS that establishing a 160–dB isopleth for estimating a safety zone for low-frequency hearing specialists when exposed to a low frequency source is conservative. For mid- or high-frequency hearing specialists, a 160–dB ZOI for a low-frequency source is likely overly conservative.

Bowhead whale avoidance of airguns at 120 dB is an important consideration in any MMPA authorization in as much as it could affect the ability of subsistence whalers to effectively hunt bowheads, however, in this case the activity is scheduled to take place hundreds of kilometers from land and before the bowhead migration comes through, so subsistence hunting is not a concern.

Comment 10: One commenter states that the preparation of an EIS is necessary pursuant to NEPA, especially considering the increased controversy that has arisen.

Response: NMFS has addressed all of the NEPA significance criteria in our Finding of No Significant Impact (FONSI), which may be viewed at our website. (See **ADDRESSES**)

Comment 11: CBD asserts that, based on the NMFS stock assessment reports, the population status of several of the species (such as ringed seals, bearded seals, and spotted seals) addressed in the IHA is unknown. They say that without this information, NMFS cannot make a negligible impact determination.

Response: NMFS acknowledges that there are some gaps in the data available on some Arctic species, however, NMFS uses the best data available to do our analyses. For example, ringed seal density was based on survey data from 1999 and 2000. The ratio used to calculate bearded seal data from ringed seal data was from was based on data gathered in 1990 and 1991. However, actual bearded seal density surveyed in 1999 and 2000 was 5 to 10 times less than the number used here, but that number was not used because the surveyor was unable to correct for missed animals. Though NMFS has a responsibility to use the best available science and to be precautionary in the absence of data, the MMPA does not mandate that NMFS deny authorizations until newer data are available.

Comment 12: The marine mammal commission recommended that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could be attributed to the applicant's activities.

Response: NMFS will incorporate this recommendation into the IHA.

Comment 13: One commenter suggests that NMFS should further consider the possibility bubble growth in marine mammals as a result of airgun pulses.

Response: Both the EA and the IHA application include a discussion of bubble growth. It is possible that certain marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed in the EA and application, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, and beaked whales do not occur in the present study area. Additionally, it is unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal, and the required monitoring and mitigation measures.

Comment 14: The MMC recommended that NMFS revise its interpretation of TTS to indicate that it has the potential to injure marine mammals and therefore constitutes Level a Harassment.

Response: TTS may be considered to be an adaptive process (analogous to the dark adaptation in visual systems) wherein sensory cells change their response patterns to sound. Tissues are not irreparably damaged with the onset of TTS, the effects are temporary (particularly for onset-TTS), and NMFS does not believe that this effect qualifies as an injury. Therefore TTS-onset is treated as of Level B Harassment.

Comment 15: The CBD argues that the effects of this action are significant under NEPA and that, therefore, an EIS is required. Additionally, CBD suggests that it is illegal for NMFS to authorize an activity covered by an EA when NSF has announced their intent to do an EIS (as argued in Humane Society v. Department of Commerce (DOC) (05–1392).

Response: NMFS does not believe that the effects of this action are significant pursuant to NEPA and refers the commenter to NMFS' Finding of No Significant Impact, where we have addressed the NEPA significance criteria.

Further, NMFS disagrees that HSUS v. DOC precludes reliance on the EA and FONSI for the Healy's seismic survey and IHA. In HSUS v. DOC, the court concluded that the FONSI was deficient (for reasons explained in the court's opinion), and therefore an EIS was required; the court did not say that the fact that an EIS is in the process of development per se precludes any action until the EIS is complete.

Comment 16: The MMC recommends that the NMFS, in consultation with the applicant, the affected Native communities, the Minerals Management Service, NSF and other interested parties, identify and establish long-term monitoring programs needed to confirm that the proposed seismic surveys and anticipated future oil and gas-related activities do not cause changes in the seasonal distribution patterns, abundance, or productivity of marine mammal populations in the area.

Response: Both NMFS and NSF recognize the importance of long-term monitoring in the Arctic and will work towards this end whenever possible. Specifically though, as discussed in previous comments, Sections 101(a)(5)(A) and (D) of the MMPA do not address cumulative effects and therefore it is not appropriate to require the applicant, through the IHA, to participate in a long-term monitoring program for that reason.

Comment 17: NMFS' proposed IHA requires that the 180 dB isopleth around the sound source be free of marine mammals for 30 minutes before ramp-up may commence. UTIG suggests that only the 190–dB radius needs to be clear of marine mammals prior to start up because bowheads and belugas have been shown to avoid seismic anyway and are expected to move beyond the 180–dB radius during the ramp-up and because pinnipeds (to which the 190–dB radius applies) have not shown much avoidance of operating seismic in the Beaufort Sea will not move out of the safety zone during a ramp-up anyway.

Response: NMFS uses the 180–dB isopleth as an appropriate precautionary area around the sound source to clear prior to the start-up of the airguns. NMFS is currently working on developing acoustic criteria, based in part on more taxa-specific data, and will revisit this issue upon their completion.

Comment 18: UTIG proposed expanded safety radii wherein they would not begin a ramp-up in shallow or intermediate depth water unless an area with radius at least 2 km has been visible to the observers and no cetaceans have been observed for 30 minutes, and wherein they would shut down if a cetacean was spotted at any range. However, during the comment period UTIG noted that for the single operating airguns, the 180 and 190 dB radii are much smaller than for the 4- or 8–gun sources. Thus, the lack of a power down option in shallow and intermediate water depths is conservative beyond necessity and limits research.

Response: NMFS generally agrees with NSF and has made minor modifications to the safety radii that were in the proposed IHA (see Table 1). The safety radii and their associated shutdown and powerdown criteria for the large airgun array and for pinnipeds remain the same as in the proposed IHA.

However, for the smaller airgun array, regarding cetaceans, the shutdown criteria have changed. Whereas the proposed IHA indicated that when in shallow or intermediate depth water the Healy would cease operating the smaller airgun array any time a cetacean was seen at any distance (which means 2 to 3 kilometers), the final IHA will require that the Healy powerdown airguns whenever a cetacean is sighted at any distance, and shut down at the distances indicated in Table 1, which are still significantly larger than the isopleths suggested by the model and initially proposed as safety radii by UTIG.

NSB Comments on Specific Pages of the **Federal Register** *Notice of the Proposed IHA*

Comment 19: In the proposed IHA on Page 27998, 1st column, Description of Activity: The first paragraph of this section states that seismic activity will begin at a distance greater than 93 miles north of Barrow. The next paragraph goes on to state that the seismic area will occur at about 71°36′N. Barrow is approximately 71°14′ N. The difference between these two latitudes is on the order of 20 miles and not 93. Why the discrepancy?

Response: The Healy cruise will begin approximately 93 miles north of Barrow, however, it ends southwest of the starting point. The area delineated by the indicated latitude and longitude includes both the starting and ending point.

Comment 20: In the proposed IHA on Page 27999, 2nd and 3rd columns, Safety Radii: Modeling attenuation rates of seismic sounds in the Arctic based on empirical data collected in the Gulf of Mexico has considerable limitations. Sea ice will likely play a major role in the attenuation rates of sounds in the northern Chukchi Sea. Sea ice could cause seismic sounds to propagate much farther than expected. Empirical data need to be collected to verify the models and safety radii must be adjusted accordingly.

Response: UTIG's original application proposed safety radii based on the Gulf of Mexico, however, for the reasons stated in the above comment UTIG and NMFS decided to use expanded precautionary safety radii to implement powerdowns and shutdowns.

Comment 21: The proposed IHA states that most encounters with marine mammals will ''occur in low numbers and most encounters for most species will occur within 100 km of shore.'' This statement is not supported by data. There have been few surveys of marine

mammal distribution or abundance in the planned activity area. The studies used for estimating the densities of marine mammals in the study area are not well suited for estimating takes. The seismic activities of the Healy will be conducted in the sea ice, whereas most of the surveys referenced are in open water situations. As a result of the lack of data regarding the density of certain species in the pack ice, some of the take estimates in the proposed IHA are low, and some are high. Satellite tracking of beluga whales (Suydam *et al.* 2005), indicates that large numbers of belugas may be encountered at the shelf break or in deep waters of the Arctic Basin. Spotted seals takes are also very low. Considerable numbers of spotted seals could be encountered on the south reaching leg of the seismic surveys. Estimates for belugas and spotted seals appear to be too low.

Response: NMFS appreciates the input from local biologists regarding potential encounters with the affected species during the *Healy* cruise. Accordingly, NMFS has increased the authorized take of beluga whales from 134 to 200, and take of spotted seals from 5 to 25. This change does not affect our negligible impact determination.

Estimated Take by Incidental Harassment for the Eastern Tropical Pacific Seismic Survey

All anticipated takes would be ''takes by harassment'', as described previously, involving temporary changes in behavior. In the sections below, we describe methods to estimate ''take by harassment'' and present estimates of the numbers of marine mammals that might be affected during the proposed seismic study in the Arctic Ocean. The estimates are based on data obtained during marine mammal surveys in and near the Arctic Ocean by Stirling *et al.* (1982), Kingsley (1986), Koski and Davis (1994), Moore *et al.* (2000a), and Moulton and Williams (2003), and on estimates of the sizes of the areas where effects could potentially occur. In some cases, these estimates were made from data collected from regions and habitats that differed from the proposed project area. Adjustments to reported population or density estimates were made on a case by case basis to take into account differences between the source data and the general information on the distribution and abundance of the species in the project area. This section provides estimates of the number of potential ''exposures'' to sound levels equal or greater than 160 dB.

Although several systematic surveys of marine mammals have been conducted in the southern Beaufort Sea, few data (systematic or otherwise) are available on the distribution and numbers of marine mammals in the northern Chukchi and Beaufort Seas or offshore water of the Arctic Ocean. The main sources of distributional and numerical data used in deriving the estimates are described in detail in UTIG's application. There is some uncertainty about how representative those data are and the assumptions used below to estimate the potential ''take by harassment''. However, the approach used here seems to be the best available at this time.

The following estimates are based on a consideration of the number of marine mammals that might be harassed by approximately 3624 line kilometers (2,251 mi) of seismic surveys across the Arctic Ocean. An assumed total of 4530 km (2,815 mi) of trackline includes a 25–percent allowance over and above the planned approximately 3624 km (2,251 mi) to allow for turns, lines that might have to be repeated because of poor data quality, or for minor changes to the survey design.

As noted above, there is some uncertainty about how representative the data are and assumptions used in the calculations. To provide some allowance for the uncertainties, ''maximum estimates'' as well as ''best estimates'' of exposures have been derived (Table 1). For a few marine mammal species, several density estimates were available, and in those cases, the mean and maximum estimates were calculated from the survey data. When the seismic survey area is on the edge of the range of a species, we used the available mammal survey data as the maximum estimate and assumed that the average density along the seismic trackline will be approximately 0.10 times the density from the available survey data. The assumed densities are believed to be similar to, or in most cases higher than, the densities that will actually be encountered during the survey.

The anticipated radii of influence of the bathymetric sonar, sub-bottom profiler, and pinger are less than those for the airgun configurations. NMFS assumes that, during simultaneous operations of all the airgun array, sonar, and profiler, any marine mammals close enough to be affected by the sonars would already be affected by the airguns. The pinger will operate only during coring while the airguns are not in operation. However, whether or not the airguns are operating simultaneously with the sonar, profiler or pinger, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the sonar, profiler or pinger given their characteristics (e.g., narrow downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' and, therefore, no additional allowance is included for animals that might be affected by the sound sources other than the airguns.

The potential number of occasions when members of each species might be exposed to received levels of 160 dB re 1 μPa (rms) was calculated for each of three water depth categories (<100 m (328 ft), 100–1000 m (328–3,280 ft), and >1000 m (>3,280 ft)) within the two survey areas (south of 75° N. ''near Barrow'' and north of 75° N. ''polar pack'') by multiplying

- The expected species density, either ''average'' (i.e., best estimate) or ''maximum'', corrected as described above,
- The anticipated line-kilometers of operations with both the 4–GI and 8–airgun array in each water-depth category after applying a 25 percent allowance for possible additional line kilometers as noted earlier,
- The cross-track distances within which received sound levels are predicted to be 160 dB for each water-depth category (2 X the 160 dB safety radii).

Unlike other species whose ''best'' and ''maximum'' density estimates were multiplied by the entire trackline within each of the two portions of the project area (''near Barrow'' and ''polar pack'') to estimate exposures, gray whale and walrus densities were only multiplied by the proposed seismic trackline in water depths <200 m (<656 ft) along the final SW leg of the survey, south of 75° N. Gray whales tend to remain in the shallow, nearshore waters of the Chukchi Sea and rarely occur in the Beaufort Sea. Basing exposures on the entire SW seismic trackline south of 75° N should somewhat overestimate the number of gray whales that may be encountered while conducting seismic operations.

Based on this method, the ''best'' and ''maximum'' estimates of the numbers of marine mammal exposures to airgun sounds with received levels 160 dB re 1 μPa (rms) were obtained using the average and ''maximum'' densities from Tables 1, and are presented in Table 1. Using these calculations, for some species zero individuals were expected to be exposed to 160 dB. Since they are occasionally seen, however, UTIG increased the requested take to 5 to allow for the unlikely chance that they are encountered and exposed to 160 dB (Table 1). However, NMFS does not

believe these takes are likely. In the *Healy* Section 7 requested in the MMPA application were likely to be taken incidental to this activity and, therefore, pursuant to the MMPA, NMFS is not authorizing any take of fin whales and is authorizing take of 31 bowhead whales.

Additionally, NMFS received a public comment from the North Slope Borough (NSB) Department of Wildlife that strongly suggested that the *Healy* might encounter larger numbers of both spotted seals and beluga whales than were indicated in the proposed IHA. NMFS appreciates the local knowledge of the NSB and has accordingly raised the number of these species to be authorized in this IHA.

Additional information regarding how these estimated take numbers were calculated is available in the application.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. Although feeding bowhead whales may occur in the area, the proposed activities will be of short duration in any particular area at any given time; thus any effects would be localized and short-term. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they do not result in any appreciable fish kill. However, the existing body of information relating to the impacts of seismic on marine fish and invertebrate species is very limited.

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1952 in Wardle *et al.*, 2001). Generally, the higher the received pressure and the less time it takes for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.*, 2004). For the proposed survey, any injurious effects on fish would be limited to very short distances.

The only designated Essential Fish Habitiat (EFH) species that may occur in the area of the project during the seismic survey are salmon (adult), and their occurrence in waters ≤150 km (93 mi) north of the Alaska coast is highly unlikely. Adult fish near seismic operations are likely to avoid the source, thereby avoiding injury. No EFH species will be present as very early life stages when they would be unable to avoid seismic exposure that could otherwise result in minimal mortality.

The proposed Arctic Ocean seismic program for 2006 is predicted to have negligible to low physical effects on the various life stages of fish and invertebrates for its approximately 40 day duration and 3625–km (2,252–mi) extent and will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. Nonetheless, the main impact issue associated with the proposed activities will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

During the seismic study only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the seismic activity ceases. Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Although the main summering area for bowheads is in the Canadian Beaufort Sea, at least a few feeding bowhead whales may occur in offshore waters of the western Beaufort Sea and northern Chukchi Sea in July and August, when the Healy will be in the area. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes.

Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations, since operations at the various sites will be limited in duration.

Potential Effects on Subsistence Use of Marine Mammals

Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987). Subsistence remains the basis for Alaska Native culture and community. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. The National Science Foundation offers guidelines for science coordination with native Alaskans at *http://www.arcus.org/guidelines/*.

Marine mammals are legally hunted in Alaskan waters near Barrow by coastal Alaska Natives; species hunted include bowhead whales, beluga whales, ringed, spotted, and bearded seals, walrus, and polar bears. In the Barrow area, bowhead whales provided approximately 69 percent of the total weight of marine mammals harvested from April 1987 to March 1990. During that time, ringed seals were harvested the most on a numerical basis (394 animals).

Bowhead whale hunting is the key activity in the subsistence economies of Barrow and two smaller communities to the east, Nuiqsut and Kaktovik. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC). The AEWC allots the number of bowhead whales that each whaling community may harvest annually (USDI/BLM 2005).

The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migrations along the coast. Often, the bulk of the Barrow bowhead harvest is taken during the spring hunt. However, with larger quotas in recent years, it is common for a substantial fraction of the annual Barrow quota to remain available for the fall hunt. The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. The spring hunt at Barrow occurs after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. The location of the fall subsistence hunt depends on ice conditions and (in some years)

industrial activities that influence the bowheads movements as they move west (Brower, 1996). In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km. The autumn hunt at Barrow usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow. The whales have usually left the Beaufort Sea by late October (Treacy, 2002a,b).

The scheduling of this seismic survey has been discussed with representatives of those concerned with the subsistence bowhead hunt, most notably the AEWC and the Barrow Whaling Captains' Association,. For this among other reasons, the project has been scheduled to commence in mid-July and terminate approximately 25 August, before the start of the fall hunt at Barrow (or Nuiqsut or Kaktovik), to avoid possible conflict with whalers.

Although the timing of the *Healy*'s seismic survey may overlap with potential subsistence harvest of beluga whales, ringed seals, spotted seals, or bearded seals, the hunting takes place well inshore of the proposed survey, which is to start ≤ 150 km (93 mi) offshore and terminate ≤ 200 km (124 mi) offshore.

Providing UTIG abides by the Plan of cooperation below, NMFS does not anticipate any unmitigable adverse impacts on the subsistence hunt of these species or stocks to result from the proposed *Healy* seismic survey.

Plan of Cooperation

UTIG and the AEWC have developed a ''Plan of Cooperation'' for the 2006 Arctic Ocean seismic survey, in consultation with representatives of the Barrow whaling community.

A Barrow resident knowledgeable about the mammals and fish of the area will be included as a member of the MMO team aboard the *Healy*. Although his primary duties will be as a member of the MMO team responsible for implementing the monitoring and mitigation requirements, he will also be able to act as liaison with hunters and fishers if they are encountered at sea. However, the proposed activity has been timed so as to avoid overlap with the main harvests of marine mammals (especially bowhead whales), and is not expected to affect the success of subsistence fishers.

The Plan of Cooperation covers the initial phases of UTIG's Arctic Ocean seismic survey planned to occur 15 July to 25 August. The purpose of this plan is to identify measures that will be taken to mitigate any adverse effects on the availability of marine mammals for subsistence uses, and to ensure good communication between the project scientists and the community of Barrow. The *Healy* will communicate with the shore via the Barrow Arctic Science Consortium or Search and Rescue in Barrow to know where hunters may be located to avoid them. The *Healy*'s Helicopters receive flight path directions which are followed unless there is a human safety issue that prevents it. Once the ship is 20–25 miles north of Barrow, it is not considered in the zone of subsistence hunting for any village and is less of a concern.

As noted above, in the unlikely event that subsistence hunting or fishing is occurring within 5 km (3 mi) of the *Healy*'s trackline, the airgun operations will be suspended until the Healy is <5 km (3 mi) away.

Mitigation

For the proposed seismic survey in the Arctic Ocean, UTIG will deploy airgun sources involving 4 GI guns or 8 airguns. These sources will be small-to-moderate in size and source level, relative to airgun arrays typically used for industry seismic surveys. However, the airguns comprising the arrays will be clustered with only limited horizontal separation, so the arrays will be less directional than is typically the case with larger airgun arrays, which will result in less downward directivity than is often present during seismic surveys, and more horizontal propagation of sound.

Several important mitigation measures have been built into the design of the project:

- The project is planned for July-August, when few bowhead whales are present and no bowhead hunting is occurring;
- Airgun operations will be limited to offshore waters, far from areas where there is subsistence hunting or fishing, and in waters where marine mammal densities are generally low;
- When operating in shallower parts of the study area, airgun operations will be limited to the smaller source (4 GI guns);

In addition to these mitigation measures that are built into the general design, several specific mitigation measures will be implemented to avoid or minimize effects on marine mammals encountered along the tracklines and are discussed below.

Vessel-based observers will monitor marine mammals near the seismic source vessel during all airgun operations. These observations will provide the real-time data needed to implement some of the key mitigation measures. When marine mammals are observed within, or about to enter, designated safety zones (see below) where there is a possibility of significant effects on hearing or other physical effects, airgun operations will be powered down (or shut down if necessary) immediately. Vessel-based observers will watch for marine mammals near the seismic vessel during all periods of shooting and for a minimum of 30 min prior to the planned start of airgun operations after an extended shut down. Due to the timing of the survey situated at high latitude, the project will most likely take place during continuous daylight and monitoring adjustments will not be necessary for nighttime (darkness).

In addition to monitoring, mitigation measures that will be adopted will include (1) speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) power down or shut-down procedures, and (3) no start up of airgun operations unless the full 180 dB safety zone is visible for at least 30 min during day or night.

Speed or Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect on the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or power down or shut down of the airgun(s). However, in regions of complete ice cover, which are common north of 75° N., cetaceans are unlikely to be encountered because they must reach the surface to breathe.

Power-down Procedures

A power-down involves decreasing the number of airguns in use such that the radius of the 180–dB zone is decreased to the extent that marine mammals are no longer within the 180–dB safety radius. A power down may also occur when the vessel is moving from one seismic line to another. During a power down, one airgun (or some other number of airguns less than the

full airgun array) is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns may (as an alternative to a complete shut down) be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down if the power-down results in the animal being outside of the 180–dB isopleth, else the airguns will be shut down. During a power-down of the 4- or 8–airgun array, one airgun (either a single 105 in3 GI gun or one 210 in3 G. gun, respectively) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single airgun (see Table 2), it will be shut down as well (see next subsection).

Following a power-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it: is visually observed to have left the safety zone; or has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds; or has not been seen within the zone for 30 min in the case of mysticetes (large odontocetes do not occur within the study area).

Shut-down Procedures

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the then-applicable safety radius and a power down is not practical or prescribed (see expanded safety radii in Table 1). The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated safety radius around the source that would be used during a power down.

Expanded Safety Radii

After submitting their application, UTIG proposed expanded safety zones for shallow and intermediate depth water. As reflected in Table 1, while operating the small array (420 in3) in shallow or intermediate depth water, the *Healy* will powerdown airguns if a cetacean is seen at any distance from the vessel (most likely maximum visibility 2–3 km (1.2–1.9 mi)). While operating the 420 in^3 array, the *Healy* will cease operating the airguns at the distances indicated in Table 1.

While the Healy is operating the large array (3940 in3) in intermediate depth water, they will shutdown airguns if a cetacean is seen at any distance from the ship.

For pinnipeds, in shallow water the *Healy* will implement a 1000–m (3,280–ft) shut-down zone, and for intermediate depth water, the *Healy* will implement a 500–m (1,640–ft) shut-down zone.

Ramp-up Procedures

A ''ramp-up'' procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. NMFS normally requires that the rate of ramp up be no more than 6 dB per 5 min period. The specified period depends on the speed of the source vessel and the size of the airgun array that is being used. Ramp-up will begin with one of the G. guns (210 in^3) or one of the Bolt airguns (500 in^3) for the 8–airgun array, or one of the 105 in^3 GI guns for the 4–GI gun array. One additional airgun will be added after a period of 5 minutes. Two more airguns will be added after another 5 min, and the last four airguns (for the 8–airgun array) will all be added after the final 5 min period. During the ramp-up, the safety zone for the full airgun array in use at the time will be maintained.

If the complete 180–dB safety radius has not been visible for at least 30 min prior to the start of operations, ramp up will not commence unless at least one airgun has been operating during the interruption of seismic survey operations. This means that it will not be permissible to ramp up the 4–GI gun or 8–airgun source from a complete shut down in thick fog or darkness (which may be encountered briefly in late August); when the outer part of the 180 dB safety zone is not visible. If the entire safety radius is visible, then start up of the airguns from a shut down may occur at night (if any periods of darkness are encountered during seismic operations). If one airgun has operated during a power-down period, ramp up to full power will be permissible in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp up of the airguns will not be initiated during the day or at night if a marine mammal has been sighted within or near the applicable safety radii during the previous 15 or 30 min, as applicable.

Airgun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes).

Helicopter flights

The use of a helicopter to deploy and retrieve SISs during the survey is expected, at most, to cause brief behavioral reactions of marine mammals. To limit disturbance to marine mammals, helicopters will follow the survey track line. UTIG will avoid landing within 1000 ft (304 m) of an observed marine mammal, and maintain a minimum altitude of 1000 ft (304 m), unless weather or other circumstances require a closer landing for human safety. For efficiency, each helicopter excursion will be scheduled to deploy/retrieve three or four SIS units. This will minimize the number of flights and the number of potential distubances to marine mammals in the area.

Monitoring

UTIG proposes to sponsor marine mammal monitoring during the present project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA.

Vessel-based observers will monitor marine mammals near the seismic source vessel during all seismic operations. There will be little or no darkness during this cruise. Airgun operations will be shut down when marine mammals are observed within, or about to enter, designated safety radii. Vessel-based marine mammal observers (MMOs) will also watch for marine mammals near the seismic vessel for at least 30 min prior to the planned start of airgun operations after an extended shut down of the airgun. When feasible, observations will also be made during daytime periods without seismic operations (e.g., during transits and during coring operations).

During seismic operations in the Arctic Ocean, four MMOs will be based aboard the vessel. MMOs will be appointed by UTIG with NMFS' concurrence. A Barrow resident knowledgeable about the mammals and fish of the area is expected to be included as one of the team of marine mammal observers (MMOs) aboard the *Healy*. At least one MMO, and when practical, two MMOs, will monitor marine mammals near the seismic vessel during ongoing operations and nighttime start ups (if darkness is encountered in late August). Use of two simultaneous MMOs will increase the

proportion of the animals present near the source vessel that are detected. MMO(s) will normally be on duty in shifts of duration no longer than 4 hours. The USCG crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction on how to do so.

The *Healy* is a suitable platform for marine mammal observations. When stationed on the flying bridge, the eye level will be approximately 27.7 m (91 ft) above sea level, and the MMO will have an unobstructed view around the entire vessel. If surveying from the bridge, the MMO's eye level will be 19.5 m (64 ft) above sea level and approximately 25° of the view will be partially obstructed directly to the stern by the stack (Haley and Ireland, 2006). The MMO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Fujinon), Big-eye binoculars (25 150), and with the naked eye. During any periods of darkness (minimal, if at all, in this cruise), NVDs will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), if and when required. The survey will take place at high latitude in the summer when there will be continuous daylight, but night (darkness) is likely to be encountered briefly at the southernmost extent of the survey in late August. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation; these are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly.

To assure prompt implementation of shut downs, additional channels of communication between the MMOs and the airgun technicians will be established in 2006 as compared with the arrangements on the *Healy* in 2005 (cf. Haley and Ireland, 2006). During power downs and shut downs, the MMO(s) will continue to maintain watch to determine when the animal(s) are outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes).

All observations and airgun power or shut downs will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide

1. The basis for real-time mitigation (airgun power or shut down).
2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS (behavior when disturbed, etc).
3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.
4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.
5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of the impacts on marine mammals resulting from the seismic survey. Analysis and reporting conventions will be consistent with those for the 2005 *Healy* cruise to factilitate comparisons and (where appropriate) pooling of data across the two seasons.

Endangered Species Act

Pursuant to section 7 of the ESA, the National Science Foundation (NSF) has consulted with NMFS on this proposed seismic survey. NMFS has also consulted internally pursuant to Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. In a Biological Opinion (BO), NMFS concluded that the 2006 UTIG seismic survey in the Arctic Ocean and the issuance of the associated IHA are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat. NMFS has issued an incidental take statement (ITS) for bowhead whales that contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. The terms and conditions of the BO have been incorporated into the UTIG IHA.

National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment of a Marine Geophysical Survey by the USCG *Healy* of the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge, Arctic Ocean, July-August 2006. NMFS has adopted this EA and issued a Finding of No Significant Impact.

Conclusions

NMFS has determined that the impact of conducting the seismic survey in the Arctic Ocean may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers, relative to the population sizes, of certain species of marine mammals. The maximum estimates of take indicate that no more than 2.5 percent of the gray whale, ringed seal, and spotted seal populations would be harassed, and no more than 1 percent of any of the other affected stocks. This activity is expected to result in a negligible impact on the affected species or stocks.

To summarize the reasons stated previously in this document, this preliminary determination is supported by: (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 μPa are reached rather than 180 dB re 1 μPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

The proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not be conducted in the same space and time as the hunts in subsistence whaling and sealing areas. Therefore, NMFS believes the issuance of an IHA for this activity will not have an unmitigable adverse effect on the availability of any marine mammal species or stocks for subsistence purposes.

Authorization

As a result of these determinations, NMFS proposes to issue an IHA to UTIG for conducting a seismic survey in the Arctic Ocean from July 15 – August 25, 2006, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 26, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806C]

Small Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

ACTION: Notice; receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments and information.

SUMMARY: NMFS has received a request from Eglin Air Force Base (EAFB) for the take of marine mammals, by Level B harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations at EAFB, Florida. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Air Force to take, by Level B harassment, two species of cetaceans at EAFB beginning in July, 2006. NMFS is also requesting comments on its intent to promulgate regulations in 2007 governing the take of marine mammals over a 5–year period incidental to the activities described herein. NMFS issued an IHA for these activities in 2005 (70 FR 51341, August 30, 2005), however, the activities were not conducted.

DATES: Comments and information must be received no later than August 31, 2006.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.071806C@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. With respect to military readiness activities, the MMPA defines ''harassment'' as:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 2, 2006, NMFS received an application from EAFB requesting re-authorization for the harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations at EAFB, Florida, in the northern Gulf of Mexico (GOM). Each of up to six missions per year would include up to 5 live detonations of approximately 10–lb (4.6–kg) net explosive weight charges to occur in approximately 60–ft (18.3–m) deep water from one to three nm (1.9 to 5.6 km) off shore. Because this activity will be a multi-year activity, NMFS also plans to develop proposed regulations for NEODS training operations at EAFB.

Specified Activities

The mission of NEODS is to train personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and

operations. The NEODS proposes to utilize three areas within the Eglin Gulf Test and Training Range (EGTTR), consisting of approximately 86,000 mi2 (222,739 km²) within the GOM and the airspace above, for Mine Countermeasures (MCM) detonations, which involve mine-hunting and mine-clearance operations. The detonation of small, live explosive charges disables the function of the mines, which are inert for training purposes. The proposed training would occur approximately one to three nautical miles (nm) (1.9 to 5.6 km) offshore of Santa Rosa Island (SRI) six times annually, at varying times within the year.

Each of the six training classes would include one or two ''Live Demolition Days.'' During each set of Live Demolition Days, five inert mines would be placed in a compact area on the sea floor in approximately 60 ft (18.3 m) of water. Divers would locate the mines by hand-held sonars. The AN/PQS–2A acoustic locator has a sound pressure level (SPL) of 178.5 re 1 μPascal @ 1 meter and the Dukane Underwater Acoustic Locator has a SPL of 157–160.5 re 1 μPascal @ 1 meter. Because output from these sound sources would attenuate to below any current threshold for protected species within approximately 10–15 m, noise impacts are not anticipated and are not addressed further in this analysis.

Five charges packed with five lbs (2.3 kg) of C–4 explosive material will be set up adjacent to each of the mines. No more than five charges will be detonated over the 2–day period. Detonation times will begin no earlier than 2 hours after sunrise and end no later than 2 hours before dusk and charges utilized within the same hour period will have a maximum separation time of 20 minutes. Mine shapes and debris will be recovered and removed from the water when training is completed. A more detailed description of the work proposed is contained in the application which is available upon request (see **ADDRESSES**).

Military Readiness Activity

NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. The Navy and the Marine Corps believe that the ability of Sailors and Marines to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

The Navy believes that an array of transnational, rogue, and subnational adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: shallow water; the surf zone; and the beach zone. The Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The NEODS mission in the GOM offshore of EAFB is considered a military readiness activity pursuant to the National Defense Authorization Act (NDAA)(Public Law 108–136).

Marine Mammals and Habitat Affected by the Activity

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and the West Indian manatee. While a few manatees may migrate as far north from southern Florida (where there are generally confined in the winter) as Louisiana in the summer, they primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions are conducted one to 3 nm (5.6 km) from shore and effects on manatees are therefore considered very unlikely and not discussed further in this analysis.

Cetacean abundance estimates for the project area are derived from GulfCet II aerial surveys conducted from 1996 to 1998 over a 70,470 km² area, including nearly the entire continental shelf region of the EGTTR, which extends approximately 9 nm (16.7 km) from shore. The dwarf and pygmy sperm whales are not included in this analysis because their potential for being found near the project site is remote. Although Atlantic spotted dolphins do not normally inhabit nearshore waters, they are included in the analysis to ensure conservative mitigation measures are applied. The two marine mammal species expected to be affected by these activities are the bottlenose dolphin (Tursiops truncatus) and the Atlantic spotted dolphin (*Stenella frontalis*). Descriptions of the biology and local distribution of these species can be found in the application (see **ADDRESSES** for availability); other sources such as Wursig et al. (2000), and the NMFS Stock Assessments, can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.

Atlantic Bottlenose Dolphins

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters and occur in the slope, shelf, and inshore waters of the GOM. Based on a combination of geography and ecological and genetic research, Atlantic bottlenose dolphins have been divided into many separate stocks within the GOM. The exact structure of these stocks is complex and continues to be revised as research is completed. For now, bottlenose dolphins inhabiting waters less than 20 m (66 ft) deep in the U.S. GOM are believed to constitute 33 provisional inshore stocks, and those inhabiting waters from 20 to 200 m (66 to 656 ft) deep in the northern GOM from the U.S.-Mexican border to the Florida Keys are considered the continental shelf stock (Waring *et al.*, 2004). The proposed action would occur on the ocean floor at a depth of approximately 60 ft (18 m) and, therefore, has the potential to affect both the continental shelf and inshore stocks.

Continental shelf stock assessments were estimated using data from vessel surveys conducted between 1998 and 2001 (at 20- to 200–m (66– to 656–ft) depths). The minimum population estimate for the northern GOM continental shelf stock of the Atlantic bottlenose dolphin is 20,414 (Waring et al., 2005).

Distinct inshore stocks are provisionally identified in each of 33 areas of contiguous, enclosed or semi-enclosed bodies of water adjacent to the Gulf of Mexico (GOM) based on descriptions of relatively discrete dolphin ''communities'' in some of these areas (Waring et al., 2005). A ''community includes resident dolphins that regularly share large portions of their ranges, exhibit similar distinct genetic profiles, and interact with each other to a much greater extent than with dolphins in adjacent waters (dolphins from different communities do interbreed). The most recent inshore stock assessment surveys were conducted aerially in 1993. Two bodies of water north of the project area are thought to support distinct communities, the Pensacola Bay and the Choctawhatchee Bay. Population size estimates for most of the inshore stocks are greater than 8 years old and therefore the current population size for each stock is considered unknown. Previous abundance in Pensacola Bay and Choctawhatchee Bay was estimated as 33 and 242 animals, respectively.

Texas A&M University and NMFS conducted GulfCet II aerial surveys in an area including the EGTTR from 1996 to 1998. Density estimates were

calculated using abundance data collected from the continental shelf area of the EGTTR. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic bottlenose dolphins within the project area is 0.810 individuals/km². A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km².

Atlantic Spotted Dolphins

Atlantic spotted dolphins are endemic to the tropical and warm temperate waters of the Atlantic Ocean and can be found from the latitude of Cape May, New Jersey south along mainland shores to Venezuela, including the GOM and Lesser Antilles. In the GOM, Atlantic spotted dolphins occur primarily in continental shelf waters 10 to 200 m (33 to 656 ft) deep out to continental slope waters less than 500 m (1640.4 ft) deep. One recent study presents strong genetic support for differentiation between GOM and western North Atlantic management stocks, but the Gulf of Mexico stock has not yet been further subdivided.

Abundance was estimated in the most recent assessment of the northern GOM stock of the Atlantic spotted dolphin using combined data from continental shelf surveys (20 to 200 m (66 to 656 ft) deep) and oceanic surveys (200 m (656 ft)) to offshore extent of U.S. Exclusive Economic Zone) conducted from 1996 to 2001. The minimum population estimate for the northern GOM is 24,752 Atlantic spotted dolphins (Waring *et al.*, 2005).

Density estimates for the Atlantic spotted dolphin within the EGTTR were calculated using abundance data collected during the GulfCet II aerial surveys. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic spotted dolphins within the project area is 0.677 individuals/km2. A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km².

Potential Effects of Activities on Marine Mammals

The primary potential impact to the Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the proposed detonations is Level B harassment from noise. In the absence of any mitigation or monitoring measures, there is a very small chance that a marine mammal could be injured or killed when exposed to the energy generated from an explosive force on the sea floor. However, NMFS believes the proposed mitigation measures will preclude this possibility in the case of this particular activity. Analysis of NEODS noise impacts to cetaceans was based on criteria and thresholds initially presented in U.S. Navy Environmental Impact Statements for ship shock trials of the SEAWOLF submarine and the WINSTON CHURCHILL vessel and subsequently adopted by NMFS.

Non-lethal injurious impacts (Level A Harassment) are defined in EAFB's application and this proposed IHA as tympanic membrane (TM) rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 μPa² s. TM rupture is well-correlated with permanent hearing impairment (Ketten (1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold). The zone of influence (ZOI) (farthest distance from the source at which an animal is exposed to the EFD level referred to) for the Level A Harassment threshold is 52 m (172 ft).

Level B (non-injurious) Harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 μPa²s maximum EFD level in any 1/3–octave band above 100 Hz for toothed whales (e.g., dolphins). The ZOI for this threshold is 230 m (754 ft). A second criterion, 23 psi, has recently been established by NMFS to provide a more conservative range for TTS when the explosive or animal approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The ZOI for 23 psi is 222 m (728 ft) (NMFS will apply the more conservative of these two).

Level B Harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of time. Threshold criteria for this particular type of harassment are currently still under debate. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 μPa² s. Due, however, to the infrequency of the detonations, the potential variability in target locations, and the continuous movement of marine mammals off the northern Gulf, NMFS believes that behavioral modification from repeated exposures to the same animal is highly unlikely.

Numbers of Marine Mammals Estimated to be Harassed

Estimates of the potential number of Atlantic bottlenose dolphins and Atlantic spotted dolphins to be harassed by the training were calculated using the number of distinct firing or test events (maximum 30 per year), the ZOI for noise exposure, and the density of animals that potentially occur in the ZOI. The take estimates provided here do not include mitigation measures, which are expected to further minimize impacts to protected species and make injury or death highly unlikely.

The estimated number of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to the Level A Harassment threshold (205 dB re 1 μPa2 s), are less than one (0.22 and 0.19, respectively) annually.

For Level B Harassment, two separate criteria were established, one expressed in dB re 1 μPa² s maximum EFD level in any 1/3–octave band above 100 Hz, and one expressed in psi. The estimated numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to 182 dB are 4 and 3 individuals, respectively. The estimated numbers potentially taken through exposure to 23 psi are also 4 and 3 individuals, respectively.

Possible Effects of Activities on Marine Mammal Habitat

The Air Force anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins or Atlantic spotted dolphins in the EGTTR. The primary source of marine mammal habitat impact resulting from the NEODS missions is noise, which is intermittent (maximum 30 times per year) and of limited duration. The effects of debris (which will be recovered following test activities), ordnance, fuel, and chemical residues were analyzed in the NEODS Biological Assessment and the Air Force concluded that marine mammal habitat would not be affected.

Proposed Mitigation and Monitoring

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the ZOI. A trained, NMFS-approved observerwill be staged from the highest point possible on a support ship and have proper lines of

communication to the Officer in Tactical Command. The survey area will be 460 m (1509 ft) in every direction from the target, which is twice the radius of the ZOI for Level B Harassment (230 m (755 ft)). To ensure visibility of marine mammals to observers, NEODS missions will be delayed if whitecaps cover more than 50 percent of the surface or if the waves are greater than 3 feet (Beaufort Sea State 4).

Pre-mission monitoring will be used to evaluate the test site for environmental suitability of the mission. Visual surveys will be conducted two hours, one hour, and the entire 15 minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals and large schools of fish, and that the weather is adequate to support visual surveys. The observer will plot and record sightings, bearing, and time for all marine mammals detected, which would allow the observer to determine if the animal is likely to enter the test area during detonation. If a marine mammal appears likely to enter the test area during detonation, if large schools of fish are present, or if the weather is inadequate to support monitoring, the observer will declare the range fouled and the tactical officer will implement a hold until monitoring indicates that the test area is and will remain clear of detectable marine mammals.

Monitoring of the test area will continue throughout the mission until the last detonation is complete. The mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI (230 m (755 ft)). The delay would continue until the animal that caused the postponement is confirmed to be outside the ZOI (visually observed swimming out of the range).

(2) Any marine mammal is detected in the ZOI and subsequently is not seen again. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large schools of fish are observed in the water within of the ZOI. The delay would continue until large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, mitigation measures would continue while operations personnel attempted to recognize and solve the problem (detonate the charge).

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least two hours after the last detonation. The monitoring team would document and report to the appropriate marine animal stranding network any marine mammals killed or injured during the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the Officer in Tactical Command.

Reporting

The Air Force will notify NMFS 2 weeks prior to initiation of each training session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, NMFS, within 24 hours. A summary of mission observations and test results, including dates and times of detonations as well as pre- and post-mission monitoring observations, will be submitted to the Southeast Regional Office (NMFS) and to the Division of Permits, Conservation, and Education, Office of Protected Resources (NMFS) within 90 days after the completion of the last training session.

Endangered Species Act

In a Biological Opinion issued on October 25, 2004, NMFS concluded that the NEODS training missions and their associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for those species. NMFS has issued an incidental take statement (ITS) for sea turtles pursuant to section 7 of the Endangered Species Act. The ITS contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. This proposed IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

National Environmental Policy Act

In 2005, NMFS prepared an Environmental Assessment (EA) on the Issuance of Authorizations to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida, and subsequently issued a Finding of No Significant Impact (FONSI). This proposed IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously. Therefore, preparation of an EIS on this action is not required by section 102(2) of the NEPA or its implementing regulations.

Preliminary Conclusions

NMFS proposes to issue an IHA to the USAF for the NEODS training missions to take place at EAFB over a 1–year period. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of the NEODS training, which entails up to six missions per year, including up to 5 live detonations per mission of approximately 5–lb net explosive weight charges to occur in approximately 60–foot (18 m) deep water from one to three nm off shore, will result in the Level B harassment of small numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins and would have a negligible impact on these marine mammal species and stocks. Dwarf and pygmy sperm whales and manatees are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by Atlantic bottlenose dolphins and Atlantic spotted dolphins to avoid the resultant acoustic stimuli, there is virtually no possibility of injury or mortality when the potential density of dolphins in the area and extent of mitigation and monitoring are taken into consideration. The effects of the NEODS training are expected to be limited to short-term and localized TTS-related behavioral changes.

Due to the infrequency and localized nature of these activities, the estimated number of marine mammals, relative to the population size, potentially taken by harassment is small (less than 0.0002 percent for each species, and perhaps 1–2 percent of an inshore stock of bottlenose dolphin if one of them were harassed). In addition, no take by injury and/or death is anticipated. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the NEODS test sites.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to

the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 26, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–12373 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606F]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, August 24, 2006, at 9 a.m.

ADDRESSES: The meeting will be held at the Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. The Groundfish Oversight Committee will meet to begin discussion of the next adjustment to the Northeast Multispecies Fishery Management Plan (FMP). The most recent amendment to this FMP adopted measures to rebuild groundfish stocks and called for an evaluation of rebuilding progress in 2008, with any adjustments to measures to be implemented on May 1, 2009. These changes will be supported by updated stock assessments and an evaluation of biological reference points. The Committee will review issues related to scheduling of these assessments and their interaction with management actions. The Committee will also consider whether the adjustment should be an amendment or a framework action, and may begin the process of identifying the types of measures that will be considered. A recommendation for timing of the assessments and a plan for the management action will be presented to the New England Fishery Management Council for review at its September 26–28, 2006 meeting in Peabody, MA.

2. A second issue to be addressed by the Committee will be a follow-up to an issue addressed in Framework Adjustment 42 (FW 42) to the FMP. FW 42 is under review by NOAA Fisheries. One of the Council's recommendations in that action requires the Committee to develop a standard to be used for the approval of additional gear that can be used in the Eastern U.S./Canada Haddock Special Access Program. The Committee will work to develop such a standard so that it can be quickly implemented should that measure be approved. The Committee's work on this issue will also be considered by the Council in September.

3. The Committee will also receive a report on recent assessments of Eastern Georges Bank cod and haddock, and Georges Bank yellowtail flounder that were completed by the Transboundary Resource Assessment Committee. These assessments will be used to establish total allowable catch limits for these stocks that will be used in fishing year 2007.

4. The Committee may review and develop comments on the proposed rule for FW 42.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: July 27, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–12293 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606G]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meetings of its Scientific and Statistical (SSC) Committee in August, 2006, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, August 22, 2006, at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Science and Statistical Committees (SSCs) of both the New England and Mid-Atlantic Fishery Management Councils will review analyses supporting the development of the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment to the FMPs of both Councils and provide their recommendations to the Council(s).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul

J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 27, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–12294 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072706A]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meetings of its Small Mesh Multispecies (Whiting) Advisory Panel in August, 2006, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, August 23, 2006, at 10 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The panel will meet to review the scoping document and scoping comments; review, and prepare comments to the Council, on the goals, objectives and scope of issues to be addressed in the Small Mesh Multispecies (SMM) Fishery Management Plan and Northeast Multispecies Amendment 14; discuss timing of the SMM Plan and Amendment 14 and discuss any other related issues that may arise.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 27, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–12362 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606H]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public teleconference.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) will hold a Steller Sea Lion (SSL) teleconference.

DATES: The teleconference will be held on August 25, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific listening sites.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The listening sites are as follows:

1. North Pacific Fishery Management Council, 605 W 4th Avenue, Suite 306, Anchorage, AK;
2. NMFS, 709 W 9th Avenue, Conference Room, 4th Floor, Juneau, AK;
3. Alaska Fishery Science Center, 7600 Sand Point Way, NE, Building 4, Room 2039, Seattle, WA; and
4. NMFS - Kodiak Fisheries Research Center, 301 Trident Way (on Near Island), Kodiak, AK.

The Council's agenda is to review Scientific and Statistical Committee comments on the SSL Recovery Plan and finalize Council comments in time for the September 1, 2006 deadline.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 27, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–12295 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606I]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will be held on Monday, August 28 through Wednesday, August 30, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W.

4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee's agenda includes the following issues:

1. Introductions and opening remarks;
2. Minutes of last meeting;
3. Report on Scientific and Statistical Committee meeting;
4. Update on Steller Sea Lion Research;
5. Work session on proposals; and
6. The Committee will discuss and deliberate on these issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 27, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–12296 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606E]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Precious Corals Plan Team (PCPT) meeting, in Honolulu, HI.

ADDRESSES: The PCPT meeting will be held at the Western Pacific Fishery Management Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

DATES: The meeting of the PCPT will be held on Thursday, August 24, 2006, from 9 a.m. to 12 noon.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The PCPT will meet on August 24, 2006, to discuss the following agenda items:

1. Introductions
2. Review of last plan team meeting and recommendations
3. Black Coral Workshop Report
4. Trends in Black Coral Landings
5. Gold Coral Management

The order in which agenda items are addressed may change. Public comment periods will be provided throughout the agenda.

The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: July 27, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–12287 Filed 7–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 31, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: July 26, 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: National Assessment of Educational Progress—Study of Measures of Socio-Economic Status.

Frequency: One time.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 18,320.

Burden Hours: 1,553.

Abstract: This is the third of three clearance packages for the NAEP 2007 assessment activities. This package covers two studies intended to study measures of student background characteristics. These are a new set of questions for students to respond to and a study looking at a potential link to census block level information.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3163. 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. E6–12311 Filed 7–31–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Information Collection Activity; Proposed Information Collection; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments must be submitted on or before Friday, September 29, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005. ATTN: Ms. Laiza N. Otero (or via the Internet at *lotero@eac.gov*).

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Mrs. Juliet Thompson-Hodgkins or Ms. Laiza N. Otero at (202) 556–3100. You may also view the proposed collection instrument by visiting our Web site at *http://www.eac.gov*.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: 2006 Election Administration and Voting Survey; OMB Number Pending.

Needs and Uses: This proposed information collection activity is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Section 241 of HAVA requires the EAC to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, HAVA transferred to the EAC the Federal Election Commission's responsibility of biennially administering a survey on the impact of the National Voter Registration Act (NVRA). The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations (Chapter 1, Part 8, Subchapter C). HAVA 703(a) also amended the Uniformed and Overseas Citizens Absentee Voters Act by requiring that ''not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit and local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such votes and cast in the election, and shall make such a report available to the general public.'' In order to fulfill these requirements and to provide a complete report to Congress, the EAC is seeking information relating to the period from the close of registration for the November 2, 2004, Federal general election until the close of registration for the November 7, 2006, Federal general election, and information from the November 7, 2006, Federal general election.

Affected Public: State government.

Number of Respondents: 55.

Responses per Respondent: 1.

Estimated Burden per Response: 91 hours.

Estimated Total Annual Burden Hours: 728.50 hours.

Frequency: Biennially.

To improve and facilitate the collection and analysis of the survey data, the EAC anticipates developing and implementing an Internet-based platform to administer the survey. This method will allow respondents to enter, save, and edit data prior to submitting their final survey response. The following categories of information are requested on a state level and/or county/local election jurisdiction:

Voter Registration Applications

(a) Number of active and inactive registered voters at the time of the close of registration for the November 2, 2004, and the November 7, 2006, Federal general elections; (b) Number of persons who registered to vote on Election Day (November 7, 2006)—only applicable to States with Election Day registration; (c) Number of voter registration applications received from all sources during the period between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (d) Number of voter registration applications received by mail during the period between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (e) Number of voter registration applications received in person at the clerk or registrar's office during the period between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (f) Number of voter registration applications received or generated by each voter registration agency during the period between the close of registration for the November 2, 2004, Federal general elections until

close of registration for the November 7, 2006, Federal general elections; (g) Number of voter registration applications that were duplicates of other valid voter registrations, changes of name, changes of address, changes of party, and invalid or rejected (other than duplicates); (h) Number of new, valid voter registration applications processed between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; Number of election jurisdictions conducting voter registration; (i) The local entity primarily responsible for registering voters; State and local government offices or agencies designated as voter registration agencies; (j) Training provided to employees of Federal, State, and local government offices or agencies designated as voter registration agencies on the voter registration process; (k) Manner in which voter registration applications are transferred from voter registration agencies to the official responsible for voter registration; Official responsible for verifying and processing voter registration forms; (1) Number used as the voter identification number on the processed voter registration form; Manner in which voter registration applications are verified; (m) Manner in which voter registration officials check for duplicate registrations; Notification to applicants of rejection of their application and reason for the rejection; and (n) Manner in which the statewide voter registration database links to a State's department of motor vehicles and disability and social services agencies.

List Maintenance

(a) Manner in which list maintenance is performed; Number of registrations deleted from the registration list for whatever reason between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (b) Number of removal notices [Section 8, (d)(2) confirmation] mailed out between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (c) Number of responses received to the confirmation notices mailed out between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (d) Number of voters moved to the inactive list between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (e) Number of voters (active and inactive) removed from the voter rolls between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general election; (f) Sources considered in performing list maintenance; and (g) Manner in which voters convicted of a felony, voters serving a sentence of incarceration for conviction of a felony, and voters serving a term of probation following being convicted of a felony are treated.

2006 Election Day Results

(a) Identification of States that conduct early voting; (b) Statistics on ballots cast and ballots counted by mode of voting; (c) Statistics on ballots counted for each candidate on a Federal race; and (d) Statistics on provisional ballots.

Absentee Ballots (for the November 7, 2006, Federal General Election Only)

(a) Statistics on absentee ballots requested and not counted by type of absentee voter; (b) Statistics on advanced ballots; (c) Statistics on the number of Federal Write-In Absentee Ballots (FWAB) received; and (d) Statistics on absentee ballot rejections.

Undervotes and Overvotes (for the November 7, 2006, Federal General Election Only)

(a) Statistics on the number of undervotes reported in each Federal contest; and (b) Statistics on the number of overvotes reported in each Federal contest.

Poll Workers (for the November 7, 2006, Federal General Election Only)

(a) Information on the number of poll workers required by State law or regulation to be present at each polling place; (b) Statistics on the number of poll workers that served on Election Day; and (c) Number of polling places that did not have the required number of poll workers.

Voting Jurisdictions and Polling Places (for the November 7, 2006, Federal General Election Only)

(a) Information on what constitutes a local election jurisdiction in the State; (b) Number of local election jurisdictions in the State; Statistics on the number of precincts; (c) Statistics on the number of polling places; (d) Number of polling places that are accessible to voters with disabilities; and (e) Number of polling places where a visually impaired voter can cast a private ballot.

Sources of Information

(a) Number of jurisdictions that provided information to the State for purposes of responding to the survey; (b) Contact information for each local election official that provided information to the State for purposes of responding to the survey; and (c) Other sources of information used to respond to the survey other than those already provided.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–6602 Filed 7–31–06; 8:45 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

[OE Docket No. EA–267–A]

Application To Amend Authority To Export Electric Energy; Conectiv Energy Supply, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Conectiv Energy Supply, Inc. (CESI) has applied to amend its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 16, 2006.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 18, 2002, the Department of Energy (DOE) issued Order No. EA–267 authorizing CESI to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. That authorization expired on July 18, 2004.

On July 7, 2006, CESI filed an application with DOE to renew the

export authority contained in Order No. EA–267. CESI has indicated that after expiration of Order No. EA–267, it inadvertently engaged in transactions resulting in the exportation of electricity to Canada. CESI has requested that any export authorization granted by DOE in this proceeding be made effective as of July 19, 2004, in order to validate those exports made subsequent to the expiration of its previous authorization. CESI asserts that it has not engaged in any transactions to export electric energy to Canada since June 1, 2006, and it commits not to engage in any further exports pending approval of the application in this proceeding.

CESI has also requested expedited treatment of this amendment application and that the authorization, if granted, be effective for a period of five years. In response to the CESI request, DOE has shortened the comment period to 15 days.

CESI will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the CESI application to export electric energy to Canada should be clearly marked with Docket EA–267–A. Additional copies are to be filed directly with I. David Rosenstein, Esquire, General Counsel, Conectiv Energy, Legal Department, 800 North King Street, Wilmington, DE 19801 and Antonia A. Frost, Esquire, Bruder, Gentile and Marcoux, L.L.P., 1701 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20006–5805.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on July 25, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–12315 Filed 7–31–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 7, 2006, 8:15 a.m.–5 p.m., Friday, September 8, 2006, 8:15 a.m.–12 p.m.

ADDRESSES: La Fonda Hotel, 100 E. San Franciso, Santa Fe, New Mexico 87501, (505) 982–5511.

FOR FURTHER INFORMATION CONTACT: E. Douglas Frost, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5619.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the EM SSAB is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, September 7, 2006

8:15 a.m. Welcome and Overview.
8:45 a.m. Update on Groundwater Monitoring and Sampling Technology.
9:30 a.m. Round Robin: Groundwater Issues at Sites.
10:30 a.m. Break.
10:45 a.m. Update on Waste Disposition.
12 p.m Public Comment Period.
12:15 p.m. Lunch in Santa Fe Plaza.
1:15 p.m. EM Update.
2:15 p.m. Break.
2:30 p.m. Round Robin: Top Three Site Issues.
3:45 p.m. Break.
4 p.m. Chairs' Discussion.
4:45 p.m. Public Comment Period.
5 p.m. Review.

Friday, September 8, 2006

8:15 a.m. Opening.
8:30 a.m. Briefings by DOE/EM Staff.
9:15 a.m. Chairs Working Session.
10:45 a.m. Break.
11 a.m. EM SSAB Issues and Next Meeting.
11:30 a.m. Public Comment Period.
11:45 a.m. Meeting Wrap-Up and Closing Remarks.
12 p.m. Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed either before or after the meeting with the Designated Federal Officer, E. Douglas Frost, at the address above or by phone at (202) 586–5619. Individuals who wish to make oral statements pertaining to agenda items should also contact E. Douglas Frost. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by calling E. Douglas Frost at (202) 586–5619 and will be posted at *http://web.em.doe.gov/public/ssab/chairs.html*.

Issued at Washington, DC on July 26, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–12316 Filed 7–31–06; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 19, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 2, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0809.

Title: Communications Assistance for Law Enforcement Act (CALEA).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; State, local, or tribal governments.

Number of Respondents: 8,824.

Estimated Time per Response: 1–80 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 107,118 hours.

Total Annual Costs: N/A.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to create rules that regulate the conduct and recordkeeping of lawful electronic surveillance. CALEA was enacted in October 1994 to respond to rapid advances in telecommunications technology and eliminates obstacles faced by law enforcement personnel in conducting electronic surveillance. Section 105 of CALEA requires telecommunications carriers to protect against the unlawful interception of communications passing through their systems. Law enforcement officials use the information maintained by telecommunications carriers to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

On May 12, 2006, the Commission released a *Second Report and Order and Memorandum Opinion and Order* in ET Docket No. 04–195, FCC 06–56, which will become effective August 4, 2006. The *Second Report and Order* established guidelines for filing section 107(c), section 109(b) petitions and monitoring reports. Section 107(c)(1) permits a petitioner to apply for an extension of time, up to two years from the date that the petition is filed, and to come into compliance with a particular CALEA section 103 capability requirement. CALEA section 109(b) permits a telecommunication carrier covered by CALEA to file a petition with the FCC and an application with the Department of Justice (DOJ) to request that DOJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. The *Second Report and Order* requires several different collections of information:

(a) Within 90 days of the effective date of the *Second Report and Order*, facilities based broadband Internet access and interconnected Voice over Interconnected Protocol (VOIP providers newly identified in the *First Report and Order* in this proceeding will be required to file system security statements under the Commission's rules. (Security systems are currently approved under the existing OMB 3060–0809 information collection).

(b) Petitions filed under Section 107(c), request for additional time to comply with CALEA, these provisions apply to all carriers subject to CALEA and are voluntary filings.

(c) Section 109(b), request for reimbursement of CALEA, would modified, these provisions apply to all carriers subject to CALEA and are voluntary filings.

(d) A new collection would require each carrier that has a CALEA section 107(c) extension petition currently on file to submit to the Commission a letter documenting that the carrier's equipment, facility or service qualifies for section 107(c) relief under the October 25, 1998, cutoff for such relief.

(e) A new collection would require all carriers providing facilities based broadband Internet access or interconnected VOIP services to file monitoring reports with the Commission to ensure timely CALEA compliance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–12325 Filed 7–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 20, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the

collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 2, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318 and 73.685, Blanketing Interference.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time Per Response: 1–2 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 41,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.88(AM) states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour.

47 CFR Section 73.318(b)(FM) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c)(FM) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88(AM), 73.318(FM), and 73.685(d)(TV), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, ''Blanketing Interference.'' This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–12326 Filed 7–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, August 3, 2006

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 3, 2006, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service (WC Docket No. 06–10). *Summary:* The Commission will consider a Memorandum Opinion and Order concerning the classification of broadband over power line Internet access service.
	Office of Engineering and Technology	*Title:* Amendment of part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems (ET Docket No. 04–104). *Summary:* The Commission will consider a Memorandum Opinion and Order in response to petitions for reconsideration of the rules applicable to Broadband over Power Line systems.
	Wireline Telecommunications	*Title:* Service Rules for the 698–746, 747–762 and 777–792 MHz Bands. *Summary:* The Commission will consider a Notice of Proposed Rulemaking regarding possible changes to the rules governing wireless licenses in the 698–746, 747–762, and 777–792 MHz Bands.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 06–6641 Filed 7–28–06; 12:31 pm]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Moratorium on Certain Industrial Loan Company Applications and Notices

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice; The Imposition of a Moratorium.

SUMMARY: This notice announces the imposition of a six-month moratorium on FDIC action to accept, approve, or deny any application for deposit insurance submitted to the FDIC by, or on behalf of, any proposed or existing industrial loan company, industrial bank or similar institution (collectively, ILC),[1] or accept, disapprove, or issue a letter of intent not to disapprove, any change in bank control notice submitted to the FDIC with respect to any ILC. The FDIC Board of Directors (Board) may exclude from the moratorium any particular application or notice if it determines that the moratorium would present a significant safety and soundness risk to any FDIC-insured institution or a significant risk to the deposit insurance fund, or failure to act would otherwise impair the mission of the FDIC.

DATES: The moratorium is effective through Wednesday, January 31, 2007.

FOR FURTHER INFORMATION CONTACT: For questions regarding the moratorium: contact Robert C. Fick, Counsel, (202) 898–8962; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

[1] See 12 U.S.C. 1813(a)(2), 1841(c)(2)(H).

I. Background

Nature and Brief History of ILCs

ILCs were first chartered in the early 1900's as small loan companies for industrial workers. Over time the chartering states have gradually expanded the powers of their ILCs to the extent that ILCs now generally have the same powers as state commercial banks.[2]

ILCs are state-chartered banks, and all of the existing FDIC-insured ILCs are ''state nonmember banks'' under the FDI Act. As a result, their primary Federal banking supervisor is the FDIC. The FDIC generally exercises the same supervisory and regulatory powers over ILCs that it does over other state non-member banks. The only material exceptions to the FDIC's authority over ILCs are that the cross-guarantee liability provisions, the golden parachute provisions, and the management interlocks provisions are not applicable to ILCs, their affiliates or holding companies. Legislation to make these provisions applicable to ILCs is currently pending.

While ILCs are ''banks'' under the FDI Act,[3] they generally are not ''banks'' under the Bank Holding Company Act (BHCA).[4] One result of this difference in treatment is that a company that owns an ILC could engage in commercial activities and may not be subject to Federal consolidated supervision. By contrast, domestic bank holding companies and financial holding companies that are subject to Federal consolidated supervision are prohibited from engaging in commercial activities. As a result of these differences, some of the companies that own ILCs are not subject to Federal consolidated supervision. The FDIC has noted a recent increase in deposit insurance applications for, and change in control notices with respect to, ILCs that will be affiliated with commercial concerns or other companies that will not have a Federal consolidated supervisor. Some members of Congress, the Government Accountability Office, the FDIC's Office of Inspector General, and members of the public have expressed concerns regarding the lack of Federal consolidated supervision, the potential risks from mixing banking and commerce and the potential for an unlevel playing field.

[2] If an ILC is authorized to, and does, in fact, offer demand deposits, any company that owns such an ILC may be required to register as a bank holding company. As a result, most of the ILCs have chosen not to offer demand deposits.

[3] 12 U.S.C. 1813(a)(2).

[4] *See* 12 U.S.C. 1841(c)(2)(H).

Summary of ILC Portfolio

The ILC industry has evolved since the enactment of the Competitive Equality Banking Act (CEBA) in 1987, when Congress initially excepted ILCs from the BHCA. As of July 24, 2006, there were 61 operating insured ILCs; 48 of the 61 were chartered in Utah or California. ILCs also operate in Colorado, Hawaii, Indiana, Minnesota and Nevada.

As of year-end 1987, 105 ILCs reported aggregate total assets of $4.2 billion and aggregate total deposits of $2.9 billion. The reported total assets for these ILCs ranged from $1.0 million to $411.9 million, with the average ILC reporting $40.0 million in total assets and $27.3 million in total deposits. Of the current portfolio of 61 ILCs, 14 were insured during 1987 or prior years.

As of year-end 1999, the FDIC insured 55 ILCs with aggregate total assets of $43.6 billion and aggregate total deposits of $22.5 billion. The reported total assets for these ILCs ranged from $2.4 million to $15.6 billion, with 10 institutions reporting total assets of more than $1 billion. The four largest institutions reported total assets of $15.6 billion, $4.4 billion, $3.8 billion, and $3.0 billion. Six other institutions reported total assets of $1.1 billion to $2.5 billion. The remaining portfolio of ILCs, on average, reported total assets of $152.5 million. Of the current portfolio of 61 ILCs, 37 were insured during 1999 or prior years.

Since January 1, 2000, 24 ILCs became insured.[5] As of March 31, 2006, the 61 insured ILCs reported aggregate total assets of $155.1 billion; ILCs owned by four financial services firms, including Merrill Lynch & Co. Inc.; UBS AG, Lehman Brothers Holdings, Inc.; and Morgan Stanley, accounted for 63 percent of the growth in ILC assets since 1987. These four firms all operate under some form of consolidated supervision by the Federal Reserve Board (FRB), the Office of Thrift Supervision (OTS) or the Securities and Exchange Commission (SEC) account for 61.4% of the total ILC industry assets as of March 31, 2006. Reported total assets of all ILCs, as of March 31, 2006, ranged from $2.7 million to $62.0 billion. ILCs reporting total assets of $10 billion or more include Merrill Lynch Bank USA ($62.0 billion), UBS Bank USA ($19.0 billion), American Express Centurion Bank ($13.8 billion), Fremont Investment & Loan ($12.9 billion), and Morgan

[5] During 2000, 4 new ILCs were insured; 2 during each of 2001 and 2002; 5 during 2003; 6 during 2004; 4 during 2005; and 1 thus far in 2006. The insurance date for each institution reflects the date the institution began operating.

Stanley Bank ($10.9 billion); 9 other ILCs reported total assets of $1 billion or more. The remaining 47 institutions, on average, reported total assets of $223.6 million.

While many of the ILCs insured after CEBA are subject to some form of consolidated supervision, many of the recent applications are from companies that would have no consolidated Federal supervisor. Currently, nine applications for deposit insurance for ILCs are pending before the FDIC. The FDIC has also received five notices of change in bank control to acquire an ILC. None of the potential parent companies of the current ILC applicants or the potential acquirers of ILCs will be subject to Federal consolidated supervision.

II. Recent Developments and Expressions of Concern

The ILC industry has grown and evolved since its inception in 1910, and that growth and evolution appears to be continuing in ways that may not have been anticipated at the time CEBA was enacted in 1987 and even at the time that the Gramm-Leach-Bliley Act (GLBA) was enacted in 1999, when Congress last addressed the issue of mixing banking and commerce. Over time the chartering states have gradually expanded the powers of their ILCs to the extent that ILCs now generally have the same powers as state commercial banks.[6] That fact, coupled with the ability of a company that controls an ILC to possibly engage in activities not permissible for a Federally-supervised holding company, has attracted the interest of a wide range of potential owners. For some of these companies, the ILC charter was the only way the company could own a bank. Some of these companies plan to use an ILC to support their non-financial activities; others plan to use an ILC to augment the services of their financial services units.

In 2005 the GAO issued a report that concluded that while ''from an operations standpoint [ILCs] do not appear to have a greater risk of failure than other types of depository institutions,''[7] commercial firm ownership of ILCs constituted a mixing of banking and commerce and created an unlevel playing field when compared to the holding companies of banks and thrifts subject to consolidated supervision, and that the FDIC's examination, regulation and supervision authorities may not adequately protect the bank and the insurance fund when an ILC is held by a commercial firm. Previously, the FDIC's OIG had issued a 2004 report expressing a concern that ILCs may present additional risks to the deposit insurance fund because the parent holding companies of ILCs are not always subject to consolidated supervision, consolidated capital requirements, or enforcement actions imposed on parent organizations subject to the BHCA.

The FDIC also received more than 13,000 comment letters and heard substantial testimony in three days of hearings on the proposed Wal-Mart Bank's deposit insurance application. Most of the comments and testimony expressed opposition to the granting of deposit insurance to this particular applicant. As of June 30, 2006 over 640 of those comments specifically raised concerns over the risk to the deposit insurance fund posed by an ILC that has a parent without a consolidated Federal supervisor or in which an ILC is owned or affiliated with a commercial concern.

Recently, numerous members of Congress have expressed their concerns about ILCs in comments on applications and notices pending before the FDIC, in recent Congressional hearings on ILCs, and by introducing a number of bills affecting ILCs.

III. Need for a Moratorium

From a safety and soundness standpoint, ILCs have not presented the FDIC thus far with any greater risk of failure than other types of insured depository institutions and the FDIC's current statutory authority has proved adequate to supervise ILCs. However, as a result of the continued evolution of the ILC industry and the various issues and concerns expressed regarding the ILC industry mentioned above, it is appropriate for the FDIC to further evaluate (i) industry developments, (ii) the various issues, facts, and arguments raised with respect to the ILC industry, (iii) whether there are emerging safety and soundness issues or policy issues involving ILCs or other risks to the insurance fund, and (iv) whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of ILCs in order to protect the deposit insurance fund or important Congressional objectives.

IV. The Moratorium

The FDIC has imposed a six-month moratorium on FDIC action to (i) accept, approve, or deny any application for deposit insurance submitted to the FDIC by, or on behalf of, any proposed or existing ILC, or (ii) accept, disapprove, or issue a letter of intent not to disapprove, any change in bank control notice submitted to the FDIC with respect to any ILC. The FDIC Board of Directors may exclude from the moratorium any particular application or notice if it determines that (i) the moratorium would present a significant safety and soundness risk to any FDIC-insured institution or a significant risk to the deposit insurance fund, or (ii) failure to act would otherwise impair the mission of the FDIC.

During the moratorium, the FDIC will not ''accept'' applications for deposit insurance for any ILC or notices of change in control with respect to any ILC, regardless of whether the application or notice is substantially complete. The moratorium includes all pending ILC applications for deposit insurance and notices of change in control with respect to an ILC in order to maintain the status quo. In that way the FDIC would be able to focus carefully and comprehensively on further evaluating the developments, facts, issues, and arguments mentioned above, and to ensure that no new ILCs will be insured and no new changes in control will be permitted that would be inconsistent with the FDIC's findings and conclusions.

During the moratorium, all ILC applications and notices other than those subject to the moratorium will be acted upon only by the FDIC's Board of Directors.

Finally, it is expected that during the moratorium the FDIC will seek public input on the issues and concerns raised with regard to the ILC industry.

Imposition of a limited-duration moratorium at this time is necessary to insure that the FDIC achieves and preserves the broad statutory objectives of the FDI Act which include maintenance of public confidence in the banking system by insuring deposits and maintaining the safety and soundness of insured depository institutions. The FDIC recognizes that the moratorium may appear inconsistent with specific timetables for agency action on certain applications or notices. However, adherence to a strict statutory timeline without an opportunity to re-evaluate the FDIC's standards for determining the public interest may frustrate the substantive policies the agency is charged with promoting.

The moratorium will not implement any new standards for any regulatory approvals, but rather will seek to maintain the status quo while the FDIC evaluates its standards in light of its

[6] *See* n.1 *supra.*

[7] U.S. Government Accountability Office, GAO–05–621, Industrial Loan Corporations: Recent Asset Growth And Commercial Interest Highlight Differences In Regulatory Authority (2005), available at *http://www.gao.gov/highlights/d05621high.pdf* (hereinafter GAO–05–621).

statutory objectives and congressional policies.

By Order of the Board of Directors.

Dated at Washington, DC, this 28th day of July, 2006.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E6–12449 Filed 7–31–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—07/03/2006			
20051218	Kaba Holding AG	Masco Corporation	Computerized Security Systems Inc. Saflok EMEA NV.
TRANSACTIONS GRANTED EARLY TERMINATION—07/05/2006			
20061096	Quantum Corporation	Advanced Digital Information Corporation.	Advanced Digital Information Corporation.
20061149	Lindsay Goldberg & Bessemer L.P	John Rincon	Intermex Wire Transfer, LLC.
20061264	Allianz Aktiengesellschaft	MAN Aktiengesellschaft	MAN Roland Druckmaschinen Aktiengesellschaft.
20061270	ADC Telecommunications, Inc	Andrew Corporation	Andrew Corporation.
20061274	Ascendia Brands, Inc	Donata Holding GmbH & Co. KG	Coty Inc.
20061276	ValueAct Capital Master Fund, L.P	Valeant Pharmaceuticals International	Valeant Pharmaceuticals International.
20061281	Fremont Partners III, L.P	Nautic Partners V, LP	IPS Intermediate Holdings Corporation.
20061289	ACO Holding LP	Acosta, Inc	Acosta, Inc.
20061301	ArcLight Energy Partners Fund III, L.P	Ralph R. Bell	Cincoi Pipe and Supply, Ltd.
20061302	ArcLight Energy Partners Fund III, L.P	John H. Causey	Cincoi Pipe and Supply, Ltd.
20061303	Hospital Partners of America, Inc	CHRISTUS Health	CHRISTUS Health Gulf Coast.
20061305	Platinum Equity Capital Partners, L.P	Textron Inc	Avdel Cherry LLC. Burkland Textron Inc. Camcar LLC. Cherry Aerospace LLC. Elco Fastening Systems LLC. Flexalloy Inc. Ring Screw LLC. TFS Fastening Systems LLC. Wolverine Metal Specialties, Inc.
20061312	Atlantic Equity Partners IV, L.P	BHM Technologies, LLC	BHM Technologies, LLC.
20061320	Level 3 Communications, Inc	Looking Glass Networks Holding Co., Inc.	Looking Glass Networks Holding Co., Inc.
20061322	Apollo Investment Fund VI, L.P	International Paper Company	Bucksport Leasing Company. Nextier Solutions Corporation.
20061324	Macquarie Utilities Inc	Kelda plc	Aquarion Company.
20061326	Crestview Capital Partners, L.P	Friedman, Billings, Ramsey Group, Inc	FBR Capital Markets Corporation.
20061329	Harbinger Capital Partners Offsore Fund I, Ltd.	Crescent Jewelers	Crescent Jewelers.
20061333	Sandler Capital Partners V, L.P	Premedia Inc	Premedia Special Interest Publications, Inc.
20061337	UBS AG	ABN AMRO Holding N.V	ABN AMRO Clearing and Management Services, Inc. ABN AMRO Commodity Finance, Inc. ABN AMRO Incorporated. ABN AMRO Sage Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—07/06/2006			
20061335	TPG Partners V. L.P	Field Holdings, Inc	Field Container Company, L.P.
TRANSACTIONS GRANTED EARLY TERMINATION—07/07/2006			
20060987	Hologic, Inc	Suros Surgical Systems, Inc	suros Surgical Systems, Inc.
20061241	National Grid plc	KeySpan Corporation	KeySpan Corporation.
20061297	Schneider Electric SA	Invensys plc	Barber-Colman Holdings Corp.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—07/10/2006			
20061192	Arthur L. Allen	Lowell L. Sando And Patricia A. Sando	Diversified Software Systems, Inc.
20061249	Healthways, Inc	LifeMasters Supported SelfCare, Inc	LifeMasters Supported SelfCare, Inc.
200611290	FedEx Corporation	Watkins Associated Industries, Inc.	Freight Terminals, Inc. TP–01, LLC. TP–02, LLC. Watkins Canada Express Inc. Watkins Equipment & Terminals Canada Inc. Watkins International, Inc. Watkins Motor Equipment, Inc. Watkins Motor Lines, Inc. Watkins Trailer Company. WML–99 Trailer Company. WML Trailers. WW Two Trailer Company.
TRANSACTIONS GRANTED EARLY TERMINATION—07/11/2006			
20060063	INCO Limited	Falconbridge Limited	Falconbridge Limited.
20061291	EPCOR Power L.P	EPCOR Utilities Inc	EPCOR Energy (U.S.), G.P.
20061331	The Southern Company	Progress Energy, Inc	Rowan County Power, LLC.
20061336	Carlyle Partners IV, L.P	Brentwood Associates Private Equity III, L.P.	OTC Holdings, Inc.
20061342	Fidelity Sedgwick Holdings, Inc	Capital Partners Holdings II–A, L.P	Security Capital Corporation.
20061346	Xerox Corporation	Sharon Duker	Amici LLC.
20061347	Wells Fargo & Company	Reilly Mortgage Group, Inc	Reilly Mortgage Group, Inc.
20061351	United Business Media plc	RFE Investment Partners VI, L.P	CBM Holdings, Inc.
20061358	United Group Limited	Michael Silver	Equis Corporation.
20061359	Cofra Holding AG	Pent Technologies, Inc	Pent Technologies, Inc.
20061360	First Resource Federal Credit Union	United Federal Credit Union	United Federal Credit Union.
20061361	Koch Industries, Inc.	Insulair, Inc	Insulair, Inc.
20061370	Electronic Arts Inc	Mythic Entertainment, Inc	Mythic Entertainment, Inc.
20061373	Veolia Environment S.A	SuperShuttle International, Inc	SuperShuttle International, Inc.
20061375	Lehman Brothers Holdings Inc	Campus Door, Inc	Campus Door, Inc.
20061386	Phelps Dodge Corporation	Inco Limited	Inco Limited.
TRANSACTIONS GRANTED EARLY TERMINATION—07/12/2006			
20061330	Charterhouse Dragon I S.A	Financiere F.L	Compagnie de Fives-Lille.
20061334	Group 1 Automaotive, Inc	Frederick E. Hitchcock, Jr	Anaheim Imports, Inc.
20061340	Ares Corporate Opportunities Fund II, L.P.	WCA Waste Corporation	WCA Waste Corporation.
20061341	Morgan Stanley	TransMontaigne Inc	TransMontaigne Inc.
20061365	FS Equity Partners V, L.P	Mattress Giant Holding Corporation	Mattress Giant Holding Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—07/13/2006			
20061309	Ronald O. Perelman	Rentokil Initial plc	Initial Security, LLC. Rentokil Inc.—Security Services.
20061339	D.E. Shaw Composite International Fund.	Orkla ASA	Elkem Metals Company-Alloy L.P. Elkem Metals, Inc.
20061367	Magellan Health Services, Inc	Raju Mantena	Icore Healthcare, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—07/14/2006			
20060787	Berkshire Fund VI, Limited Partnership	John G. Brunner Vi-Jon Laboratories, Inc..	
20060788	Berkshire Fund VI, Limited Parntership	Cumberland Swan Holdings, Inc	Cumberland Swan Holdings, Inc.
20061327	Hicks, Muse, Tate & Furst Equity Fund V, L.P.	Valence Operating Company	ECC Midstream Ltd. Valence Midstream, Ltd.
20061345	Atlas Copco AB	2000 Riverside Capital Appreciation Fund, L.P.	Beacon Holdings Corporation.
20061353	CHS Private Equity V, L.P	CGW Southeast Partners IV, L.P	TruckPro Holding Corporation.
20061377	Clayton, Dubilier & Rice Fund VII, L.P	New Sally Holdings, Inc	New Sally Holdings, Inc.
20061381	Teachers Insurance and Annuity Association of America.	J. Scott Kaspick and Susan Termohlen	Kaspick & Company, LLC.
20061383	Linsalata Capital Partners Fund V, L.P	Stanton Carpet Corporation	Stanton Carpet Corporation.
20061391	Genstar Capital Partners IV, L.P	Halpern Denny Fund III, L.P	OnCure Medical Corp.
20061394	BPC Holding Acquisition Corp	BPC Holding Corporation	BPC Holding Corporation.
20061398	CHS Private Equity V, L.P	KII Holding Corporation	KII Holding Corporation.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—07/17/2006			
20061348	CHS Private Equity V, L.P	Bruckmann, Rosser, Sherrill & Co., L.P	Penhall International Corp.
20061366	Sterling Group Partners II, L.P	CSTI Holdings, LLC	CST Industries, Inc.
20061384	Holcim Ltd	U.S. Equity Partners II (U.S. Parallel), L.P.	Meyer Material Holding Co., Inc.
20061385	Lion Capital Fund I, L.P	J.W. Childs Equity Partners II, L.P	RSA Holdings Corp.
20061389	AstraZeneca plc	Abbott Laboratories	Abbott Pharmaceuticals PR Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—07/17/2006			
20060784	Linde AG	The BOC Group plc	The BOC Group plc
TRANSACTIONS GRANTED EARLY TERMINATION—07/18/2006			
20061378	Walgreen Co	Medmark Holdings Inc	Medmark Holdings Inc.
20061393	Glen A. Taylor	Antonio Accornero	CPI Card Group—Colorado, Inc. CPI Card Group—Nevada, Inc. CPI Holding Co., Reno Plastics, Inc. Winner Properties, LLC.
20061402	Harvest Partners IV, L.P	Whitney V, L.P	Encanto Restaurants, Inc.
20061405	FS Equity Partners V, L.P	Savers, Inc	Savers, Inc.
20061406	Insurance Servies Office, Inc	Lynette Childs Loveland	Xactware, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/19/2006			
20061343	Powerwave Technologies, Inc	Filtronic, plc	Filtronic Comtek (UK) Limited. Filtronic (Overseas Holdings) Limited.
20061374	The Home Depot, Inc	Henry J. Hinman, Jr. and Ellen G. Hinman.	Forest Products Supply, Inc.
20061412	The Procter & Gamble Company	ARYx Therapeutics, Inc	ARYx Therapeutics, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/20/2006			
20061307	Duke Energy Corporation	Dynergy, Inc	Dynergy Midwest Generation, Inc. Dynergy Operating Company. Dynergy Power Marketing, Inc. Rockingham Power, L.L.C.
20061356	Everett R. Dobson Irrevocable Family Trust.	Faramarz Attar	Highland Cellular, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—07/21/2006			
20061315	TC Holdings Corp	Michigan Transco Holdings, L.P	Michigan Transco Holdings, L.P.
20061316	Expro International Group PLC	FR IX Offshore L.P	Power Well Service Holdings, LP. Power Well Services, Inc.
20061368	Chesapeake Energy Corporation	Gene D. Yost and Sara Yost	Diamond Y Enterprises, Inc. Gene D. Yost & Son, Inc.
20061369	Chesapeake Energy Corporation	Duane Yost and Judy Yost	Diamond Y Enterprises, Inc. Gene D. Yost & Son, Inc.
20061407	Bunker Hill Capital, L.P	Russell W. Kuhn	California Family Health, Inc.
20061408	Bunker Hill Capital, L.P	Larry R. Gury	California Family Health, Inc.
20061416	Li & Fung Limited	Rosetti Handbags & Accessories Ltd	Rosetti Handbags & Accessories, Ltd.
20061417	Wynnchurch Capital Partners II, L.P	SafeWorks, LLC	SafeWorks, LLC.
20061418	Mr. Ronald P. Mathison	Veritas DGC, Inc	Veritas DGC Land, Inc. Veritas DGC Ltd. Veritas Energy Services Partnership.
20061420	Voting Shares Trust	Newton Holding, LLC	Gurwitch Products, L.L.C.
20061421	Richard M. DeVos	Newton Holding, LLC	Gurwitch Products, L.L.C.
20061424	Koninklijke KPN N.V	iBasis, Inc	iBasis, Inc.
20061430	Stone Arcade Acquisition Corporation	International Paper Company	International Paper Company.
20061433	Lindsay Goldberg & Bessemer II, LP	Brock Speciality Services, Ltd	Brock Speciality Services, Ltd.
20061439	TAC Acquisition Corp	R. John Chapel	Aviel Systems, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative, or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–6604 Filed 7–31–06; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–06–0008]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Emergency Epidemic Investigations—Extension—(0920–0008), Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background & Brief Description

The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. The EPI-AID mechanism is a means for Epidemic Intelligence Service (EIS) officers of the Centers for Disease Control and Prevention (CDC), along with other CDC staff, to provide technical support to state health agencies requesting assistance for epidemiologic field investigations. This mechanism allows CDC to respond rapidly to public health problems in need of urgent attention, thereby providing an important service to state and other public health agencies; and to provide supervised training opportunities for EIS officers (and, sometimes, other CDC trainees) to actively participate in epidemiologic investigations.

Epi Trip Reports are delivered to the state health agency official requesting assistance shortly after completion of the EPI-AID investigation. This official can comment on both the timeliness and the practical utility of the recommendations from the investigation. Upon completion of the EPI-AID investigation, requesting officials at the state or local health department will be asked to complete a brief questionnaire to assess the promptness of the investigation and the usefulness of the recommendations. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Requestors of EPI-AIDs	~ 100 per year	1	15/60	25 hours per year

Dated: July 26, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–12307 Filed 7–31–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 21, 2006, from 8 a.m. to 5 p.m.

Location: Food and Drug Administration, CDER Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Cathy Groupe, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6778, e-mail: *Cathy.Groupe@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the information line for up-to-date information on this meeting.

Agenda: The committee will discuss clinical data for aprotinin injection (trade name, TRASYOL), an approved product, new drug application (NDA) 020–304, Bayer Pharmaceuticals) with the indication for prophylactic use to reduce perioperative blood loss and the need for blood transfusion in patients undergoing cardiopulmonary bypass in the course of coronary artery bypass graft surgery. This discussion follows a February 8, 2006, FDA Public Health Advisory for the use of apportioning injection (*www.fda.gov/cder/drug/advisory/aprotinin.htm*). The background material for this meeting will be posted 1 business day before the meeting on FDA's Website at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading ''Cardiovascular and Renal Drugs Advisory Committee.'' (Click on the

year 2006 and scroll down to the above named committee meeting.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 13, 2006. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants and an indication of the approximate time requested to make their presentation on or before September 13, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–12269 Filed 7–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0312]

Meeting to Present Work-In-Progress on a Method for Ranking Feed Contaminants According to the Relative Risks They Pose to Animal and Public Health; Part 1: Health Consequence Scoring for Feed Contaminants

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting it will hold to present work-in-progress on a method for ranking animal feed contaminants by their relative risks to animal and human health. The relative risk posed by feed contaminants to animal and human health consists of two components, namely health consequence scoring and exposure scoring. At this meeting the agency will describe the methods it plans to use to develop animal and human health consequence scoring for chemical, physical, and biological feed contaminants. At one or more subsequent public meetings, FDA will present information about how the health consequence scoring will be combined with information about the exposure of animals and humans to feed contaminants to determine the relative risks of such contaminants in feed.

Date and Time: The public meeting will be held on September 12, 2006, from 9 a.m. to 4:30 p.m.

Location: The meeting will be held at the Center for Drug Evaluation and Research Conference Room, third floor, 7519 Standish Pl., Rockville, MD 20855.

ADDRESSES: You may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Zoe Gill, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6867, FAX 240–453–6882, e-mail: *zoe.gill@fda.hhs.gov*.

Registration: You may register by telephone, fax, or e-mail by contacting Nanette Milton, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6840, FAX 240–453–6880, e-mail: *nanette.milton@fda.hhs.gov*. Send registration information (including name, title, firm name, address, telephone, and fax number to Nanette Milton. To obtain the registration form via the Internet go to *http://www.fda.gov/cvm/AFSS.htm#Meetings*. Due to limited meeting space, registration will be required. We strongly encourage early registration.

SUPPLEMENTARY INFORMATION:

I. Background

The Animal Feed Safety System (AFSS) is FDA's program for animal feed aimed at protecting human and animal health by ensuring animal feed is safe. It covers the entire spectrum of agency activities from preapproval of food additives and drugs for use in feed, to establishing limits for feed contaminants, providing education and training, and conducting inspections and taking enforcement actions for ensuring compliance with agency regulations. AFSS includes oversight of all feed ingredients and mixed feed at all stages of manufacture, production, distribution, and use, whether at commercial or non-commercial establishments.

During the past several years, FDA has been considering changes that need to be made to AFSS to ensure that it is comprehensive, preventive, and risk-based. As part of this effort, the agency is developing a model for ranking the relative risks to human and animal health of contaminants in animal feed. An effective model will permit the agency to systematically distinguish among feed hazards based on the relative risks they pose to animals or humans. Such a model will consider the risks of hazards present in incoming materials or feed ingredients and will also consider how activities at feed manufacturing, storage, distribution, and transportation facilities may modify such risks. For the purpose of AFSS, FDA defines a feed hazard as a biological, chemical, or physical agent in, or condition of, feed with the potential to cause an adverse health effect in animals or humans.

Previously, FDA held two public meetings to discuss AFSS, including discussions of the agency's plan to develop a risk ranking model for determining the relative risks to animal or human health of feed hazards. The first meeting was held on September 23 and 24, 2003, in Herndon, VA, and the second meeting was held on April 5 and 6, 2005, in Omaha, NE. The public meetings included active participation by consumers, animal feed processors, animal producers, and State and other Federal Government agencies. Following the meetings, we placed a number of documents in FDA's docket for the AFSS project (found in brackets in the heading of this document). These documents included transcripts of the meetings, summaries of break-out discussion groups, presentations of invited speakers, and meeting summaries. We also placed in the docket a number of other documents relating to AFSS, including a framework for AFSS that lists the principal components of AFSS and the gaps the agency has identified which are being addressed by the agency team working on the AFSS project. These documents provide excellent, general background material on AFSS for the public meeting that will be held on September 12, 2006.

This meeting is the first of several planned by FDA to discuss aspects of the AFSS relative risk ranking model during the model's development by the agency. To determine the relative risks of chemical, physical, and biological contaminants in animal feed, information about the health consequences posed by the contaminant (represented by a health consequence scoring) is combined with information about the amount of the contaminant in animal feed (represented by an exposure scoring). This meeting will describe the methods used by the agency to develop the animal and human health consequence scoring for feed contaminants. At one or more subsequent meetings, FDA will present information about exposure of animals and humans to contaminants in feed and information about how health consequence scoring is combined with exposure scoring to determine the relative risks of contaminants in animal feed.

II. Meeting

We are holding the meeting in an effort to gather further information from you, our stakeholders, on changes to AFSS that will help minimize risks to animal and human health associated with animal feed. Prior to the public meeting, FDA will place in the docket (found in brackets in the heading of this document) two documents, entitled ''List of Potentially Hazardous Contaminants in Animal Feed and Feed Ingredients'' and ''Determining Health Consequence Scoring for Feed Contaminants.'' The documents will summarize the agency's methods for assigning animal and human health consequence scoring to physical, chemical, and biological contaminants that may be present in animal feed. Details of these methods will be discussed at the meeting. A draft agenda for the meeting will also be placed in the docket prior to the meeting.

III. Comments

If you would like to submit written comments to the docket, please send you comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. You can view comments FDA has received on the Internet at *http://www.fda.gov/ohrms/dockets/*.

Dated: July 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–12266 Filed 7–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 6, 2006, from 8 a.m. to 5 p.m. and September 7, 2006, from 8 a.m. to 12 noon.

Location: Hilton, Washington DC/Silver Spring, Maryland Ballrooms, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, email: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 6, 2006, the committee will discuss two new drug applications (NDAs): (1) NDA 21–874, proposed trade name GENASENSE (oblimersen sodium) Injection, Genta, Inc., proposed indication for the treatment of patients with chronic lymphocytic leukemia in combination with fludarabine and cyclophosphamide; and (2) NDA 020–287, FRAGMIN (dalteparin sodium), Pfizer, Inc., proposed indication for the extended treatment of symptomatic venous thromboembolism (VTE), proximal deep vein thrombosis, and/or pulmonary embolism to reduce the recurrence of VTE in patients with cancer. On September 7, 2006, the committee will discuss NDA 21–660, ABRAXANNE (paclitaxel protein-bound particles for injectible suspension) (albumin-bound), Abraxis Bioscience, Inc., including trial design issues for adjuvant treatment of node-positive breast cancer.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 22, 2006. Oral presentations from the public will be scheduled between approximately 10 a.m. to 10:30 a.m., and 2:30 p.m. to 3 p.m. on September 6, 2006, and between approximately 10 a.m. to 10:30 a.m. on September 7, 2006. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation before August 22, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Johanna Clifford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–12270 Filed 7–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA 225–06–8401

Memorandum of Understanding Between the U.S. Food and Drug Administration, Department of Health and Human Services and the Centers for Disease Control and Prevention

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The purpose of this memorandum of understanding (MOU) is to set forth an agreement between the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA) (collectively ''the Parties'', or individually as a ''Party'') to provide a framework for coordination and collaborative efforts between these two agencies which are both components of the Department of Health and Human Services. This MOU also provides the principles and procedures by which information exchanges between FDA and CDC shall take place. This memorandum supersedes the Memorandum of Understanding between the Centers for Disease Control and the Food and Drug Administration, dated June 26, 2000, and numbered 225–03–8001.

DATES: The agreement became effective June 14, 2006.

FOR FURTHER INFORMATION CONTACT:

For FDA: Ellen F. Morrison, Director, Office of Crisis Management, Emergency Operations Center, Food and Drug Administration, 5600 Fishers Lane, rm. 12A–55, Rockville, MD 20857, 301–827–5660.

For CDC: Steven L. Solomon, Director, Coordinating Center for Health and Information Services, Centers for Disease Control and Prevention, Atlanta, GA 30333, 404–498–0123.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: July 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-06-8401
(formerly 225-03-8001 and 225-00-8000)

MEMORANDUM OF UNDERSTANDING

Between the

FOOD AND DRUG ADMINISTRATION

And the

CENTERS FOR DISEASE CONTROL AND PREVENTION

I. PURPOSE

This Memorandum of Understanding (MOU) between the Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC) provides a framework for coordination and collaborative efforts between these two agencies which are both components of the Department of Health and Human Services. This MOU also provides the principles and procedures by which information exchanges between FDA and CDC shall take place.

This memorandum supersedes the Memorandum of Understanding Between the Centers for Disease Control and the Food and Drug Administration, dated 6/26/00, regarding the exchange of information and coordination of actions.

II. BACKGROUND

FDA and CDC are sister agencies within the Department of Health and Human Services. Both FDA and CDC exist and work to protect the public health but have different statutory mandates and responsibilities.

FDA is a regulatory agency responsible for protecting the public health through the regulation of food, cosmetics, and medical products, including drugs, biological products, animal drugs, and medical devices. FDA administers the Federal Food, Drug, and Cosmetic Act and relevant sections of the Public Health Service Act, among other statutes. Among its duties, FDA approves pre-market applications, conducts inspections of manufacturing facilities, and monitors post-marketing adverse events. FDA also initiates civil and criminal litigation to enforce applicable laws and regulations.

CDC is charged with protecting the public health by providing leadership and direction in the prevention and control of diseases and other preventable conditions and by responding to public health emergencies. CDC administers relevant sections of the

Public Health Service Act, the Occupational Safety and Health Act, the Clinical Laboratory Improvement Act, and the Federal Mine Safety and Health Act. CDC, among other activities, administers national programs for the prevention and control of communicable and vector-borne diseases, enforces quarantine regulations, and works to monitor and control disease outbreaks.

CDC's and FDA's respective missions to protect the public health may overlap in a variety of ways depending upon the subject matter. Each agency has a responsibility to work collaboratively to protect and improve public health. It may sometimes be the case that FDA or CDC will be in possession of information that could be useful to the other agency in that agency's' performance of its responsibilities. Timely sharing of information between CDC and FDA is therefore critical to protecting the public health.

III. SUBSTANCE OF AGREEMENT AND RESPONSIBILITIES OF EACH AGENCY

A. Coordination and Collaboration Relative to Public Health Activities

It is mutually agreed that:

1. Each agency will coordinate and collaborate with the other agency to protect and improve the public health. To achieve this, each agency will utilize the expertise, resources, and relationships of the other agency in order to increase its own capability and readiness to respond to emergency situations. In addition, each agency will designate central contact points where communications from the other agency, dealing with matters covered by this agreement, should be referred.

2. Each agency will participate in periodic joint meetings to promote better communication and understanding of regulations, policies, and statutory responsibilities, and to serve as a forum for questions and problems that may arise.

3. Each agency will notify the other agency as soon as possible when issues of mutual concern become evident.

4. Each agency will collaborate with the other agency in all investigations of mutual concern. Such collaboration may include providing alerts to the other agency regarding disease outbreaks encountered as part of its activities; providing technical advise in areas of recognized expertise; providing results of analysis; making available expert witnesses; and exchanging information as described in section III B.

5. Each agency will consult with the other before issuing press or scientific releases or publications that may have a significant impact on the other agency.

6. Each agency will refer its proposed regulations, guidances, or recommendations that may have a significant impact on the other agency for review and comment by that agency before publication.

7. This agreement does not preclude CDC or FDA from entering into other agreements which may set forth procedures for special programs which can be handled more efficiently and expertly by other agreements.

B. Principles and Procedures for the Exchange of Information That is Not Publicly Available

FDA and CDC agree that the following principles and procedures will govern the exchange or nonpublic information between the two agencies.

Although there is no legal requirement that FDA and CDC exchange information in all cases, FDA and CDC agree that there should be a presumption in favor of full and free sharing of information between FDA and CDC. As sister public health agencies within the Department of Health and Human Services, there are no legal prohibitions that preclude FDA or CDC from sharing with each other most agency records in the possession of either agency. Both agencies recognize and acknowledge, however, that it is essential that any confidential information that is shared between FDA and CDC must be protected from authorized public disclosure. See e.g., 21 U.S.C. sec. 331(j); 18 U.S.C. section 1905; 21 C.F.R. Parts 20 and 21; 42 C.F.R. Parts 5 and 5b, and 42 U.S.C. section 301(d). Safeguards are important to protect the interests of, among others, owners and submitters of trade secrets and confidential commercial information; patient identities and other personal privacy information; privileged and/or pre-decisional agency records; and information protected for national security reasons. Such safeguards also help guarantee FDA's and CDC's compliance with applicable laws and regulations.

To facilitate the sharing of information with each other, it is necessary that FDA and CDC implement procedures to ensure, at a minimum, that such sharing of information is indeed appropriate and that the recipient agency guards the confidentiality of all information received. [1]There are separate procedures, as described below, for routine requests for information and for emergency requests. It is incumbent upon both agencies to respond to requests for information in a timely manner. Any unauthorized disclosure of shared confidential information by the agency receiving the information shall be the responsibility of that agency.

1. Routine Requests for Information

a. The requesting agency must demonstrate, in writing, why it is necessary for it to obtain the requested information. This

[1] It is assumed that each agency has implemented or will implement all data and information security requirements and has implemented or will implement, to the extent necessary and practicable, all data and information security recommendations.

demonstration should consist of a summary that describes in detail the information requested (to facilitate identification of relevant records) and a brief statement of the purpose for which the information is needed. This request shall state which internal agency offices and/or individuals requested the information. A model request letter is attached.

b. The agency receiving the request for information shall, based upon the sufficiency of the need-to-know demonstration described in section III B 1a above, determine whether it is appropriate to share the requested information with the requesting agency. The need-to-know threshold is a low one. As stated above, there is a presumption in favor of information exchange between FDA and CDC. An agency should only decide not to share information in response to a request if it has credible information and a reasonable belief that the requesting agency may not be able to comply with applicable laws or regulations governing the protection of non-public information or with principles or procedures set forth in the MOU. If an agency decides that it is not appropriate to share information with the requesting agency, it shall describe to the requesting agency the reasons for such decision.

c. The requesting agency agrees that it shall comply with the following conditions:

--The requesting agency shall limit the dissemination of shared information it receives to internal agency offices and/or individuals that have been identified in its written request and/or have a need-to-know. The agency official who signs the request letter will be responsible for ensuring that there are no other recipients of the information.

--The requesting agency shall agree in writing not to publicly disclose any shared information in any manner including publications and public meetings. If the requesting agency wishes to disclose shared information, including information that it believes is publicly releasable, it shall first request and obtain the written permission of the agency that has shared the information. If the requesting agency receives a Freedom of Information (FOIA) request for the shared information, it will refer the request to the information-sharing agency for it to respond directly to the requestor regarding the releasability of the information. In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the other agency.

--The agency that shares information with the requesting agency shall include a transmittal letter, along with any agency records exchanged. The transmittal letter shall indicate the type of information

(e.g., confidential commercial information, personal privacy, or pre-decisional). A model transmittal letter is attached.

--The requesting agency shall promptly notify the appropriate office of the information-sharing agency when there is any attempt to obtain shared information by compulsory process, including but not limited to, a FOIA request, subpoena, discovery request, or litigation complaint or motion.

--The requesting agency shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that the agencies may determine the appropriate measures to take, including where appropriate the filing of a motion or an appeal with the court.

2. Emergency Requests for Confidential Information

In cases in which the requesting agency has a need to obtain certain information as soon as possible due to emergency circumstances, such as a foodborne illness outbreak, FDA and CDC may utilize the following procedures. These procedures are intended for use only in the case of an actual emergency situation and are not appropriate for routine requests for information.

a. The requesting agency shall indicate orally or in writing to the agency in possession of the relevant information that it has the need to obtain certain identifiable information as soon as possible due to the existence of emergency circumstances. The requesting agency shall also describe what the emergency circumstances are.

b. The requesting agency shall verbally agree to protect from unauthorized public disclosure any and all information that is shared, according to all applicable laws and regulations.

c. The existence of an actual emergency situation shall warrant, as determined by the agency in possession of the requested records, the waiver of the need-to-know demonstration and determination described above in section III B 1a and B 1b. However, once the requesting agency has obtained the information it seeks, it shall comply with those procedures set forth in section III B 1c above.

IV. NAME AND ADDRESS OF PARTICIPATING PARTIES

A. Food and Drug Administration
Department of Health and Human Services
5600 Fishers Lane
Rockville, Maryland 20857

B. Centers for Disease Control and Prevention
Public Health Service
Department of Health and Human Services
Atlanta, Georgia 30333

IV. LIAISON OFFICERS

A. Contact for FDA:

Ellen F. Morrison, Director
Office of Crisis Management
Emergency Operations Center
Food and Drug Administration
Rockville, MD 20857
(301) 827-5660

B. Contact for CDC:

Steven L. Solomon, M.D.
Director, Coordinating Center for Health and Information Services
Centers for Disease Control and Prevention
Atlanta, Georgia 30333
(404) 498-0123

V. PERIOD OF AGREEMENT

This agreement becomes effective upon signature of both parties and will continue for three years. It may be modified by mutual consent or terminated by either party upon 120 days written notice.

Attachments
Model Request Letter
Model Transmittal Letter

APPROVED AND ACCEPTED FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

By: Julie Louise Gerberding
Julie Louise Gerberding, M.D., M.P.H.
Director, Centers for Disease Control and Prevention

Date: JUN 14 2006

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By: Andrew C. von Eschenbach
Andrew C. von Eschenbach, M.D.
Acting Commissioner of Food and Drugs

Date: June 5, 2006

Model Language for Request

The Centers for Disease Control and Prevention (CDC) has requested the following information from FDA for the following purposes: [Identify information and purpose]

or

CDC hereby requests the following information from FDA that it will use for the following purposes: [Identify information and purpose]

CDC agrees that it will not publicly disclose any such information that FDA shares with it without prior written permission from FDA and that it will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between CDC and FDA. Applicable laws and regulations prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, 21 C.F.R. Parts 20 and 21, 42 C.F.R. Parts 5 and 5b and 42 U.S.C. §301(d).

CDC will limit dissemination of any shared information to the following CDC offices and/or employees: [Identify office(s) and/or employee(s)].

_____ _____

Name Date

[Signature and Date by CDC official with requisite responsibility and authority.]

Model Language for Request

The Food and Drug Administration (FDA) has requested the following information from the Centers for Disease Control and Prevention (CDC) for the following purposes: [Identify information and purpose]

Or

FDA hereby requests the following information from CDC for the following purposes: [Identify information and purpose]

FDA agrees that it will not publicly disclose any such information that CDC shares with it without prior written permission from CDC and that it will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between FDA and CDC. Applicable laws and regulations prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, 21 C.F.R Parts 20 and 21, 42 C.F.R. Parts 5 and 5b and 42 U.S.C. §301(d).

FDA will limit dissemination of any shared information to the following FDA offices and/or employees: [Identify office(s) and/or employee(s)].

_____ _____

Name Date

[Signature and Date by FDA official with requisite responsibility and authority.]

[Model Transmittal letter from CDC to FDA]

This letter accompanies agency records that the Center for Disease Control and Prevention (CDC) is sharing with the Food and Drug Administration (FDA) in response to FDA's request, dated_____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[CDC checks applicable numbers below]

___ trade secrets;
___ confidential commercial or financial information;
___ information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
___ information subject to the Privacy Act;
___ intra-agency records;
___ records or information compiled for law enforcement purposes or
___ information protected for national security reasons

FDA shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including by not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

FDA shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that FDA and/or CDC may take appropriate measures, including filing a motion with the court or an appeal.

FDA has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of CDC. FDA acknowledges that applicable laws and regulations may prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, 21 C.F.R. Parts 20 and 21, 42 C.F.R. Parts 5 and 5b and 42 U.S.C. §301(d). FDA also agrees to comply with the principles and procedures set forth in the Memorandum of Understanding between FDA and CDC, *cite*.

[Model Transmittal letter from FDA to CDC]

This letter accompanies agency records that the Food and Drug Administration (FDA) is sharing with the Center for Disease Control and Prevention (CDC) in response to CDC's request, dated_____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[FDA checks applicable numbers below]

___ trade secrets;
___ confidential commercial or financial information;
___ information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
___ information subject to the Privacy Act;
___ intra-agency records;
___ records or information compiled for law enforcement purposes or
___ information protected for national security reasons

CDC shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including by not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

CDC shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that FDA and/or CDC may take appropriate measures, including filing a motion with the court or an appeal.

CDC has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of FDA. CDC acknowledges that applicable laws and regulations may prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, 21 C.F.R. Parts 20 and 21, 42 C.F.R. Parts 5 and 5b and 42 U.S.C. §301(d). CDC also agrees to comply with the principles and procedures set forth in the Memorandum of Understanding between FDA and CDC, *cite*.

[FR Doc. 06–6603 Filed 7–31–06; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA 93.996]

Bioterrorism Training and Curriculum Development Program; Notification of Exception to Competition

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notification of exception to competition.

SUMMARY: The Health Resources and Services Administration's (HRSA) Healthcare Systems Bureau, Division of Healthcare Preparedness Bioterrorism Training and Curriculum Development Program (BTCDP) will provide supplemental funding to approximately five fiscal year (FY) 2006 BTCDP awardees to plan, test and evaluate the expansion of regional healthcare preparedness training efforts to a nationwide focus. A limited competition within the existing 19 awardees will be used to identify the recipients.

Authority: This activity is under that authority of the Public Health Service Act, Title III, Section 319F(g), 42 U.S.C. 247d–6(g).

Purpose: The purpose of supplemental awards is to expand the reach of the originally approved BTCDP awards from the currently approved geographic region to include the entire Nation. The intended recipients of this limited eligibility program expansion will be the successfully competed and objectively reviewed applicants from the already supported 19 regional BTCDP awardees. The program expansion will enhance consistency in preparedness training by providing proven training through a nationwide

focus. Previous efforts have consisted of a more limited approach focusing training at a local/regional level.

Amount: The anticipated award amount of $1.8 million will be distributed among the 4 or 5 most highly ranked (by objective review) applicants from the existing 19 BTCDP awardees. Awards will average $360,000.

Project Period: The period of support is from September 30, 2006, to August 31, 2007, and will align with the existing budget period.

Justification for the Exception to Competition: Open competition applications for the BTCDP program were received and reviewed by an objective review panel in the summer of FY 2005, at which time BTCDP's local and regional training plans, curriculum and evaluation strategies were reviewed and approved. A total of 74 Continuing Education applications were reviewed and 50 applications were approved. Nineteen projects were funded after careful review from a strongly competitive pool of applicants, emerging as the strongest entities with proven experience and track records to expand their accomplishments to a nationwide target of healthcare providers. Since that time, the awardees have continued to use Federal funds to align their training with the National Preparedness Goal and to deliver training consistent with HRSA's goals.

BTCDP funded programs are uniquely suited to participate in this geographic expansion based upon their authorship and mastery of tested curriculum. BTCDP awardees have been awarded funds specifically to develop training strategies for all healthcare professionals. Their experiences have made them uniquely aware of potential pitfalls to be overcome in developing and testing a national training plan and have the expertise to respond to such barriers as they arise. Since the inception of the program in FY 2003, BTCDP awardees have been responsible for the training of 225,000 healthcare providers on a locality-by-locality basis and stand ultimately poised to deploy and evaluate national training strategies.

BTCDP awardees are highly regarded academic institutions which have dedicated staff and infrastructure to create quality training opportunities for healthcare providers. Curriculum created with BTCDP dollars has already been approved by the academic institutions from which they emanate and has already secured the approval of healthcare professional continuing education accreditation bodies. Awardees possess the building blocks of the infrastructure necessary to efficiently test a national training system, and they have the knowledge and experience necessary to ensure the efficient use of funds for healthcare preparedness training.

The BTCDP is the only Federal program solely committed to the preparedness training of healthcare providers. As such, BTCDP awardees share curriculum, accomplishments and lessons learned through an established network on a regular basis, a network vital to the development of a national plan. Awardees stand uniquely prepared to respond to congressional demand for an efficient and effective national training strategy within the fiscal and time constraints of this supplement. This supplement is the first step in meeting this demand through the efficient use of proven curriculum by experienced trainers on a national basis.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Terri Spear, Chief, Emergency Training Branch, 5600 Fishers Lane, Room 13–103, Rockville, Maryland 20857. E-mail: *tspear@hrsa.gov.*

Dated: July 25, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–12267 Filed 7–31–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Complement Regulatory Gene Variants as Predictive Tests for Age-Related Macular Degeneration (AMD)

Description of Technology: Age-related macular degeneration (AMD) is a complex multigenic disorder that affects the central region of the retina (macula) and is the leading cause of legal blindness in developed countries. Age, lifestyle (*e.g.* smoking, diet) and genetic predisposition are major risk factors for AMD and 1.75 million adults over 40 are affected by advanced AMD in the United States with a further 7 million considered to be at risk (defined by the presence of large retinal deposits or drusen, which are the hallmark of this disease). A variety of immune-associated molecules including immunoglobulins, complement components, activators and regulators, etc. are associated with drusen and evidence suggests that AMD, like other age-related diseases such as Alzheimer's disease and atherosclerosis, involves a major inflammatory component. Several disease-susceptibility genes have been identified in family studies of macular degeneration and in patient cohorts by several groups including NIH researchers and their collaborators, and variants in the factor H gene (CFH)), a major inhibitor of the alternative complement pathway, have been associated with the risk for developing AMD.

NIH researchers and their collaborators have now extended this work to two other regulatory genes of this pathway, Factor B (BF) and complement component 2 (C2). These genes were screened for genetic variation in two independent cohorts comprised of ~900 AMD cases and ~400 matched controls. Haplotype analyses revealed a significant common risk haplotype (H1) and two protective haplotypes (H7 and H10). Combined analysis of the C2/BF haplotypes and CFH variants shows that variation in the two loci can predict the clinical outcome in 74% of the cases and 56% of the controls (Nature Genetics (2006) 38, 458). This suggests that these variants can be used as predictive genetic tests in combination with other potential risk factors.

Available for licensing are methods for identifying a subject at increased risk for developing AMD by determining the presence of protective genotypes at either the BF/C2 locus and at the CFH locus. Microarrays and kits are also provided. The complex and polygenic nature of AMD suggests that the protective and risk haplotypes claimed

here can be of great value not only to companies targeting Macular Degeneration but perhaps more broadly to those involved in complement-mediated inflammatory disorders.

Inventors: Michael Dean (NCI), Bert Gold (NCI) *et al.*

Patent Status: U.S. Provisional Application No. 60/772,989 filed 13 Feb 2006 (HHS Reference No. E–042–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Carson, D.Phil.; 301/435–5020; *carsonsu@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Laboratory of Genomic Diversity is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize functional or genetic tests on complement genes and proteins. Please contact Kathleen Higinbotham at 301/846–5465 for more information.

Dated: July 24, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–12338 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Child Health and Human Development Special Emphasis Panel, Communication of People with Mental Retardation.

Date: August 15, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 453–6911. *hopmann@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6606 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Pathway to Independence Award.

Date: August 3, 2006.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Time Sensitive Review.

Date: August 16, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6607 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting to the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: September 19–20, 2006.

Close: September 19, 2006, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: September 20, 2006, 8:30 a.m. to 2 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6608 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Molecular Basis for Aging.

Date: August 7–8, 2006.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Maryland, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and the Musculoskeletal System.

Date: August 14, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Mary Nekola, PhD, Chief Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814-9692, 301–496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6610 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 14–15, 2006.

Open: September 14, 2006, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research and other administrative and program development.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: September 15, 2006, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological, Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6611 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Type 1 Diabetes and Immune Function.

Date: August 21, 2006.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Thames E. Pickett, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pickettte@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6612 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Development.

Date: August 7, 2006.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph D. Mosca, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

This notice is being published less than 15 days priors to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6609 Filed 7–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24047]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0046

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding one Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of its approval of the following collection of information: 1625–0046, Financial Responsibility for Water Pollution (Vessels). Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 31, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–24047] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b). By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this

notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Ms. Barbara Davis), 2100 2nd Street SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICR. Comments to DMS must contain the docket number of this request, [USCG 2006–24047]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the August 31, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–24047], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published a 60-day notice (71 FR 11437, March 7, 2006) required by 44 U.S.C. 3506(c)(2). In this notice we stated that the complete ICR would be available through both our online docket and at a Coast Guard facility in Washington, DC. Because the complete ICR was not made available online during the stated comment period, we reopen the comment period for an additional 30 days (71 FR 32113, June 2, 2006). Neither notice elicited any comments.

Information Collection Request

Title: Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 1625–0046.

Type of Request: Extension of a currently-approved collection.

Affected Public: Legally-responsible operators of vessels subject to 33 U.S.C. 2716 and 42 U.S.C. 9608 or their designees, approved insurers, and financial guarantors.

Forms: CG–5585, CG–5586, CG–5586–1, CG–5586–2, CG–5586–3, and CG–5586–4.

Abstract: The Coast Guard will use the information collected under this information collection request to issue a Certificate of Financial Responsibility as required by the Oil Pollution Act (OPA), specifically under 33 U.S.C. 2716, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), specifically under 42 U.S.C. 9608.

Burden Estimate: The estimated burden remains 2,262 hours a year.

Dated: July 24, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–12280 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2006–25432]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Applications should reach us on or before October 15, 2006.

ADDRESSES: You may request an application form by writing to Commandant (G–PSO–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Please submit applications to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Assistant to the

Executive Director, telephone 202–372–1409, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet at *http://dms.dot.gov/search/searchFormSimple.cfm* under the docket number [USCG–2006–25432]. The application form is also available on the Internet at *http://www.uscg.mil/hq/g-m/advisory/index.htm*. You may also obtain an application by calling Mr. Mark Gould at (202) 372–1409; by e-mailing him at *mgould@comdt.uscg.mil*; by faxing him at (202) 372–1926; or by writing him at the location in **ADDRESSES** above.

MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended). It provides advice and makes recommendations to the Assistant Commandant for Prevention on matters of concern to seamen serving in our merchant marine, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended.

MERPAC normally meets twice a year, once at or near Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific tasks as required.

The Coast Guard will consider applications for seven positions that expire or become vacant in January 2007. It needs applicants with one or more of the following backgrounds to fill the positions:

(a) Public member;

(b) Licensed deck officer;

(c) Licensed engineering officer;

(d) Unlicensed member of the engine department;

(e) Marine educator not affiliated with either state or federal maritime academies; and

(f) Two (2) Marine educators affiliated with state maritime academies.

Each member serves for a term of three years. MERPAC members serve without compensation from the Federal Government; however, they do receive travel reimbursement and per diem.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: July 20, 2006.

Lorne W. Thomas,

Acting Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E6–12272 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25461]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, and certification of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: A MERPAC working group will meet on Tuesday, September 12, 2006, from 8:30 a.m. to 4:30 p.m. The full MERPAC committee will meet on Wednesday, September 13, 2006, from 8:30 a.m. to 4:30 p.m. and on Thursday, September 14, 2006, from 8:30 a.m. to 4 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 30, 2006. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before August 30, 2006.

ADDRESSES: The MERPAC working group will meet on September 12, 2006, in Room 6 South of Building 2 of the Maritime Institute of Technology and Graduate Studies (MITAGS), 692 Maritime Boulevard, Linthicum Heights, MD 21090–1952. The full MERPAC committee will meet on September 13 and 14, 2006, in the main auditorium in Building 3 at the same location. Further directions regarding the location of MITAGS may be obtained at the following link: *http://www.mitags.org/text_directions?SESS=c7447c7629f9bae5605ea186e6e1b178.* Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G–PSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Gould, Assistant to the Executive Director, telephone 202–372–1409, fax 202–372–1926, or e-mail *mgould@comdt.uscg.mil.* For questions about hotel room availability at MITAGS, please call 866–900–3517.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Meeting on September 12, 2006

The working group for Task Statement 57, concerning a national training program for operational and management level officers including integration of the STCW Code into the USCG license examination process, will meet to conduct deliberations in preparation for delivering proposed MERPAC recommendations to the full committee.

Agenda of Meeting on September 13, 2006

The full committee will meet to discuss the objectives for the meeting. The working groups addressing the following task statements may meet to deliberate: Task Statement 30, concerning utilizing military sea service for STCW certifications; Task Statement 51, concerning minimum standard of competence on tanker safety; Task Statement 55, concerning recommendations to develop a voluntary training program for deck and engine department entry level mariners on domestic and seagoing vessels; and Task Statement 57, concerning a national training program for operational and management level officers including integration of the STCW Code into the USCG license examination process. In addition, new working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public. All task statements may be viewed at the MERPAC Web site at *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.*

At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of Meeting on September 14, 2006

The agenda comprises the following:

(1) Introduction.

(2) Working Groups' Reports

(a) Task Statement 30, concerning utilizing military sea service for STCW certifications;

(b) Task Statement 51, concerning minimum standard of competence on tanker safety;

(c) Task Statement 55, concerning recommendations to develop a voluntary training program for deck and engine department entry level mariners on domestic and seagoing vessels;

(d) Task Statement 57, concerning a national training program for operational and management level officers including integration of the STCW Code into the USCG license examination process; and

(e) Other task statements which may have been adopted for discussion and action.

(3) Other items to be discussed:

(a) Standing Committee—Prevention Through People.

(b) Briefings concerning on-going projects of interest to MERPAC.

(c) Other items brought up for discussion by the committee or the public.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify Mr. Gould no later than August 30, 2006. Written material for distribution at a meeting should reach the Coast Guard no later than August 30, 2006. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to Mr. Gould no later than August 30, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Gould as soon as possible.

Dated: July 27, 2006.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E6–12334 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5091–N–01]

Notice of Proposed Information; Collection: Comment Request; Maintenance Wage Rate Recommendation, and Maintenance Wage Survey; and Report of Additional Classification and Wage Rate

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 2, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_L._Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0370, Ext. 5475 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Maintenance Wage Rate Recommendation; Maintenance Wage Survey; Report of Additional Classification and Wage Rate.

OMB Control Number, if applicable: 2501–0011.

Description of the need for the information and proposed use: Public housing agencies (PHAs), Tribally-designated housing entities (TDHEs), and the Department of Hawaiian Homelands (DHHL) are required to ensure that maintenance laborers and mechanics employed in the operation of HUD-assisted low-income or affordable housing are paid no less than prevailing wages that are determined or adopted by HUD (section 12(a), U.S. Housing Act of 1937, as amended; sections 104(b) and 805(b) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended). Except that, TDHEs may, at their discretion, implement tribally determined prevailing maintenance wage rates which would apply in place of HUD-determined or -adopted wage rates.

HUD determines or adopts a schedule of prevailing maintenance wage rates for each PHA, TDHE (except for those TDHEs that implement tribally-determined prevailing wage rates), and the DHHL, annually, coinciding with the agency's fiscal year. In order to ensure that the wage rates are reflective of current economic conditions, HUD requests that each PHA, TDHE and the DHHL submit a recommendation of prevailing wage rates for HUD consideration. PHA, TDHE, and DHHL recommendations may be based on a wide variety of economic indicators including, at the discretion of the PHA, TDHE, or DHHL, the results of a wage survey that the PHA, TDHE or DHHL may conduct of maintenance employers in their operating jurisdiction. In addition, HUD may conduct a maintenance wage rate survey in the absence of a PHA/TDHE/DHHL recommendation or to evaluate a recommendation that has been provided by a PHA, TDHE or DHHL.

In order to assist PHAs, TDHEs and the DHHL to submit prevailing wage rate recommendations and, if they choose, to conduct and evaluate the results of a maintenance wage survey, and to assist HUD personnel in the conduct and evaluation of a maintenance wage survey, HUD proposes to institute three forms: Maintenance Wage Rate

Recommendation; Maintenance Wage Rate Survey Summary; and a Survey of Maintenance Wage Rates. PHA, TDHE or DHHL submission of a recommendation is highly encouraged by HUD. In the absence of an agency recommendation, HUD will issue a prevailing wage rate schedule based upon its own actions, which may include a maintenance wage survey conducted by HUD. Participation in any maintenance wage survey conducted by a PHA, TDHE, DHHL, or HUD, is voluntary on the part of maintenance employers. Maintenance wage rate recommendations, survey summaries and survey responses must be retained by PHAs, TDHEs, the DHHL, and HUD to document compliance with the statutory labor standards provisions.

Agencies, contractors and subcontractors engaged on HUD-assisted construction and maintenance projects subject to Federal labor standards must pay no less than the wages determined to be prevailing by the Secretary of Labor (for construction work) or determined to be prevailing by the Secretary of HUD (for maintenance work) to all laborers and mechanics engaged on such work. Occasionally, the applicable wage decision schedule does not contain a prevailing wage rate for all classifications of work needed to complete the project. In such cases, the employer that will utilize the classification(s) missing from the wage decision must propose a wage rate for such classification(s) for the consideration of the Department of Labor (DOL) or HUD, as the case may be. The employer must submit its request in writing; there is no form specified or required for employer submissions. HUD and local agencies that administer HUD-assisted projects use the form HUD–4230A to record and submit employer additional classification and wage rate requests to DOL, when DOL approval is required.

Agency form numbers, if applicable: To be assigned for Maintenance Wage Rate Recommendation, Maintenance Wage Survey Summary, and Survey of Maintenance Wage Rates; HUD–4230A for Report of Additional Classification and Wage Rate.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Item	Number of respondents	Amount of time required (hours)	Total time required/annum (hours)
Maintenance Wage Recommendation	3,392	4	13,568
Survey Summary	1,696	4	6,784
Survey Form Agency Evaluation	20,352	8	162,816
Survey Form Employer Response	20,352	4	81,408
Recordkeeping	3,392	1	3,392
Additional Classification and Wage Rate	700	2	1,400
Recordkeeping	700	1	700
Total Annual Burden			270,068

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 21, 2006.

Inez Banks-Dubose,

Director, Office of Departmental Operations and Coordination.

[FR Doc. E6–12262 Filed 7–31–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4917–N–08]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2006, is 5¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2006, is 5⅜ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: L. Richard Keyser, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410–8000; telephone (202) 755–7500 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary

of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 2006, is 5⅜ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5⅜ percent for the 6-month period beginning July 1, 2006. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2006.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after . . .	Prior to . . .
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the

debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2006, is 5¾ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 2007.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: July 25, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E6–12263 Filed 7–31–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Three Applications for Incidental Take Permits for Construction of Five Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Ali Markieh, Guruday Chunilall, and Anthony Thomas (Applicants) each request an incidental take permit (ITP), for a one-year term, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate taking about 1.27 acres combined of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of five single-family homes and supporting infrastructure in Brevard County, Florida (Project). The destruction of 1.27 acres of foraging and sheltering habitat is expected to result in the take of two families of scrub-jays. The Applicants' Habitat Conservation Plans (HCPs) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP applications and HCPs should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 31, 2006.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE105729–0, for Markieh, number TE105730–0, for Chunillal, and number TE105728–0, for Thomas in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE105729–0, for Markieh, number TE105730–0, for Chunillal, and number TE105728–0, for Thomas in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov.* Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Residential construction for Markieh will take place within section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on lots 2, 3, and 4, Block 356. Residential construction for Chunilall will take place within Section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 12, Block 302. Residential construction for Thomas will take place within section 16, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 25, Block 758. Each of these lots are within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2003.

Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays

located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat fragmented by residential development. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays within the City of Palm Bay are unlikely to persist, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

The Applicants' properties provide habitat for foraging and sheltering. Accordingly, loss of this habitat due to residential construction will result in the destruction of scrub-jay habitat. The lots combined encompass about 1.27 acres and the footprint of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization. Therefore, no on-site minimization measures are proposed to reduce take of scrub-jays.

In combination, the Applicants propose to mitigate for the loss of 1.27 acres of scrub-jay habitat by contributing a total of $15,977 ($9,660 for Markieh, $3,377 for Chunilall, and $2,940 for Thomas) to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $15,977 is sufficient to acquire and perpetually manage 2.54 acres of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat. In addition, a 5 percent operating cost of $335 per acre will be included. Mr. Thomas's mitigation was calculated at a total cost of $5,250 per acre. He had been given prior information from the Service on the mitigation costs in August 2004.

We have determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCPs and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that those requirements are met, the ITPs will be issued for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: July 3, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–12303 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for an Incidental Take Permit for Construction of Three Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Duke Construction Corporation (Applicant) requests an incidental take permit (ITP) for a duration of two years pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant anticipates taking about 0.77 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (*scrub-jay*) foraging, sheltering, and potential nesting habitat incidental to lot preparation for the construction of three single-family homes and supporting infrastructure, over a two-year term, in Brevard County, Florida (Project). The destruction of 0.77 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 31, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE109694–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE109694–0 in such requests. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see

ADDRESSES). 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 address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Residential construction for Duke Construction Corporation will take place within Section 23, Township 23 South, Range 35 East, Port St. Johns, Brevard County, Florida on Lots 09, 10, and 11, Block 42. These lots are within locations where scrub-jays were sighted during surveys for this species from 1999–2003.

Scrub-jays affected by the issuance of this permit are found on the extreme western edge of a large area supporting a 16-family cluster of birds that inhabits urban areas, commercial development, and undeveloped native habitat in the Tico and Grissom territory cluster just south of Port St. Johns, Florida. This cluster of scrub-jays is part of a larger metapopulation complex of scrub-jays that persists in northern Brevard County. The number of scrub-jay families in the vicinity of the project site and in the northern Brevard County metapopulation has declined in recent years. Survey results indicate that the number of scrub-jay families has declined in the Tico and Grissom cluster from 72 in the early 1990s to 47 in 2002 (33 percent decline). Similarly, the number of families of scrub-jays within the northern Brevard County metapopulation, which includes the Tico and Grissom territory cluster, has declined from 102 to 67 families (34 percent decline) during this same time period. Both of these observed rates of decline approximate the four percent per year decline estimated by recent research findings.

The decline in numbers of scrub-jay families in northern Brevard County is the cumulative result of habitat destruction, fragmentation, and degradation. Metapopulation viability analysis suggests that this metapopulation of scrub-jays has a high quasi-extinction risk if no further conservation efforts are undertaken to acquire and manage land for the benefit of scrub-jays.

The Applicant agrees to confine construction activities to a time period outside of the nesting season, will look for active nests nearby during the nesting season, and will contact the Service if active nests are found onsite, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lots combined encompass about 0.77 acre (0.24 acre for Lot 9, 0.24 acre for Lot 10, and 0.29 acre for Lot 11) and the footprints of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

The Applicant proposes to mitigate for the loss of 0.77 acre of scrub-jay habitat by contributing a total of $10,318 to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $10,318 is sufficient to acquire and perpetually manage about 1.54 acres of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, an ITP will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: July 3, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–12304 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Two Applications for Incidental Take Permits for Construction of Four Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Ivania Castro and Edward Nissan (Applicants) each request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate taking a total of about 0.97 acre of Florida scrub-jay (*Aphelocoma coerulescens*)(scrub-jay) foraging, sheltering, and potential nesting habitat incidental to lot preparation for the construction of four single-family homes and supporting infrastructure in Brevard County, Florida (Project). Each of the Applicants seek an incidental take permit for a one-year term. The destruction of 0.97 acre

of foraging, sheltering, and potential nesting habitat is expected to result in the take of two families of scrub-jays. The Applicants' Habitat Conservation Plans (HCP) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP applications and HCPs should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 31, 2006.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit numbers TE111606–0 for Castro, and TE111607–0 for Nissan, in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE111606–0, for Castro and TE111607–0, for Nissan, in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Residential construction for Ivania Castro will take place within Section 21, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on lots 14, 15, and 16, Block 941. Residential construction for Edward Nissan will take place within Section 16, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida, lot 15, Block 777. The lots are within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2002. Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat fragmented by residential development. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays within the City of Palm Bay are unlikely to persist, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

Construction of the Applicants' infrastructure and facilities will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. The 0.97 acre of habitat alteration associated with the proposed residential construction projects will reduce the availability of foraging and sheltering habitat for two families of scrub-jays. On-site minimization measures are not practicable as the footprint of the four homes, infrastructure and landscaping will utilize all the available land area. However, both Applicants have agreed to avoid land clearing during the nesting season if any active nests are found on-site, but no other on-site minimization measures are proposed to reduce take of scrub-jays.

The Applicants propose to mitigate for the loss of 0.97 acre of scrub-jay habitat by contributing a total of $13,648 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $13,648 is sufficient to acquire and perpetually manage 0.97 acre of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

We have determined that the Applicants' proposals, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCPs and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that those requirements are

met, the ITPs will be issued for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: July 3, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–12309 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for *Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review a draft recovery plan for the Holmgren milk-vetch (*Astragalus holmgreniorum*) and Shivwits milk-vetch (*Astragalus ampullarioides*). These species are federally listed as endangered under the Endangered Species Act of 1973, as amended (Act). The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 31, 2006.

ADDRESSES: Copies of the draft recovery plan are available by request from the Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119 (telephone 801–975–3330). Submit comments on the draft recovery plan to the Field Supervisor at this same address. An electronic copy of the draft recovery plan is available at *http://endangered.fws.gov/recovery/index.html#plans*.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the above address, or telephone 801–975–3330.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for the federally listed species native to the United States where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species, establish objective, measurable criteria which, when met, would result in a determination that the species no longer needs the protection of the Act (16 U.S.C. 1531 *et seq.*), and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing approved recovery plans. It is our policy to request peer review of recovery plans, and we will summarize and respond to the issues raised by the peer reviewers in a determination appendix to the approved recovery plan.

Holmgren milk-vetch and Shivwits milk-vetch are endemic to the Mojave Desert around St. George, Utah. These perennials were listed as endangered in October 2001 (66 FR 49560, September 28, 2001) due to their rarity and declining population trends as well as the threats of urban development, off-road vehicle use, grazing, displacement by invasive plants, and mineral development. Critical habitat was proposed for these species on March 29, 2006 (71 FR 15966). For the purpose of recovery each species comprises six extant populations located in Washington County, Utah, with one Holmgren milk-vetch population extending into Mohave County, Arizona. This also represents the known historic distribution, although it is probable that both species occupied more habitat in the past.

Holmgren milk-vetch occurs at elevations between 756 and 914 meters (2,480 and 2,999 feet) in areas that drain to the Santa Clara and Virgin Rivers. It is typically found on the skirt edges of hill and plateau formations slightly above or at the edge of drainage areas; it occurs on soils characterized by small stone and gravel deposits and where living cover is less than 20 percent of the landscape. Shivwits milk-vetch is found in isolated pockets of Chinle and Moenave soils around St. George. Occupied sites are small, and populations are found between 920 and 1,330 meters (3,018 and 4,363 feet) in elevation in sparsely vegetated habitat with an average 12 percent cover. Shivwits milk-vetch is thinly and discontinuously distributed within its habitat; Shivwits milk-vetch is found in dense patches. Depending on precipitation, Holmgren milk-vetch has variable seedling output followed by a low rate of survivorship, limiting the number of reproductive adults within a population; Shivwits milk-vetch is constrained by the isolation of appropriate soil substrate and limited mechanisms for seed dispersal.

Recovery of Holmgren milk-vetch and Shivwits milk-vetch will hinge on conservation of extant populations and establishment of enough additional populations to ensure long-term demographic and genetic viability. This will require the active involvement of experts and the public as well as a continuing recognition of the role each milk-vetch plays in the ecology of southwestern Utah and, in the case of Holmgren milk-vetch, northwestern Arizona. Because of the biological and historical uncertainties regarding the status and recovery potential of these species, the recovery strategy is necessarily contingent on a growing understanding of the species and their ecological requirements. Consequently, a dynamic and adaptive approach will be key to making effective progress toward full recovery.

Public Comments Solicited

The Service solicits public comments on the draft recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Field Supervisor (see **ADDRESSES** section). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 5, 2006.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E6–12306 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting Announcement: Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the first meeting of the Sporting Conservation Council (Council). The meeting is open to the public. Agenda items tentatively include presentations by the Fish and Wildlife Service and the Bureau of Land Management, an overview of the Federal Advisory Committee Act, a session on ethics, election of the Council chairperson by members of the Council, development of a plan to address Council objectives, and a discussion on future meetings. The meeting will also include a session for the public to comment.

DATES: We will hold the meeting on August 16 and 17, 2006, from 9 a.m. to 4:30 p.m. From 9 a.m. to 10 a.m. on August 17, we will host a public comment session.

ADDRESSES: The meeting will be held at 250 Station Drive, Missoula, Montana 59801.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, Arizona 85051–2517; 602–906–5603 (phone); or *Twinkle_Thompson-Seitts@blm.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Sporting Conservation Council in February 2006. The Council's mission is to provide advice and guidance to the Federal Government through the Department of the Interior on how to increase public awareness of: (1) The importance of wildlife resources, (2) the social and economic benefits of recreational hunting, and (3) wildlife conservation efforts that benefit recreational hunting and wildlife resources.

The Secretary of the Interior and the Secretary of Agriculture recently signed an amended charter for the Council. The revised charter states that the Council will provide advice and guidance to the Federal Government through the Department of the Interior and the Department of Agriculture.

The Council will hold its first meeting on the dates shown in the **DATES** section at the address shown in the **ADDRESSES** section. The meeting will include a session for the public to comment.

Dated: July 24, 2006.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. E6–12292 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Trinity River Restoration Program Fiscal Year 2007 budget; science framework; TAMWG Charter renewal; Executive Director's report; reports from Trinity River Restoration Program workgroups; Klamath River conditions and Klamath-Trinity management coordination: restoration experience on Clear Creek; and Central Valley Project Improvement Act (CVPIA) program review. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 1 p.m. to 5 p.m. on Tuesday, September 12, 2006, and from 8:30 a.m. to 1 p.m. on Wednesday, September 13, 2006.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main St., 299 West, Weaverville, CA 96093; telephone: (530) 623–4432.

FOR FURTHER INFORMATION CONTACT: Randy A. Brown of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521; (707) 822–7201. Randy A. Brown is the working group's Designated Federal Officer.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093; (530) 623–1800.

Dated: July 20, 2006.

Joseph Polos,

Supervisory Fishery Biologist, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. E6–12308 Filed 7–31–06; 8:45 am]

BILLING CODE 4310–55–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 July 22, 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 August 16, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

COLORADO

Larimer County

Fall River Pump House and Catchment Basin, Rocky Mountain National Park, Estes Park, 06000735

GEORGIA

Clarke County

Downtown Athens Historic District (Boundary Increase II and Boundary Decrease), Roughly bounded by Dougherty St., Thomas St., Hickory St., Broad St. South. St. and Pulaski St., Athens, 06000737

Dougherty County

Albany Theatre, 107 N. Jackson St., Albany, 06000733

Floyd County

Double-Cola Bottling Company, 419 E. Second Ave., Rome, 06000738

Fulton County

61 16th Street Apartment Building, 61 16th St., Atlanta, 06000732

Newtown Elementary School, 3115 Old Alabama Rd., Alpharetta, 06000739

Smith, Archibald, House, 935 Alpharetta St., Roswell, 06000740

Walker County

Chickamauga Lodge No. 221, Free and Accepted Masons, Prince Hall Affiliate, 1378 GA 341 S, Chickamauga, 06000736

IDAHO

Power County

Warwas, Richard and Winnie, House, (American Falls, Idaho, Relocated Townsite MPS), 275 Polk St., American Falls, 06000741

LOUISIANA

Orleans Parish

Tureaud, A.P., Sr., House, 3121 Pauger St., New Orleans, 06000742

MARYLAND

Carroll County

Winemiller Family Farm, 1909 Francis Scott Key Hwy (MD 194), Taneytown, 06000743

MONTANA

Glacier County

Chief Mountain Border Station and Quarters, MT 17 at Canadian Border, Glacier National Park, Babb, 06000744

PENNSYLVANIA

Delaware County

Thornton Village Historic District, Centered on Thonton and Glen Mills Rds., Thornbury, 06000745

Philadelphia County

Nugent Home for Baptists, 221 W. Johnson St., Philadelphia, 06000746

VIRGINIA

Albemarle County

Aviator, The, 575 Alderman Rd., Charlotteville, 06000758

Arlington County

Claremont Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by S. Dinwiddie St., S. Chesterfield Rd., S. Buchanan St., 25th. St. S, 24th St. S, 23rd St. S and 22nd St. S, Arlington, 06000751

Charlotte County

Clarkton Bridge, VA 620 over the Staunton R, Nathalie, 06000747

Fauquier County

Belle Grove, 1402 Winchester Rd., Delaplane, 06000756

Blue Ridge Farm, 1799 Blue Ridge Farm Rd., Upperville, 06000753

Lexington Independent City

First Baptist Church—Lexington, 103 N. Main St., Lexington (Independent City), 06000757

Madison County

Graves Mill, 29 Graves Rd., Wolftown, 06000754

Nelson County

Tyro Mill, VA 56 (Crabtree Falls Hwy), Tyro, 06000749

Richmond Independent City

Fifth and Main Downtown Historic District, 400–500 Blks E. Franklin St., 400–600 blks E. Main St., 00 blks N 4th, 5th and 6th Sts., 00 blk S 5th St., Richmond (Independent City), 06000750

Grays, Elliott, Marker—Jefferson Davis Highway, (UDC Commemorative Highway Markers along the Jefferson Davis Highway in Virginia) Jct. of Harwood St., Ingram Ave., and Jefferson Davis Hwy., Richmond (Independent City), 06000748

Roanoke Independent City

Roanoke Apartments, 1402 Maiden Ln., Roanoke (Independent City), 06000759

Rockbridge County

Hickory Hill, 197 Hickory Hill Ln., Glasgow, 06000760

Waynesboro Independent City

ose Cliff, 835 Oak Ave., Waynesboro (Independent City), 06000755

Wise County

Kelly View School, Appalachia Elementary School, Norton Rd., U.S. 23, Appalachia, 06000752

A request for REMOVAL has been made for the following resource:

MINNESOTA

Carlton County

Kalevala Finnish Evangelical National Lutheran Church, MN 73, Kalevlala vicinity, 98001218

[FR Doc. E6–12283 Filed 7–31–06; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–894 (Review)]

Ammonium Nitrate From Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on ammonium nitrate from Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 20, 2006. Comments on the adequacy of responses may be filed with the Commission by October 16, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On September 12, 2001, the Department of Commerce issued an antidumping duty order on imports of ammonium nitrate from Ukraine (66 FR 47451). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–155, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* coextensively with the scope of subject merchandise as fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product*.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is September 12, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 20, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 16, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 26, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–12276 Filed 7–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Review)]

Foundry Coke From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on foundry coke from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on foundry coke from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 20, 2006. Comments on the adequacy of responses may be filed with the Commission by October 16, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–156, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On September 17, 2001, the Department of Commerce issued an antidumping duty order on imports of foundry coke from China (66 FR 48025). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as foundry coke.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as domestic producers of foundry coke.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is September 17, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 20, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 16, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section

207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Act; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 26, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–12277 Filed 7–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–404–408 and 731–TA–898–908 (Review)]

Hot-Rolled Carbon Steel Flat Products From Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty orders on hot-rolled carbon steel flat products from Argentina, India, Indonesia, South Africa, and Thailand and the antidumping duty orders on hot-rolled carbon steel flat products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty orders on hot-rolled carbon steel flat products from Argentina, India, Indonesia, South Africa, and Thailand and the antidumping duty orders on hot-rolled carbon steel flat products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 20, 2006. Comments on the adequacy of responses may be filed with the Commission by October 16, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On the dates listed below, antidumping and countervailing duty orders were issued on the subject imports:

Order date	*Country*	*Inv. No.*	*FR cite*
09/19/2001	Argentina	731–TA–898	66 FR 48242
09/11/2001	Argentina	701–TA–404	66 FR 47173
11/29/2001	China	731–TA–899	66 FR 59561
12/03/2001	India	731–TA–900	66 FR 60194
12/03/2001	India	701–TA–405	66 FR 60198
12/03/2001	Indonesia	731–TA–901	66 FR 60192
12/03/2001	Indonesia	701–TA–406	66 FR 60198
11/21/2001	Kazakhstan	731–TA–902	66 FR 58435
11/29/2001	Netherlands	731–TA–903	66 FR 59565
11/29/2001	Romania	731–TA–904	66 FR 59566
09/19/2001	South Africa	731–TA–905	66 FR 48242
12/03/2001	South Africa	701–TA–407	66 FR 60201
11/29/2001	Taiwan	731–TA–906	66 FR 59563
11/29/2001	Thailand	731–TA–907	66 FR 59562
12/03/2001	Thailand	701–TA–408	66 FR 60197
11/29/2001	Ukraine	731–TA–908	66 FR 59559

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce (''Commerce'').

(2) The *Subject Countries* in these reviews are Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as all hot-rolled steel products corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as all domestic producers of hot-rolled steel.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–157, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 20, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 16, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the

Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since the Order Dates.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 26, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–12274 Filed 7–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 877–880, and 882 (Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine

AGENCY: International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 20, 2006. Comments on the adequacy of responses may be filed with the Commission by October 16, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–158, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background—On September 7, 2001, the Department of Commerce issued antidumping duty orders on imports of steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine (66 FR 46777). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined the *Domestic Like Product* as certain steel concrete reinforcing bar, coextensive with the scope of the *Subject Merchandise*.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, three Commissioners based their material injury analysis on a national industry consisting of all producers of steel concrete reinforcing bar and three Commissioners found a regional industry consisting of all domestic production facilities producing the *Domestic Like Product* in the region consisting of the 30 contiguous states from New England to Texas and from the Gulf of Mexico north on both sides of the Mississippi up to the Canadian border, plus the District of Columbia and Puerto Rico.

For purposes of this notice, you should report information separately on each of the following two *Domestic Industries:* (1) All domestic producers of steel concrete reinforcing bar and (2) domestic producers of steel concrete reinforcing bar with production facilities located in the District of Columbia, Puerto Rico, and the following 30 states: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Virginia, Maryland, West Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Tennessee, Kentucky, Ohio, Indiana, Illinois, Wisconsin, Michigan, Missouri, Arkansas, Louisiana, and Texas.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is September 7, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 20, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as

specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 16, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and.

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order*

Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries*, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 26, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–12275 Filed 7–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–048]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 7, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meetings: none.

2. Minutes.

3. Ratification List.

4. Inv. No. 731–TA–1104 (Preliminary) (Certain Polyester Staple Fiber from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 7, 2006; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 14, 2006.).

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 27, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–6644 Filed 7–28–06; 1:12 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Prior to issuing a registration under 21 U.S.C. 952(a)(2)(B), and in accordance with 21 CFR 1301.34(a), this is notice that on April 13, 2005, Kenco VPI, Division of Kenco Group Inc., 350 Corporate Place, Chattanooga, TN 37419, has made application to the Drug Enforcement Administration (DEA) by letter to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance for distribution to its customers.

Kenco VPI has been an importer of Schedule III–V controlled substances since June 14, 2004. On April 14, 2005, the DEA added Schedule II to the firm's importer registration. The DEA also added the drug code for Nabilone, a Schedule II controlled substance, to the firm's registration on April 28, 2005. Both amendments to the registration were made without benefit of the required legal process for modifying the DEA registration. Kenco VPI is currently complying with the legal requirements to register as a Schedule III importer. In addition the firm was given authorization to import the Nabilone product into the United States on May 12, 2005. The Nabilone product was approved by the Food & Drug Administration on May 15, 2006. DEA has agreed to allow Kenco VPI to continue to import the Nabilone product into the United States, while the firm is completing the required legal process.

Any manufacturer who on April 13, 2005, was registered, or applying to be registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47. For purposes of this Notice, DEA has chosen recognized applicable manufacturers registered on April 13, 2005, the date on which Kenco submitted its initial request to have Nabilone added to its DEA importer registration. By employing this date, DEA seeks to equitably address its initial failure to publish Kenco's request to import Nabilone, while at the same time allowing those entities that would have been in a position to request a hearing on April 13, 2005, had DEA filed a timely notice, the right to request a hearing.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 31, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 26, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–12256 Filed 7–31–06; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–048]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station Advisory Committee.

DATES: Thursday, August 24, 2006, 1 p.m.–2 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7U22, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Todd F. McIntyre, Office of External Relations, (202) 358–4621, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support a new crew.

—To assess the Russian and American flight teams' preparedness to accomplish the Expedition Fourteen mission.

—To assess the health and flight readiness of the Expedition Fourteen crew.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees should provide identifying information in advance by contacting Todd F. McIntyre via e-mail at *Todd.McIntyre-1@nasa.gov* or by telephone at (202) 358–4621 by August 22, 2006. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: July 25, 2006.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E6–12259 Filed 7–31–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

The application includes in its quantity and activity level two barrels of contaminated rags, gloves, and clothing which, in 2004, were inadvertently shipped from France to AREVA NP without a specific NRC import license.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this import license application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application No. Docket No.	Description of material		End use	Country of origin
	Material type	Total quantity		
AREVA NP Inc., May 1, 2006, May 18, 2006, IW018, 11005628.	Class A radioactive waste in the form of contaminants of compacted dry activated waste—gloves, rags, and clothing and Class C resins.	Up to 457 kilograms of dry activated materials contaminated with various radionuclides. Total activity level of Class A waste not to exceed .07 TBq. Up to 88 kilograms of Class C resins with a total activity level not to exceed 0.21 TBq.	Waste generated from decontaminating and inspecting Dominion Generation Surry Power Station's Reactor Coolant Pump is to be returned to AREVA. It is to be sent to Energy Solutions (Duratek) for processing and then to Barnwell, South Carolina for burial. If not sent to Energy Solutions, the resin will be returned to the Surry Plant's resin holding tank.	France.

For the Nuclear Regulatory Commission.

Dated this 11th day of July 2006 at Rockville, Maryland.

Margaret M. Doane,

Deputy Director, Office of International Programs.

[FR Doc. E6–12369 Filed 7–31–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–151]

Notice and Solicitation of Comments Concerning Proposed Action To Decommission University of Illinois at Urbana-Champaign Nuclear Reactor Laboratory

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the University of Illinois at Urbana-Champaign dated March 28, 2006, for a license amendment approving its proposed decommissioning plan for the Nuclear Reactor Laboratory (Facility License No. R–115) located in Urbana, Illinois.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site.

Comments should be provided within 60 days of the date of this notice to Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, Research and Test Reactors Branch, MS O–12–G–15, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided to interested persons of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application (Accession Number ML060900623) is available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at (the Public Electronic Reading Room) *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 25th day of July 2006.

For the Nuclear Regulatory Commission.

Brian E. Thomas,

Branch Chief, Research and Test Reactors Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E6–12371 Filed 7–31–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of July 31, August 7, 14, 21, 28, September 4, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 31, 2006

There are no meetings scheduled for the Week of July 31, 2006.

Week of August 7, 2006—Tentative

There are no meetings scheduled for the Week of August 7, 2006.

Week of August 14, 2006—Tentative

There are no meetings scheduled for the Week of August 14, 2006.

Week of August 21, 2006—Tentative

There are no meetings scheduled for the Week of August 21, 2006.

Week of August 28, 2006—Tentative

There are no meetings scheduled for the Week of August 28, 2006.

Week of September 4, 2006—Tentative

There are no meetings scheduled for the Week of September 4, 2006.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 27, 2006.

Sandy Joosten,

Office of the Secretary.

[FR Doc. 06–6628 Filed 7–28–06; 9:47 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 July 7, 2006 to July 19, 2006. The last biweekly notice was published on July 18, 2006 (71 FR 40742).

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** 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.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: September 29, 2005, as supplemented by letter dated July 5, 2006.

Description of amendments request: The amendments revised the Physical Security Plan to clarify the description of the owner controlled area vehicle checkpoint.

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 amendment, which will clarify the description of a security feature of the Owner Controlled Area (OCA) Checkpoint, does not reduce the ability of the Security organization to prevent radiological sabotage and, therefore, does not increase the probability or consequences of a radiological release previously evaluated. The proposed Security Plan changes will not affect any important to safety systems or components, their mode of operation or operating strategies. The proposed Security Plan changes have no affect on accident initiators or mitigation. Therefore, the proposed amendment to the Security Plan will 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 amendment to clarify the description of a security feature of the OCA Checkpoint does not affect the operation of systems important to safety. The Security Plan amendment does not affect any of the parameters or conditions that could contribute to the initiation of any accident. No new accident scenarios are created as a result of the proposed Security Plan changes. In addition, the design functions of equipment important to safety are not altered as a result of the proposed Security Plan changes. Therefore, the proposed Security Plan changes will not create the possibility of a new or different accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed Security Plan changes will not affect any important to safety systems or components, their mode of operation, or operating strategies. The proposed Security Plan changes have no affect on accident initiators or mitigation. The proposed amendment to the Security Plan does not reduce the effectiveness of any security/safeguards measures currently in place. Therefore, the proposed Security Plan changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three 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: Janet S. Mueller, Director, Law Department, Arizona Public Service Company, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: David Terao.

Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of amendment request: June 28, 2006.

Description of amendment request: The proposed amendment changed Kewaunee Power Station (KPS) Technical Specifications 3.3.b.3.B and 3.3.b.4.A to increase the minimum required boron concentration in the refueling water storage tank (RWST) from 2400 parts per million (ppm) to 2500 ppm.

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Increasing the minimum required boron concentration in the RWST does not add, delete, or modify any KPS systems, structures, or components (SSCs). The RWST and its contents are not accident initiators. Rather, they are designed for accident mitigation. The effects of an increase in the minimum RWST boron concentration from 2400 ppm to 2500 ppm are bounded by existing evaluations and determined to be acceptable. Thus, the proposed increase in minimum RWST boron concentration has no adverse effect on the ability of the plant to mitigate the effects of design basis accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Increasing the minimum required boron concentration in the RWST does not change

the design function of the RWST or the SSCs designed to deliver borated water in the RWST to the [reactor] core. Increasing the minimum required boron concentration in the RWST does not create any credible new failure mechanisms or malfunctions for plant equipment or the nuclear fuel. The safety function of the borated water in the RWST is not being changed.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

An evaluation has been performed showing that maintaining RWST boron concentration above 2500 ppm continues to assure acceptable results for design basis accident analyses [ ] considering the reactivity of the core. Increasing the minimum boron concentration in the RWST from 2400 ppm to 2500 ppm increases the margin of safety in the KPS safety analyses, since additional post-accident negative reactivity will be available to the core. This additional negative reactivity more than compensates for the additional reactivity in the core due to the unanticipated prolonged shutdown periods in Cycle 27. Additionally, the proposed new minimum boron concentration of 2500 ppm is within the range required by current safety analyses (i.e., 2400 ppm to 2625 ppm), and well below the currently acceptable maximum boron concentration of 2625 ppm.

The proposed amendment does not result in altering or exceeding a design basis or safety limit for the plant. All current fuel design criteria will continue to be satisfied, and the safety analyses of record (except for the postLOCA sump boron concentration), including evaluations of the radiological consequences of design basis accidents, will remain applicable.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Branch Chief: L. Raghavan.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of amendment request: May 31, 2006.

Description of amendment request: The proposed amendment revised the Technical Specification (TS) requirements related to steam generator (SG) tube integrity. Specifically, it would revise the TS definition of LEAKAGE; TS 3.4.13, ''Reactor Coolant System (RCS) Operational Leakage;'' TS 5.5.7 (Indian Point Unit 2) and TS 5.5.8 (Indian Point Unit 3), ''Steam Generator (SG) Program;'' TS 5.6.7 (Indian Point Unit 2) and TS 5.6.8 (Indian Point Unit 3), ''SG Tube Inspection Report;'' and would create new TS 3.4.17, ''SG Tube Integrity.''

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF 449, Revision 4. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments concerning TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). 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 31, 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, 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 a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A steam generator tube rupture (SGTR) 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, 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 Nuclear Energy Institute (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 1–131 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 1–131 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 1–131 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 a main steam line break (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 type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the 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 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: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Richard J. Laufer.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: April 27, 2006.

Description of amendment request: The proposed amendments revised the Technical Specifications (TSs) relating to Steam Generator (SG) inspection. Specifically, TS 3/4.4.5, Surveillance Requirements, and TS 3/4.4.6, Reactor Coolant System Leakage, would be modified to clearly delineate the scope of the inservice inspections required in the tube sheet regions of the SGs.

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?

Of the various accidents previously evaluated, the proposed changes only affect the SG tube rupture (SGTR) event evaluation and the postulated steam line break [SLB] accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Series 44F SGs has shown that axial loading of the tubes is negligible during a SSE.

For the SGTR event, the required structural margins of the SG tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. Therefore, Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' margins against burst are maintained for both normal and postulated accident conditions.

The limited inspection length of 17 inches supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. The proposed changes do not affect other systems, structures, components or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR event.

The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and collapse is strengthened by the tubesheet in that region. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below 17 inches from the top of the tubesheet is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The leak rate during postulated accident conditions would be expected to be less than twice that during normal operation for indications near the bottom of the tubesheet (including indications in the tube end welds) based on the observation that while the driving pressure increases by about a factor of two, the flow resistance increases with an increase in the tube-to-tubesheet contact. While such a decrease is rationally expected, the postulated accident leak rate is bounded by twice the normal operating leak rate if the increase in contact pressure is ignored. Since normal operating leakage is limited to less than 150 gpd, the attendant accident condition leak rate, assuming all leakage to be from lower tubesheet indications, would be bounded by 300 gpd. This value is less than the 500 gpd leak rate assumed during a postulated SLB in the Turkey Point Units 3 and 4 Updated Final Safety Analysis Report (UFSAR).

Therefore, based on the above evaluation, 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?

The proposed changes do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the limited tubesheet inspection depth methodology. The proposed changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes maintain the required structural margins of the SG tubes for both normal and accident conditions. NEI [Nuclear Energy Institute] 97–06, Rev. 2 and RG 1.121 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a

method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME [American Society of Mechanical Engineers] Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, WCAP [Westinghouse Commercial Atomic Power] —16506–P defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Application of the limited tubesheet inspection depth criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Plugging of the SG tubes reduces the reactor coolant flow margin for core cooling. Implementation of the 17 inch inspection length at Turkey Point Units 3 and 4 will result in maintaining the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in any reduction of margin with respect to plant safety as defined in the UFSAR or Bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Michael L. Marshall, Jr.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: November 14, 2005.

Description of amendment request: The proposed amendment revised the table of Primary Containment Isolation Instrumentation to eliminate the trip generated by the main steamline radiation monitors.

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change deletes the Main Steamline Radiation Monitor (MSLRM) trip function from TS [technical specification]. The MSLRM is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The consequences of an accident previously evaluated, specifically the Control Rod Drop Accident (CRDA), have been evaluated consistent with the DAEC [Duane Arnold Energy Center] licensing basis utilizing the Alternative Source Term (10 CFR 50.67). As demonstrated by the dose calculations, the consequences of the accident are within the regulatory acceptance criterion. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a change in the methods governing normal plant operation. The equipment proposed to be removed from the plant, the MSLRM, is only credited in the CRDA analysis and no other event in the safety analysis. The proposed changes are consistent with the revised safety analysis assumptions for a CRDA included in this application.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change deletes the requirement for the MSLRM isolation function. Analyses performed consistent with the DAEC licensing basis, demonstrate that the removal of this isolation will not cause a significant reduction in the margin of safety, as the resulting offsite dose consequences are being maintained within regulatory limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. R.E. Helfrich, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: L. Raghavan.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 22, 2005.

Description of amendment request: The proposed amendment revised the reactor-pressure vessel material surveillance program described within the Duane Arnold Energy Center (DAEC) Updated Final Safety Analysis Report from a plant-specific program to the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP).

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change implements an integrated surveillance program that has been evaluated by the NRC [Nuclear Regulatory Commission] staff as meeting the requirements of paragraph III.C of Appendix H to 10 CFR 50. Consequently, the proposed change does not significantly increase the probability of any accident previously evaluated. The proposed change provides the same assurance of RPV [reactor pressure vessel] integrity. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the DAEC licensing bases to reflect participation in the BWRVIP ISP. The ISP was approved by the NRC staff as an acceptable material surveillance program which complies with 10 CFR 50, Appendix H. The proposed change maintains an equivalent level of RPV material surveillance and does not introduce any new accident initiators. The proposed change will not impact the manner in which the plant is designed or operated. This change will not affect the reactor pressure vessel, as no physical changes are involved. The proposed change will not cause the reactor pressure vessel or interfacing systems to be operated outside of any design or testing limits. Furthermore, the proposed changes will not alter any assumptions

previously made in evaluating the radiological consequences of any accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change has been evaluated as providing an acceptable alternative to the plant-specific RPV material surveillance program that meets the requirements of the regulations for RPV material surveillance. The material surveillance program requirements contained in 10 CFR 50, Appendix H provide assurance that adequate margins of safety exist for the reactor coolant system against nonductile or rapidly propagating failures during normal operation, anticipated operational occurrences, and system hydrostatic tests.

The BWRVIP ISP has been approved by the NRC staff as an acceptable material surveillance program which complies with I0 CFR 50, Appendix H. The ISP will provide the material surveillance data which will ensure that the safety margins required by NRC regulations are maintained for the DAEC reactor coolant system.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. R. E. Helfrich, Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: L. Raghavan.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 28, 2006.

Description of amendment request: The proposed amendment modified technical specifications (TSs) requirements for inoperable snubbers by adding Limiting Condition for Operation (LCO) 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 28, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed 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 operation. 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: Mr. R.E. Helfrich, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: L. Raghavan.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: April 10, 2006.

Description of amendment request: The proposed amendment revised Surveillance Requirement 3.8.1.11 of the Donald C. Cook Technical Specifications, raising the emergency diesel generator full load rejection voltage test limit from 5000 volts to 5350 volts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided a no significant hazards determination analysis, which is reproduced below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated.

The proposed change is an increase in the Technical Specification (TS) Surveillance Requirement (SR) limit on maximum voltage following an emergency diesel generator (DG) full load rejection. The DGs' safety function is solely mitigative and is not needed unless there is a loss of offsite power. The DGs do not affect any accident initiators or precursors of any accident previously evaluated. The proposed increase in the TS SR limit does not affect the DGs' interaction with any system whose failure or malfunction can initiate an accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated.

The DG safety function is to provide power to safety related components needed to mitigate the consequences of an accident following a loss of offsite power. The purpose of the TS SR voltage limit is to assure DG damage protection following a full load rejection. The technical analysis performed to support this proposed amendment has demonstrated that the DGs can withstand voltages above the new proposed limit without a loss of protection. The proposed higher limit will continue to provide assurance that the DG is protected, and the safety function of the DG will be unaffected by the proposed change. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no new DG failure modes created and the DGs are not an initiator of any new

or different kind of accident. The proposed increase in the TS SR limit does not affect the interaction of the DGs with any system whose failure or malfunction can initiate an accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety applicable to the proposed change are those associated with the ability of the DGs to perform their safety function. The technical analysis performed to support this amendment demonstrates that this ability will be unaffected. The increase in the TS SR limit will not affect this ability. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff evaluated the licensee's analysis, and based on this evaluation, the NRC staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: L. Raghavan.

Nebraska Public Power District (NPPD), Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 16, 2006.

Description of amendment request: The proposed amendment revised Technical Specification (TS) 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation,'' to extend the scope to include provisions for temperature increases above 212 °F as a consequence of inservice leak or hydrostatic testing, and as a consequence of control rod scram time testing initiated in conjunction with the inservice leak test or hydrostatic test, when initial test conditions are below 212 °F.

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.

Current TS LCO [Limiting Condition for Operation] 3.10.1 allows average RCS [reactor coolant system] temperature to exceed 212 °F when required during the conduct of hydrostatic and inservice leak tests without requiring entry into plant operating Mode 3, Hot Shutdown. Extending this allowance to testing in which average RCS temperature exceeds 212 °F as a consequence of maintaining pressure and to the performance of scram time testing that is initiated in conjunction with the hydrostatic and inservice leak tests will not impact any accident initiator. Thus, the proposed change does not affect the probability of any accident.

The proposed changes do not involve any modification of equipment used to mitigate accidents, and do not impact any system used in the mitigation of design basis accidents. The proposed changes do not involve modified operation of equipment or [a] system used to mitigate accidents. Thus, the proposed changes do not affect the consequences of an accident.

Based on the above, NPPD concludes that 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 TS revisions to TS LCO 3.10.1 do not involve physical modification of the plant or a change in plant operation. The proposed TS revisions do not revise or eliminate any existing requirements, and do not impose any additional requirements. The proposed changes do not alter assumptions made in the safety analysis, and are consistent with the safety analysis assumptions and current plant operating practice. Allowing the performance of control rod scram time testing, while in plant operating Mode 4 with average RCS temperature greater than 212 °F, does not create the possibility of a different kind of accident.

Based on the above NPPD[,] concludes that these proposed changes do 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 do not impact the design or operation of the Reactor Protection System or the Emergency Core Cooling System. Allowing completion of scram time testing that was initiated in conjunction with inservice leak or hydrostatic testing prior to reactor criticality and startup will eliminate the need for unnecessary plant maneuvers to control reactor temperature and pressure, thereby resulting in enhanced safe operation.

Based on the above, NPPD concludes that these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: David Terao.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: January 18, 2006.

Description of amendment request: The proposed amendment deleted the reference to the hydrogen monitors in Technical Specification (TS) 3.6.11, ''Accident Monitoring Instrumentation'' consistent with the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

The NRC staff issued a notice of availability of ''Model Application Concerning Technical Specification Improvement To Eliminate Hydrogen Recombiner Requirement, and Relax the Hydrogen and Oxygen Monitor Requirements for Light Water Reactors Using the Consolidated Line Item Improvement Process (CLIIP)'', in the **Federal Register** on September 25, 2003 (68 FR 55416). The notice included a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model application.

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, by confirming the applicability of the model NSHC determination to NMP–1 and incorporating it by reference in its application. The model NSHC determination 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 revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen [and

oxygen] monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen [and oxygen] monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. [Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.]

The regulatory requirements for the hydrogen [and oxygen] monitors can be relaxed without degrading the plant's, emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, [classification of the oxygen monitors as Category 2] and removal of the hydrogen [and oxygen] monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen [and oxygen] monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen [and oxygen] monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI [Three Mile Island], Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

[Category 2 oxygen monitors are adequate to verify the status of an inerted containment.]

Therefore, this change does not involve a significant reduction in [a] margin of safety. [The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors.]

Removal of hydrogen [and oxygen] monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the model NSHC determination and its applicability to NMP–1. Based on this review, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Richard J. Laufer.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 7, 2006.

Description of amendment request: The amendment deleted Required Action D.1.2 in Technical Specification (TS) 3.7.10, ''Control Room Emergency Ventilation System (CREVS),'' and Required Action C.1.2 in TS 3.7.11, ''Control Room Air Conditioning System (CRACS).'' These required actions are for the condition where the required actions and completion time (CT) of TS 3.7.10 Condition A (one CREVS train inoperable) and TS 3.7.11 Condition A (one CRACS train inoperable) are not met in Modes 5 or 6, or during movement of irradiated fuel assemblies. The deleted required actions, and associated CTs, are to verify the operable CREVS (or CRACS) train is capable of being powered by an emergency power source.

The amendment would also delete the phrase ''in MODES 1, 2, 3, or 4'' from Condition A (one emergency exhaust system (EES) train inoperable) of TS 3.7.13, ''Emergency Exhaust System (EES),'' and revise Condition D to state the following: ''Required Action and associated Completion Time of Condition A not met during movement of irradiated fuel assemblies in the fuel building.''

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.

Incorporation of a 7-day Completion Time for restoring an inoperable EES train during shutdown conditions (*i.e.*, during movement of irradiated fuel assemblies in the fuel building) and the deletion of Required Actions for verifying the availability of an emergency power source when a CREVS/CRACS train is inoperable during the same [shutdown] conditions, are operational provisions that have no impact on the frequency of occurrence of the event for which the EES, CREVS and CRACS are designed to mitigate, *i.e.*, a fuel handling accident (FHA) in the fuel building. These systems, (*i.e.*, their failure)[,] have no bearing on the occurrence of a fuel handling accident as the systems themselves are not associated with any of the potential initiating sequences, mechanisms or occurrences—such as failure of a lifting device or crane [lifting a fuel assembly], or an operator error—that could cause an FHA. Since these systems are designed only to respond to an FHA as accident mitigators after the accident has occurred, and they have no bearing on the occurrence of such an event themselves, the proposed changes to the CREVS, CRACS and EES Technical Specifications have no impact on the probability of occurrence of an FHA. On this basis, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

With regard to [the] consequences of previously evaluated accidents (*i.e.*, an FHA),

the proposed changes involve no design or physical changes to the EES or any other equipment required for accident mitigation.

With respect to deleting the noted Required Actions (for verifying that the operable CREVS/CRACS train is capable of being powered from an emergency power source when on CREVS/CRACS train is inoperable), such a change does not change the Limiting Condition for Operation (LCO) requirement for both CREVS/CRACS trains to be operable, nor to the LCO requirements of the TS requirements pertaining to electrical power sources/support for shutdown conditions. The change to the Required Actions would thus not be expected to have a significant impact on the availability of the CREVS and CRACS. That is, adequate availability may be still assumed such that these systems would continue to be available to provide their assumed [safety] function for limiting the dose consequences of an FHA in accordance with the accident analysis currently described in the FSAR [Callaway Final Safety Analysis Report].

With respect to the allowed outage time (Completion Time) for an inoperable EES train, the consequences of a postulated accident are not affected by equipment allowed outage times as long as adequate equipment availability is maintained. The proposed EES allowed outage time is based on the allowed outage time specified in the Standard Technical Specifications (STS) for which it may be presumed that the specified allowed outage time (Completion Time) is acceptable and supports adequate EES availability. As noted in the STS Bases, the 7-day Completion Time for restoring an inoperable EES train takes into account the availability of the other train [(*i.e.*, the other train is operable)]. Since the STS-supported Completion Time supports adequate EES availability, it may be assumed that the EES function would be available for mitigation of an FHA, thus limiting offsite dose to within the currently calculated [dose consequence] values based on the current accident analysis [in the FSAR]. On this basis, the consequences of applicable, [previously] analyzed accidents (*i.e.*, the FHA) are not increased by the proposed change.

Based on the above, the proposed change does 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 changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No hardware or design changes are involved. Thus, no new equipment will be added and no new limiting single failures must be postulated. The plant will continue to be operated within the envelope of the existing safety analysis [in the FSAR].

Therefore, the proposed changes do not create [the possibility of] a new or different kind of accident [from any accident] previously evaluated.

3. Do the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The calculated radiological dose consequences per the applicable accident analyses remain bounding since they are not impacted by the proposed changes. The margins [of safety] to the limits of 10 CFR 100 [Title 10 of the Code of Federal Regulations Part 100] and GDC [General Design Criterion] 19 [of Appendix A to 10 CFR Part 50] are thus unchanged by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: David Terao.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 22, 2006.

Description of amendment request: The proposed amendment revised Technical Specification (TS) 1.1, ''Definitions,'' TS 3.4.13, ''RCS Operational LEAKAGE,'' TS 5.5.8, ''Steam Generator (SG) Program,'' and TS 5.6.7, ''Steam Generator Tube Inspection Report,'' and adds TS 3.4.20, ''Steam Generator (SG) Tube Integrity.'' 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 licensee has evaluated whether or not a significant hazards consideration is involved with the proposed changes by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of Amendment,'' as discussed below:

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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

A SG tube rupture (TR) 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 main steam line break (MSLB), 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 1–131 in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the plant TS for operational leakage and for DOSE EQUIVALENT 1–131 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 in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT 1–131 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.

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 TS. 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 type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the 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.

SG 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 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: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by E-mail to *pdr@nrc.gov.*

Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: February 6, 2006, as supplemented by letter dated May 5, 2006.

Brief description of amendment: The proposed amendment added a license condition to extend certain Technical Specification (TS) surveillance intervals on a one-time basis to account for the effects of an extended forced outage in the spring of 2005.

Date of issuance: July 12, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 187.

Facility Operating License No. DPR–43: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in the **Federal Register:** March 14, 2006 (71 FR 13172).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 2006.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: June 15, 2005.

Brief description of amendments: The amendments revised the Technical Specifications to eliminate the out of date requirements associated with the completion of the Keowee Refurbishment modifications on both Keowee Hydro Units (KHUs).

Date of Issuance: July 11, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 353, 355, and 354.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Licenses and the Technical Specifications.

Date of initial notice in the **Federal Register:** May 9, 2006 (71 FR 26998).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 2006.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: July 5, 2005, as supplemented by letter dated March 22, 2006.

Brief description of amendment: The amendment modified the existing Technical Specification 3.3.1.3, ''Oscillation Power Range Monitor (OPRM) Instrumentation,'' Surveillance Requirement 3.3.1.3.5. Specifically, the thermal power level at which the OPRMs are ''not bypassed'' (enabled to perform their design function) will be change from > 28.6-percent rated thermal power to ≥ 23.8-percent rated thermal power.

Date of issuance: June 30, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 138.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in the **Federal Register:** August 16, 2005 (70 FR 48206).

The March 22, 2006 supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 2006.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: March 7, 2006.

Brief description of amendments: The amendments revised Section 5.5.2, ''Leakage Monitoring Program,'' of the units'' Technical Specifications, adding the Liquid Waste Disposal System, Waste Gas System, and Post-Accident Containment Hydrogen Monitoring System to the list of systems. The listing of these systems was inadvertently omitted from Section 5.5.2.

Date of issuance: July 5, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 294 and 297.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revise the Technical Specifications and Licenses.

Date of initial notice in the **Federal Register:** April 11, 2006 (71 FR 18374).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of application for amendment: June 29, 2005, as supplemented by letter dated April 25, 2006.

Brief description of amendment: The amendment revised Technical Specifications Table 3.3.8.1–1, ''Loss of Power Instrumentation,'' changing the allowable values for the 4.16-kV essential bus degraded voltage from a range of 3897–3933 volts to a range of 3913–3927 volts.

Date of issuance: July 3, 2006.

Effective date: As of the date of issuance and shall be implemented concurrently with implementation of the Improved Technical Specifications (Amendment No. 146, dated June 5, 2006).

Amendment No: 147.

Facility Operating License No. DPR–22: Amendment revised the Facility Operating License and Technical Specifications.

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

Date of initial notice in the **Federal Register:** November 23, 2005 (70 FR 70889).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 3, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: February 16, 2006.

Brief description of amendment: The amendment revised the Technical Specifications to make the existing SG tube surveillance program consistent with the Commission's approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity,'' Revision 4.

Date of issuance: July 6, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 223.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications and License.

Date of initial notice in the **Federal Register:** May 23, 2006 (71 FR 29679).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 11, 2005, supplemented by letter dated March 23, 2006.

Brief description of amendments: The amendments revise PINGP's Technical Specification (TS) 3.6.5, ''Containment Spray and Cooling Systems,'' to incorporate changes to an existing condition and two surveillance requirements, and also to add a new condition that will allow continued plant operation with TS limitations when two containment cooling system fan coil units, one in each train, are inoperable.

Date of issuance: June 29, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 173 and 163.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in the **Federal Register:** February 28, 2006 (71 FR 10074).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2006.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: January 19, 2006.

Brief description of amendment: The amendment revises the Humboldt Bay Unit 3 Technical Specifications to correct an editorial error and to allow leaving the Unit 3 control room temporarily unmanned during

emergency conditions requiring personnel to evacuate occupied buildings for their safety.

Date of issuance: July 10, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 38.

Facility Operating License No. DPR–7: This amendment revised the Technical Specifications and License.

Date of initial notice in the **Federal Register:** February 28, 2006 (71 FR 10077).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 2006.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: February 1, 2006, as supplemented on June 27, 2006.

Brief description of amendments: The amendments revise the Technical Specification (TS) requirements for inoperable snubbers by adding limiting condition for operation 3.0.8 for SSES 1 and 2. This change is based on the TS Task Force (TSTF) change traveler TSTF–372, Revision 4. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on November 24, 2004, and May 4, 2005.

Date of issuance: July 7, 2006.

Effective date: As of the date of issuance and to be implemented within 60 days.

Amendment Nos.: 236 and 213.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications and License.

Date of initial notice in the **Federal Register:** April 25, 2006 (71 FR 23959).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 2006.

The supplement dated June 27, 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.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: October 6, 2005, as supplemented April 17, 2006.

Brief Description of amendments: The amendments revised Technical Specification (TS) Section 5.6.5, ''Core Operating Limits Report (COLR),'' to reflect the addition of the methodology in WCAP–16009–P–A, ''Realistic Large Break LOCA [Loss-Of-Coolant Accident] Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM),'' for and provide a new large break LOCA analyses for Farley Units 1 and 2.

Date of issuance: July 11, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 174/167.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications and Licenses.

Date of initial notice in the **Federal Register:** November 8, 2005 (70 FR 67751). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: February 17, 2006.

Brief Description of amendments: The amendments revised the Technical Specifications (TSs) adding Limiting Condition for Operation (LCO) 3.0.8 to allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4).

Date of issuance: June 29, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 173/166.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: Amendments revised the Licenses and the Technical Specifications.

Date of initial notice in the **Federal Register:** April 25, 2006 (71 FR 23960).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: December 16, 2005.

Brief description of amendments: The amendments revised the Technical Specifications ACTIONS NOTE for TS 3.7.5, ''Auxiliary Feedwater (AFW) System,'' based on Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–359, Revision 9, ''Increased Flexibility in Mode Restraints.''

Date of issuance: July 14, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 142 and 122.

Facility Operating License Nos. NPF 68 and NPF–81: Amendments revised the Licenses and the Technical Specifications.

Date of initial notice in the **Federal Register:** February 14, 2006 (71 FR 7813).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 2006.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: May 26, 2005, as supplemented by letter dated March 9, 2006.

Brief description of amendment: The amendment revised TS 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' by adding the MSIV actuator trains to (1) the limiting condition for operation (LCO) and (2) the conditions, required actions, and completion times for the LCO. The existing conditions and required actions in TS 3.7.2 are renumbered to account for the new conditions and required actions.

Date of issuance: June 16, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 172.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications and License.

Date of initial notice in the **Federal Register:** June 21, 2005 (70 FR 35740).

The supplemental letter dated March 9, 2006, provided additional clarifying information, 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 published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 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).

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station (LGS), Unit 2, Montgomery County, Pennsylvania

Date of amendment request: June 9, 2006, as supplemented June 16, and June 23, 2006.

Description of amendment request: The one-time amendment revises Technical Specification (TS) Limiting Condition for Operation 3.6.1.7 concerning drywell average air temperature. Specifically, the proposed change would add a footnote to the TS limit for drywell average air temperature of 145 degrees Fahrenheit (°F) to allow continued operation of LGS, Unit 2, with drywell average air temperature no greater than 148 °F for the remainder of the current operating cycle (Cycle 9), which is currently scheduled to end in March 2007, or until the next shutdown of sufficient duration to allow for unit cooler fan repairs, whichever comes first.

Date of issuance: July 7, 2006.

Effective date: As of date of issuance, to be implemented within 14 days.

Amendment No.: 145.

Facility Operating License No. NPF–85: The amendment revises the Technical Specifications and License.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. June 20, 2006 (71 FR 35453). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by July 5, 2006, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated July 7, 2006.

The supplements dated June 16 and June 23, 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.

Attorney for licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Darrell J. Roberts.

Dated at Rockville, Maryland, this 25th day of July, 2006.

[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.

For the Nuclear Regulatory Commission.

Cornelius F. Holden,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–6597 Filed 7–31–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Difficulty in Receiving Petitions for the 2006 Annual GSP Product and Country Practices Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of difficulty in receiving petitions for the 2006 Annual GSP Product and Country Practices Review.

SUMMARY: This notice identifies those petitions that the Office of the United States Trade Representative (USTR) received by the deadline of July 20, 2006, for consideration in the 2006 Annual Review. Because of technical difficulties in receiving petitions, USTR requests parties who submitted petitions prior to July 20, 2006, to review the list of petitioners included in the **SUPPLEMENTARY INFORMATION** and to notify the USTR of any petitions that were submitted to the GSP Subcommittee by 5 p.m., July 20, 2006, but not included in that list.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971, the facsimile number is (202) 395–9481, and the e-mail address is *FR0618@USTR.EOP.GOV.*

SUPPLEMENTARY INFORMATION: On June 29, 2006, USTR published a request for petitions for the 2006 Annual GSP Product and Country Practices Review (71 FR 37129, June 29, 2006). Because of technical problems, USTR may not have received all the petitions which were submitted. We did receive petitions from the following parties: ANFACER (Brazilian Association of Ceramic Tile Manufacturers), The Home Depot, the International Intellectual Property Association (IIPA), AFL–CIO, and R&J Trading International Company, Inc. Parties that can verify submission of a petition not included in this list should call the GSP Subcommittee at (202) 395–6971 and then resubmit the petition to *FR0618@USTR.EOP.GOV.* Parties must also include proof that the petition was transmitted by e-mail to the GSP Subcommittee by the July 20, 2006, deadline. Such documentation may include a copy of the original e-mail transmitting the petition, indicating the original date and time, from a ''sent message'' folder. The deadline for re-submitting any petitions meeting these criteria is 5 p.m., August 11, 2006.

Public Review: Public versions of all documents relating to the 2006 Annual Review will be available for examination on or before August 21, 2006, by appointment, in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Marideth Sandler,

Executive Director GSP, Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. E6–12313 Filed 7–31–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Initiation of a Review To Consider the Designation of East Timor as a Least Developed Beneficiary Developing Country Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment.

SUMMARY: This notice announces the initiation of a review to consider the designation of East Timor as a least developed beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria. Comments are due on August 25, 2006, in accordance with the requirements for submissions, explained below.

ADDRESSES: Submit comments by electronic mail (e-mail) to: *FR0618@ustr.eop.gov.* For assistance or if unable to submit comments by e-mail, contact the GSP Subcommittee, Office of the United States Trade Representative; USTR Annex, Room F–220; 1724 F Street, NW., Washington, DC 20508 (Tel. 202–395–6971).

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative; USTR Annex, Room F–220; 1724 F Street, NW., Washington, DC 20508 (Telephone: 202–395–6971, Facsimile: 202–395–9481).

SUPPLEMENTARY INFORMATION: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has initiated a review in order to make a recommendation to the President as to whether East Timor meets the eligibility criteria of the GSP statute, as set out below. After considering the eligibility criteria, the President is authorized to designate East Timor as a least developed beneficiary developing country for purposes of the GSP.

Interested parties are invited to submit comments regarding the eligibility of East Timor for designation as a least developed beneficiary developing country. Documents should be submitted in accordance with the instructions below to be considered in this review.

Eligibility Criteria

The trade benefits of the GSP program are available to any country that the President designates as a GSP ''beneficiary developing country.'' Additional trade benefits under the GSP are available to any country that the President designates as a GSP ''least-developed beneficiary developing country.'' In designating countries as GSP beneficiary developing countries, the President must consider the criteria in sections 502(b)(2) and 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(b)(2), 2462(c)) (''the Act''). Section 502(b)(2) provides that a country is ineligible for designation if:

1. Such country is a Communist country, unless—

(a) The products of such country receive nondiscriminatory treatment, (b) Such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and (c) Such country is not dominated or controlled by international communism.

2. Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(a) To withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and (b) To cause serious disruption of the world economy.

3. Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

4. Such country—

(a) Has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a

United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, (b) Has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or (c) Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) Prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to above, (ii) Good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or (iii) A dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

5. Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

6. Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. Appx. section 2405(j)(1)(A)) or such country has not taken steps to support the efforts of the United States to combat terrorism.

7. Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

8. Such country has not implemented its commitments to eliminate the worst forms of child labor.

Section 502(c) provides that, in determining whether to designate any country as a GSP beneficiary developing country, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

3. Whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

4. The extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

5. The extent to which such country is providing adequate and effective protection of intellectual property rights;

6. The extent to which such country has taken action to—

(a) Reduce trade distorting investment practices and policies (including export performance requirements); and (b) Reduce or eliminate barriers to trade in services; and

7. Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights. Note that the Trade Act of 2002 amended paragraph (D) of the definition of the term ''internationally recognized worker rights,'' which now includes: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children and a prohibition on the worst forms of child labor as defined in paragraph (6) of section 507(4) of the Act; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

To designate a country as a least-developed beneficiary developing country, the President must consider the criteria in section 502(c), as well as the criteria in section 501 of the Act. Section 501 provides that, in extending preferences under the GSP, the President shall have due regard for:

1. The effect such action will have on furthering the economic development of developing countries through the expansion of their exports.

2. The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries.

3. The anticipated impact of such action on United States producers of like or directly competitive products.

4. The extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Requirements for Submissions

All submissions must conform to the GSP regulations set forth at 15 CFR Part 2007, except as modified below. Comments must be submitted, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) as soon as possible, but not later than 5 p.m., August 25, 2006.

In order to facilitate prompt consideration of submissions, USTR strongly prefers electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. E-mail submissions should be single-copy transmissions in English with the total submission, including attachments, not to exceed 30 single-spaced standard letter-size pages using 12-point type. The e-mail transmission should use the following subject line: ''East Timor GSP Eligibility Review''. Documents must be submitted as either MSWord (''.doc''), WordPerfect (''.wpd''), or text (''.txt'') files. Documents submitted as electronic image files or containing imbedded images (for example, ''.jpg'', ''.pdf'', ''.bmp'', ''.tif'', or ''.gif'') will not be accepted. Spreadsheets submitted as supporting documentation are acceptable as Excel files, pre-formatted for printing only on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Submissions in response to this notice will be subject to public inspection by appointment with the staff of the USTR Public Reading Room except for information granted ''business

confidential'' status pursuant to 15 CFR 2003.6.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential version must be clearly marked ''Business Confidential'' at the top and bottom of each page of the document. The non-confidential version must be clearly marked ''Public'' or ''Non-Confidential'' at the top and bottom of each page. Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the character ''P–''. The ''BC–'' or ''P–'' should be followed by the name of the party (government, company, union, association, etc.) which is submitting the comments.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's identifying information with telephone number, fax number, and e-mail address. The e-mail address for these submissions is *FR0618@ustr.eop.gov.* Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for public review approximately three weeks after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling 202–395–6186.

Marideth J. Sandler,

Executive Director for the GSP Program, Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. E6–12297 Filed 7–31–06; 8:45 am]

BILLING CODE 3190–W6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54216; File No. SR–CBOE–2006–58]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Regarding DPM and E–DPM Membership Ownership Requirements and the Ultimate Matching Algorithm

July 26, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2006.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rules relating to membership ownership requirements. CBOE also proposes to amend the provisions of CBOE Rules 6.45A and 6.45B which provide that a DPM or Lead Market Maker (''LMM'') utilizing more than one membership in the trading crowd where a class is traded will count as two market participants for purposes of Component A of the Ultimate Matching Algorithm (''UMA''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rules 8.85 and 8.92 require that a DPM organization and e-DPM organization, respectively, own a certain number of Exchange memberships. Specifically, with respect to DPM organizations, CBOE Rule 8.85 requires that each DPM organization own one Exchange membership for each trading location at which the organization serves as a DPM. CBOE Rule 8.92 requires that until July 12, 2007, each e-DPM organization is required to own one Exchange membership for every 30 products allocated to the e-DPM, or lease one Exchange membership for every 20 products allocated to the e-DPM.[4]

CBOE proposes to modify these membership ownership requirements in connection with the Exchange's determination to apply a specific ''appointment cost'' to each options class allocated to a DPM organization or an e-DPM organization. With respect to DPM organizations, CBOE Rule 8.85, as proposed to be amended, would require that each DPM organization own one Exchange membership, and own or lease such additional Exchange memberships as may be necessary based on the aggregate ''appointment cost'' for the classes allocated to the DPM organization. Each membership owned or leased by the DPM organization would have an appointment credit of 1.0. The appointment costs for the Hybrid 2.0 Option Classes and the Non-Hybrid Classes allocated to the DPM organization would be the same as the appointment costs set forth in CBOE Rule 8.3. The appointment cost for Hybrid Option Classes would be .01 per class.

For example, if the DPM organization has been allocated such number of options classes that its aggregate appointment cost is 1.6, the DPM organization would be required to own at least one Exchange membership, and own or lease one additional Exchange membership. As it currently does for purposes of Remote Market Maker (''RMMs'') and Market-Maker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] After July 12, 2007, each e-DPM organization is required to own one Exchange membership for every 30 products allocated to the e-DPM.

appointments, the Exchange would rebalance the ''tiers'' set forth in proposed CBOE Rule 8.3(c)(i), excluding the ''AA'' and ''A+'' tiers, once each calendar quarter, which could result in additions or deletions to their composition. When a class changes ''tiers'' it would be assigned the ''appointment cost'' of that tier. Upon rebalancing, each DPM organization would be required to own or lease the appropriate number of Exchange memberships reflecting the revised ''appointment costs'' of the classes that have been allocated to it. CBOE Rule 8.85 also would provide that a DPM organization is required to own or lease the appropriate number of Exchange memberships at the time a new options class allocated to it pursuant to CBOE Rule 8.95 begins trading.

Additionally, because member organizations may be approved and function in a number of capacities at CBOE, including as a DPM organization, e-DPM organization, and as an RMM, CBOE proposes to allow the DPM organization to use any excess membership capacity in its capacity as an RMM or e-DPM. Specifically, in the event the member organization approved as the DPM organization is also approved to act as an RMM and/or e-DPM, and has excess membership capacity above the aggregate appointment cost for the classes allocated to it as the DPM, the member organization would be permitted to utilize the excess membership capacity to quote electronically in an appropriate number of Hybrid 2.0 Classes in the capacity of an RMM and not trade in open outcry, or to quote electronically in the Hybrid 2.0 Classes in which it is appointed an e-DPM. For example, if the DPM organization has been allocated such number of option classes that its aggregate appointment cost is 1.6, the member organization could request an appointment as an RMM in any combination of Hybrid 2.0 Classes whose aggregate ''appointment cost'' does not exceed .40. The member organization would not function as a DPM in any of these additional classes. In the event the member organization utilizes any excess membership capacity to quote electronically in some additional Hybrid 2.0 Classes as an RMM or e-DPM, it would be required to comply with the provisions of CBOE Rules 8.4(c) and Rule 8.93(vii), respectively.

With respect to e-DPMs, CBOE Rule 8.92, as proposed to be amended, would require that each e-DPM organization own one Exchange membership, and own or lease such additional Exchange memberships as may be necessary based on the aggregate ''appointment cost'' for the classes allocated to the e-DPM organization. Each membership owned or leased by the e-DPM organization would have an appointment credit of 1.0. The appointment costs per Hybrid 2.0 Class, which are categorized by ''tiers'', would be identical to the tiers and appointment costs set forth in CBOE Rules 8.3(c)(i) and 8.4(d) that have been structured for purposes of RMMs and Market Maker appointments.

If the e-DPM organization has been allocated such number of option classes that its aggregate appointment cost is 6.6, the e-DPM organization would be required to own at least one Exchange membership, and own or lease six additional Exchange memberships. The Exchange would rebalance the ''tiers'' (excluding the ''AA'' and ''A+'' tiers) once each calendar quarter, which could result in additions or deletions to their composition. When a class changes ''tiers'' it would be assigned the ''appointment cost'' of that tier. Upon rebalancing, each e-DPM organization would be required to own or lease the appropriate number of Exchange memberships reflecting the revised ''appointment costs'' of the classes that have been allocated to it.

Similar to DPM organizations, CBOE proposes that in the event the member organization approved as the e-DPM organization is also approved to act as an RMM and/or DPM, and has excess membership capacity above the aggregate appointment cost for the classes allocated to it as the e-DPM, the member organization would be permitted to utilize the excess membership capacity to quote electronically in of Hybrid 2.0 Classes in the capacity of a RMM and not trade in open outcry, and/or to quote electronically and trade in open outcry in the classes in which it is appointed a DPM. For example, if the member organization has been allocated such number of option classes that its aggregate appointment cost is 6.6, the member organization could request an appointment as an RMM in any combination of Hybrid 2.0 Classes whose aggregate ''appointment cost'' did not exceed .40. The member organization would not function as an e-DPM in any of these additional classes. In the event the member organization utilizes any excess membership capacity to quote electronically in some additional Hybrid 2.0 Classes as an RMM or DPM, it would be required to comply with the provisions of CBOE Rules 8.4(c) and 8.85(a)(v), respectively. In connection with this change, CBOE proposes to delete the restriction in CBOE Rule 8.92 which states that memberships used to satisfy the membership ownership requirements may not be used to comply with the DPM membership ownership requirement of Rule 8.85(e).

Finally, CBOE proposes to amend the provisions of CBOE Rules 6.45A for DPMs and 6.45B for DPMs and LMMs, which provide that a DPM or LMM utilizing more than one membership in the trading crowd where a class is traded shall count as two market participants for purposes of Component A of UMA. Because each membership owned or leased by a DPM (or LMM) would now have an appointment credit of 1.0, and because each class in which a DPM (or LMM) has an appointment would have a specific appointment cost associated with it, CBOE does not believe that requiring a DPM (or LMM) to utilize a full membership to count as two market participants for purposes of Component A of UMA is reasonable. Rather, CBOE believes that it is more appropriate and reasonable to require that a DPM (or LMM) exclusively use the portion of a membership(s) representing one-half the total appointment cost of the classes allocated to the DPM (or, in which the LMM has been appointed) at a particular trading station in order to count as two market participants, and not for any other purpose.

For example, if a DPM's appointment cost is 2.2 for the classes allocated to it at a particular trading station, pursuant to proposed amendments to CBOE Rule 8.85(e), the DPM would be required to own one membership and own or lease two additional memberships. In addition, the DPM would be permitted to choose to count as two market participants for purposes of Component A of the Algorithm if the DPM exclusively utilizes 1.1 (one-half of 2.2) of the membership(s) it owns or leases in order to count as two market participants, and not utilize the 1.1 of the memberships for any other purpose. In this example, to comply with the membership ownership requirements and to count as two market participants for purposes of Component A, the DPM would be required to own one membership, and own or lease three additional memberships to satisfy its total cost of 3.3 (2.2 + 1.1).

In amending CBOE Rules 6.45A and 6.45B, CBOE proposes to make it optional for a DPM (or LMM) to choose whether to exclusively use the portion of its membership(s) representing one-half the total appointment cost of the classes allocated to the DPM at a particular trading station in order to count as two market participants, or instead to use the excess membership

capacity to quote electronically in Hybrid 2.0 Classes.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for 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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–CBOE–2006–58 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–CBOE–2006–58. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–58 and should be submitted on or before August 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–12324 Filed 7–31–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54213; File No. SR–CHX–2006–22]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend the CHX Holdings, Inc. Certificate of Incorporation

July 26, 2006.

I. Introduction

On June 22, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange''), on behalf of its parent company, CHX Holdings, Inc. (''CHX Holdings''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the CHX Holdings Certificate of Incorporation (''Charter'') to: (1) Make a change in the ownership limitations applicable to CHX participants and other persons or entities; and (2) increase the number of shares of common stock that CHX Holdings is authorized to issue. On June 30, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 10, 2006 for a 15-day comment period.[4] The Commission received no comments on the proposal. On July 21, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[5] This order grants accelerated approval of the proposed rule change, as amended.

II. Description of the Proposal

The CHX Holdings Charter currently imposes ownership limitations which prohibit: (i) Any person, either alone or together with its related persons, from owning, directly or indirectly, shares constituting more than 40% of any class

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical changes to correct the marking of the proposed rule text.

[4] *See* Securities Exchange Act Release No. 54090 (July 10, 2006), 71 FR 38915 (''Notice''). The 15-day comment period ended on July 25, 2006.

[5] In Amendment No. 2, the Exchange confirmed that the stockholders of CHX Holdings had approved the proposed changes to the CHX Holdings Charter at a meeting held on July 19, 2006. As stated in the Notice, stockholder approval of the proposed changes was required before they could become effective. Amendment No. 2 was a technical amendment and, therefore, not subject to notice and comment.

of CHX Holdings capital stock; and (ii) any person that holds a CHX trading permit, either alone or together with its related persons (an ''Exchange Participant''), from owning, directly or indirectly, shares constituting more than 20% of any class of CHX Holdings capital stock. The Exchange proposes to modify these ownership limitations so that they refer to shares of stock of CHX Holdings representing in the aggregate more than 20% or 40% of ''the then outstanding votes entitled to be cast on any matter,'' rather than to the shares of each class of stock that a person might own. The Exchange also proposes to increase the number of shares of common stock that can by issued by CHX Holdings from 750,000 to 900,000. These proposed changes to the CHX Holdings Charter were filed in connection with a series of transactions in which four firms will invest in CHX Holdings in an exchange for minority stakes in the company.

III. Discussion

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 proposal is consistent with Section 6(b)(1) of the Act,[7] which requires a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules or regulations thereunder, and the rules of the exchange. The Commission also finds the proposal to be consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that the Exchange proposes to retain the current 20% and 40% ownership limitations, as applicable, in the CHX Holdings Charter, and to make only minor modifications to the ownership limitation provisions to refer to ''the then outstanding votes entitled to be cast on any matter,'' rather than to the shares of each class of stock that a person might own. The Commission believes that these proposed modifications are reasonable and that they preserve the adequacy of the ownership limitations to prevent a person's (and, specifically, an Exchange Participant's) interest from becoming so large as to cast doubt on whether the Exchange can fairly and objectively exercise its self-regulatory responsibilities. The Exchange's additional proposal to increase the number of shares of common stock that can be issued by CHX Holdings is designed, among other things, to give CHX Holdings the ability to seek additional investors and to have additional shares available should the company seek to establish an equity compensation plan. The Commission believes this increase in authorized common stock is reasonable and consistent with the Act.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice thereof in the **Federal Register**. The CHX has requested that the Commission approve the proposal on an accelerated basis upon the Exchange's filing of the amendment stating that the shareholders of CHX Holdings had approved the proposed changes to the Charter. The Commission notes that the new language in the ownership limitation provisions proposed by CHX Holdings is nearly identical to language included in the recently approved Amended and Restated Certificate of Incorporation of NYSE Group, Inc.[9] and raises no new regulatory issues. The Commission further notes that accelerated approval of the proposed changes will allow the transactions between CHX Holdings and the four investors to proceed without unnecessary delay. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[10] to approve the proposal, as amended, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2006–22), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–12321 Filed 7–31–06; 8:45 am]

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[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)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Article V, Section 2 of the Amended and Restated Certificate of Incorporation of NYSE Group, Inc., approved by the Commission in Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving NYSE–2005–77).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54204; File No. SR–ISE–2006–38]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Extend the Linkage Fee Pilot Program

July 25, 2006

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis for a pilot period through July 31, 2007.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until July 31, 2007, the current pilot program regarding transaction fees for trades executed through the intermarket options linkage (the ''Linkage''). Currently pending before the Commission is a filing to make such fees permanent.[3] The text of the proposed rule change is available on the ISE's Web site at (*http://www.iseoptions.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–ISE–2003–30 (the ''Permanent Fee Filing'').

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for one year the pilot program establishing ISE fees for Principal Orders (''P Orders'') and Principal Acting as Agent Orders (''P/A Orders'') sent through Linkage and executed on the ISE. The fees currently are effective for a pilot period scheduled to expire on July 31, 2006,[4] and this filing would extend the fees through July 31, 2007. The Exchange notes that in addition to the Permanent Fee Filing, the Exchange filed one other Linkage related fee filing that proposes to increase from $0.15 per contract to $0.24 per contract the fee for P Orders sent through Linkage and executed on the ISE.[5]

The three fees the ISE charges for these orders are: the Firm Proprietary execution fee of $0.15 per contract for trading on the ISE; a surcharge of between $.05 and $.15 for trading certain licensed products; and a $.03 comparison fee (collectively ''linkage fees'').[6] These are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange.[7] The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the ISE discusses in detail the reasons why it believes it is appropriate to charge fees for P Orders and P/A Orders executed through Linkage. ISE believes that market makers on competing exchanges always can match a better price on the ISE and never are obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P Orders or P/A Orders, ISE believes it is appropriate to charge its Members the same fees levied on other non-customer orders. Because the Commission is continuing to study Linkage in general and the effect of fees on Linkage trading, the proposal would extend the current pilot program for Linkage fees[8] for one year while the Commission considers the Permanent Fee Filing.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) of the Act[9] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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 unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2006–38 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–2006–38. 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 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–ISE–2006–38 and should be submitted on or before August 22, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular, the requirements of Section 6(b) of the Act[11] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that

[4] *See* Securities Exchange Act Release No. 52168 (July 29, 2005), 70 FR 45454 (August 5, 2005) (extending the Linkage fee pilot program until July 31, 2006).

[5] *See* Securities Exchange Act Release No. 54074 (June 30, 2006), 71 FR 38917 (July 10, 2006) (''P Order Fee Filing'').

[6] Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

[7] The ISE charges these fees only to its Members, generally firms who clear P Orders and P/A Orders for market makers on the other linked exchanges.

[8] Under the current pilot program, while fees for both P Orders and P/A orders are currently set at $0.15 per contract, the ISE has proposed to increase the fee for P Orders to $0.24 per contract in the P Order Fee Filing.

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

the extension of the Linkage fee pilot until July 31, 2007 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2006–38) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–12273 Filed 7–31–06; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54214; File No. SR–NASD–2006–082]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 22 Examination Program

July 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 July 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Representative—Direct Participation Programs (Series 22) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of a direct participation programs representative. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] The Series 22 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 22 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2006–082 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Special Counsel, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated July 19, 2006.

[7] 17 CFR 240.24b–2.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(g)(3) of the Act[8] requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. In accordance with that provision, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

Pursuant to NASD Rule 1032(c), an associated person of a member who meets the definition of representative in NASD Rule 1031 may register with NASD as a Limited Representative—Direct Participation Programs if: (1) The individual's activities in the investment banking and securities business are limited solely to the solicitation, purchase, and/or sale of equity interests in or debt of direct participation programs as defined in NASD Rule 1022(e)(2) and (2) the individual passes the Series 22 qualification examination.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 22 examination program. As a result of this review, NASD is proposing to make the following revisions to the study outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of a direct participation programs representative. NASD is proposing to add a section on SEC Form S–1 registration. NASD also is proposing to add a section on NASD Rule 2370 (Borrowing from or Lending to Customers) and a section on like-kind exchanges.

In addition, NASD is proposing to revise the study outline to remove the sections on Section 4(3) (Transactions by a dealer) under the Securities Act of 1933[9] and SEC Rule 174 (Delivery of prospectus by dealers; exemptions under Section 4(3)).[10] Further, NASD is proposing to remove the sections on NASD Rules 1040 (Registration of Assistant Representatives and Proctors) and 1110 (formerly Registration of

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] 15 U.S.C. 77d(3).

[10] 17 CFR 230.174.

Government Securities Principals and Representatives), as well as to remove the section on NASD Certificate of Incorporation.

NASD is proposing these changes to the entire content of the Series 22 examination, including the selection specifications and question bank. The number of questions on each section of the Series 22 examination will remain the same. In addition, the number of questions on the examination will remain at 100, and candidates will continue to have 2¼ hours (135 minutes) to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 22 examination program are consistent with the provisions of Sections 15A(b)(6) [11] and 15A(g)(3) of the Act,[12] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [13] and Rule 19b–4(f)(1) thereunder,[14] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 22 examination program on August 15, 2006. NASD will announce the implementation date in a *Notice to Members* to be published on the same date as this filing.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(g)(3).

[13] 15 U.S.C. 78s(b)(3)(A)(i).

[14] 17 CFR 240.19b–4(f)(1).

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2006–082 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–082 and should be submitted on or before August 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–12320 Filed 7–31–06; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54215; File No. SR–NYSE–2006–51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 36 To Allow a Registered Competitive Market Maker To Call To and Receive Calls From the Booth

July 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 July 3, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE is proposing to amend NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Registered Competitive Market Maker (''RCMM'') to use an Exchange authorized and provided portable telephone on the Exchange Floor to call to and receive calls from his or her booth on the Floor, provided certain conditions are met.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 36

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Currently, NYSE Rules 36.20 through 36.22 provide that, subject to certain restrictions, Floor brokers and RCMMs are allowed to use Exchange authorized and provided portable phones on the Exchange Floor.[5]

Under the existing Pilot, subject to certain restrictions, RCMMs are allowed to use an Exchange authorized and provided portable phone solely to communicate with their or their member organizations' off-Floor office and the off-Floor office of their clearing member organization to enter off-Floor orders and to discuss matters related to the clearance and settlement of transactions, provided the off-Floor office uses a wired telephone line for these discussions. RCMMs are not allowed to use a portable phone to conduct any agency business.[6]

Proposed Amendment to NYSE Rule 36.22

The Exchange proposes to amend NYSE Rule 36.22 to allow RCMMs to call their booths on the Floor for business-related purposes, including discussing trade reporting and executions and clearance and settlement of trades, much as they do today by calling their upstairs office personnel and their clearing member organization's upstairs offices. Booth personnel would also be allowed to call their RCMMs' Exchange authorized and provided portable phones for business-related purposes. In turn, all booth phones on the Floor which are used to make calls to and receive calls from RCMMs' Exchange authorized and provided portable phones would be systemically blocked by the Exchange from call-forwarding and conference calling.[7] By allowing RCMMs to communicate with their booths on the Floor, NYSE believes that the proposed rule change would increase the efficiency of trading on the Floor.

In addition, all Exchange authorized and provided portable phones used by Floor brokers and RCMMs do not have call-forwarding or conference calling capabilities and would continue to not have such capabilities.[8] The Exchange would issue a revised Member Education Bulletin outlining the amendment to the Pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE believes that the amendment to NYSE Rule 36 supports the mechanism of free and open markets by providing for increased means by which communications on the Floor of the Exchange may take place.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative period under Rule 19b-4(f)(6)(iii) of the Act.[13] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing. The Commission believes that the waiver of the 30-day operative delay may increase the efficiency of the Exchange by providing immediate use of Exchange authorized and portable phones to RCMMs to communicate with their booths on the Floor. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

The Commission notes that proper surveillance is an essential component of any telephone access policy to an exchange trading floor. Surveillance procedures should help to ensure that RCMMs use portable phones as authorized by NYSE Rule 36. The Commission expects the Exchange to actively review these procedures and address any potential concerns that arises. In this regard, the Commission notes that the Exchange should address whether telephone records are adequate for surveillance purposes. The Commission also requests that the Exchange report any problems, surveillance, or enforcement matters

[5] The Exchange has authorized the use of portable phones by Floor brokers and RCMMs pursuant to a series of pilots. The current pilot is scheduled to expire July 31, 2006 (''Pilot''). *See* Securities Exchange Act Release No. 53277 (February 13, 2006), 71 FR 8877 (February 21, 2006) (SR–NYSE–2006–03).

[6] *See* Securities Exchange Act Release No. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR–NYSE–2005–80).

[7] *See* proposed NYSE Rule 36.22(c)(ii).

[8] *See* proposed NYSE Rules 36.21(a)(v) and 36.22(c)(iii).

[9] 15 U.S.C. 78f(b)(5).

[10] Telephone conversation between David Matta, Principal Rule Counsel, NYSE, and Molly M. Kim, Special Counsel, Division of Market Regulation, Commission, on July 11, 2006.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

associated with RCMMs' use of an Exchange authorized and provided portable telephone on the Exchange Floor. Furthermore, in any future additional filings on the Pilot, the Commission would expect that the Exchange submit information documenting the usage of the Exchange authorized and portable phones and any problem that have occurred, including, among other things, any regulatory actions or concerns.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR-NYSE–2006–51 and should be submitted on or before August 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–12322 Filed 7–31–06; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54220; File No. SR–NYSE–2006–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Relating to Amendments to Exchange Rule 629—Schedule of Fees

July 26, 2006.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4[3] thereunder, notice is hereby given that on July 21, 2006, New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. NYSE has filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[4] of the Act, and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal as effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE is proposing an amendment to Rule 629 to clarify the hearing deposits required for customer counterclaims, third party claims, and cross-claims.

The text of the proposed rule change is available on NYSE's Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 629 (''Rule 629'') sets forth the schedules of fees for hearing deposits required by the parties when filing claims, counterclaims, third party claims and cross-claims. The hearing deposits differ for customer and industry claimants.

NYSE proposes to amend Rule 629 to clarify that the hearing deposits required of customers who file counterclaims, third party claims and cross-claims [in an industry initiated dispute] are the same as the hearing deposits for matters in which a customer is the claimant.

2. Statutory Basis

NYSE believes the proposed changes are consistent with Section 6(b)(4)[6] of the Act, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect

[6] 15 U.S.C. 78f(b)(4).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(6)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii)[9] under the Act based upon a representation that the proposed rule change accurately reflects the fees imposed pursuant to Rule 629 and will provide further clarification regarding hearing deposits required for customers filing counterclaims, third party claims and cross-claims in industry initiated disputes. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2006–52 and should be submitted on or before August 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–12323 Filed 7–31–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5481]

Culturally Significant Objects Imported for Exhibition Determinations: ''New Ireland: Art of the South Pacific''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''New Ireland; Art of the South Pacific,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Saint Louis Art Museum, St. Louis Missouri, from on or about October 13, 2006, until on or about January 7, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 25, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–12367 Filed 7–31–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5480]

Culturally Significant Objects Imported for Exhibition Determinations: ''Set in Stone: The Face in Medieval Sculpture''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Set in Stone: The Face in Medieval Sculpture,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The

objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about September 25, 2006, until on or about February 18, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 26, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–12368 Filed 7–31–06; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Meeting of the TVA Regional Resource Stewardship Council and Public Hearing Held by the TVA Board Community Relations Committee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (Regional Council) will hold a meeting on August 16 and August 17 to discuss TVA land management. In conjunction with the Regional Council meeting the TVA Board Community Relations Committee will hold a public hearing on August 16 to hear viewpoints from various stakeholders regarding TVA's management of public lands in the Tennessee Valley. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Overview of TVA lands.

(2) Federal and State land management policy (Invited panelists).

(3) Stakeholder perspectives (Invited panelists).

(4) Public comments.

(5) Council discussion and advice.

The TVA Board Community Relations Committee and the TVA Regional Resource Stewardship Council will hear opinions and views of citizens by providing a public comment session. The public comment session will be held from 2:30 p.m. to 4 p.m. EDT on Wednesday, August 16, 2006. An interpreter for the deaf will be provided.

Participation in the Public Comment portion of the hearing is available on a first-come, first-served basis following the testimony of the panelists. TVA asks that comments be brief (less than 5 minutes) to allow as many people to speak as possible. Persons wishing to speak are requested to register at the door by 1:30 p.m. EDT on August 16 and will be called on during the public comment period. For those who wish to make comments but not speak publicly, a court reporter will be available at the meeting. Comments may also be submitted in writing the day of the meeting or until August 23 by email to *landpolicyhearing@tva.gov* or by mail to the TVA Board Community Relations Committee, Land Policy Hearing, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, or by fax to (865) 632–3146. Comments may also be submitted on a dedicated phone line, 1–888–882–7675.

DATES: The meeting will be held on Wednesday, August 16, 2006, from 8:30 a.m. to 4 p.m. EDT and on Thursday, August 17, 2006, from 9 a.m. to 11:30 a.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in Ballroom A/B at the Knoxville Convention Center, 701 Henley Street, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra Perry, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: July 26, 2006.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 06–6600 Filed 7–31–06; 8:45am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 14, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–25383.

Date Filed: July 11, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 1, 2006.

Description: Joint Application of Air China Limited d/b/a Air China and Air China Cargo Company Limited d/b/a Air China Cargo requesting (1) the transfer from Air China to Air China Cargo of all authority presently held by Air China, whether by foreign air carrier permit or exemption authority, to engage in all-cargo transportation between designated points in the People's Republic of China (PRC) and the United States of America (USA) on the routes agreed in the bilateral aviation agreement between the Governments of the PRC and the USA and to which Air China has been designated by the Government of the PRC; (2) the issuance to Air China Cargo of a foreign air carrier permit or exemption authority authorizing Air China Cargo to engage in foreign air transportation of all-cargo services, including mail, between points in the PRC and points in the USA, for which Air China presently has economic authority from the Department of Transportation, whether by permit or exemption authority; and (3) an amendment of the foreign air carrier permit and exemption authority presently held by Air China authorizing Air China to engage in foreign air transportation of passengers and cargo, including mail, in combination or all-cargo flights, to authorize Air china to engage in foreign air transportation of passengers and cargo, including mail, in

combination only, on the authorized routes.

Docket Number: OST–1995–766.

Date Filed: July 14, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 4, 2006.

Description: Application of American Airlines, Inc. requesting renewal of its certificate authority to serve between U.S. points and Barcelona, Spain on segment 3 of its certificate for Route 602.

Docket Number: OST–1996–1394.

Date Filed: July 14, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 4, 2006.

Description: Application of American Airlines, Inc. requesting renewal of segment 4 of its certificate for Route 602, authorizing scheduled foreign air transportation of persons, property and mail between the coterminal points Dallas/Ft. Worth, TX and Miami, FL, the intermediate points the Azores and Lisbon, Portugal, and the coterminal points Madrid, Barcelona, Malaga, and Palma de Mallorca, Spain.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–12312 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Shelby County, AL

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Shelby County, Alabama.

FOR FURTHER INFORMATION CONTACT: Catherine A. Batey, Acting Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117, Telephone: (334) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Department of Transportation, Shelby County Highway Department, and the city of Helena, will prepare an environmental impact statement (EIS) for Alabama Project ST–059–261–004. The proposed project is to construct a new, multi-lane facility within the corporate limits of Helena (Shelby County), Alabama, from Shelby County Road 52 northeastward to State Route 261, a distance of approximately 4 miles. The purpose of this proposed action is to provide an alternate route around historic downtown Helena. Existing and future traffic demands warrant additional lanes and/or an alternate route. Opportunities for further defining the purpose and need for the proposed project will be provided to the participating agencies and the public through scoping and public meetings

Alternatives under consideration include (1) alternate route locations; and (2) a no-action or no-build alternative. Opportunities for providing additional alternatives by participating agencies and the public will be accomplished through a scoping meeting and a public meeting. These opportunities will insure a full range of alternatives have been considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens that have previously expressed or are known to have an interest in this proposal. A series of public invovlement meetings will be initiated, and public hearings will be held. Public notice will be given of the time and place for the meetings and hearings. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. An interagency scoping meeting will be held. The time and date for the scoping meeting will be coordinated as the project develops. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 26, 2006.

Bill Van Luchene,

Acting Division Administrator, Montgomery, Alabama.

[FR Doc. 06–6599 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–01–10578, FMCSA–04–17195]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 1, 2006. Comments must be received on or before August 31, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–01–10578, FMCSA–04–17195, using any of the following methods.

- Web site: *http://dmses.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or

comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 5 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Manuel A. Almeida, Donald E. Hathaway, Jose M. Suarez, Stephen D. Vice, and Richard A. Yeager.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 69 FR 17267; 69 FR 17263; 69 FR 31447). Each of these 5 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 31, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 5 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its Notices of applications. Those Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 25, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–12335 Filed 7–31–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer

Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 10, 2006 at 2 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, August 10, 2006 at 2 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: July 25, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–12350 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 15, 2006.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, August 15, 2006 from 9 a.m. ET to 10 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1–888–912–1227 or 718–488–2085, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 25, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–12352 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 24, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, August 24, 2006 from 10 a.m. Pacific Time to 11:30 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: July 25, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–12355 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 16, 2006, at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, August 16, 2006 at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made

with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 25, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–12356 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 22, 2006, at 11 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, August 22, 2006, at 11 a.m., Central Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: July 25, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–12357 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 15, 2006 from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, August 15, 2006, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: July 25, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–12360 Filed 7–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) hereby gives notice that VA will not publish the annual weighted average poverty threshold figures in the **Federal Register**, as previously announced. Instead, interested parties may obtain that information directly from the U.S. Census Bureau's Web site.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Chief, Regulations Staff, Compensation and Pension Service, Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: VA published a final rule amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, 55 FR 31,579. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Census Bureau as the poverty threshold for one person. The provisions of 38 CFR 4.16(a) use the poverty threshold as a standard in defining marginal employment when considering total disability ratings for compensation based on unemployability of an individual. We stated we would publish annual poverty threshold figures as established by the U.S. Census Bureau. VA does not intend to continue that function because those poverty threshold figures are now available to the public directly from the U.S. Census Bureau's Web site at *http://www.census.gov/hhes/www/poverty/threshld.html*.

Approved: July 24, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–12257 Filed 7–31–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory committee will be held at VA Center Office, 810 Vermont Avenue, NW., Washington, DC on September 19–20, 2006. The session on September 19 will convene at 8:30 a.m. and conclude at 5 p.m. in Room 430 and on September 20, the session will convene at 8 a.m. and conclude at noon in Room 730. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary of Health on all matters pertaining to geriatrics and gerontology

by assessing the capability of VA health care facilities to meet the medical, psychological, and function needs of older veterans and by evaluating VA facilities designated as Geriatric Research Education, and Clinical Centers (GRECCs).

The meeting will feature presentation topics that include VHA Poly Trauma Centers, the Office of Academic Affiliations, My Health-e-Vet, the 2005 White House Conference on Aging, the Employee Education System, and perfomranc oversight of the VA Geriatric Research, Education, and clinical Centers.

No time will be allocated at this meeting for receiving oral presentation from the public. Interested parties can provide written comments for review by the Committee 10 days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney, Program Analyst, at (202) 273–8540, at least seven days in advance of the meeting.

Dated: July 20, 2006.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–6588 Filed 7–31–06; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of a computer-matching program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) this notice announces that the Department of Veterans Affairs (VA), recipient agency, intends to conduct a recurring computer-matching program with the Railroad Retirement Board (RRB), source agency.

VA will match pension and parents' dependency and indemnity compensation (DIC) records with RRB recipient records. The goal of this match is to compare income status as reported to VA with benefit records maintained by RRB. The authority to conduct this match is 38 U.S.C. 5106.

DATES: VA will file a report of the subject matching agreement with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OBM). The matching program will be effective as indicated in this notice.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.*

All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Pamela Liverman (212A), (757) 858–6148, ext. 107.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the RRB and VA have determined that a computer matching agreement is the most cost effective and efficient way to verify statements of applicants and recipients.

VA has an obligation to verify the income information submitted by individuals in receipt of income-dependent benefits. Title 38 U.S.C. 5106 requires that Federal agencies disclose this information to VA upon request. By comparing the information received through the matching program between VA and RRB on a recurring basis, VA will be able to make timely and more accurate adjustments in the benefits payable.

A. Participating Agencies

The U.S. Railroad Retirement Board and the U.S. Department of Veterans Affairs.

B. Purpose of the Match

The purpose of the matching agreement is to identify beneficiaries receiving VA income dependent benefits and RRB benefits, to update VA's master records and adjust VA income dependent benefit payments as prescribed by law. This agreement reflects both agencies' responsibilities under the Privacy Act (5 U.S.C. 552a) and the regulations promulgated.

C. Authority for Conducting the Matching Program

The authority to conduct this match is 38 U.S.C. 5106.

D. Records To Be Matched

The VA records involved in the match are the VA system of records, Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22), first published at 41 FR 9294 (March 3, 1976), and last amended at 70 FR 34186 (June 13, 2005), with other amendments as cited therein.

The RRB records consist of information from the Railroad Retirement, Survivor, and Pensioner Benefit System, RRB–22, contained in the Privacy Act Issuances, 2001 Compilation Online via GPO Access.

E. Description of Computer Matching Program

The Department of Veterans Affairs plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC, with Railroad Retirement benefit records maintained by RRB. The match with RRB will provide VA with data from the RRB Research File of Retirement and Survivor Benefits.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's income is obtained only from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

VA will provide RRB with a tape, which contains the names, VA claim numbers, social security numbers, verification codes and VA regional office identifiers. RRB will return a tape to VA, which contains information on RRB payment amounts in RRB's records.

F. Inclusive Dates of the Matching Program

The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

This computer-matching program is subject to public comment and review

by Congress and the Office of Management and Budget. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

Approved: July 14, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–12258 Filed 7–31–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
August 1, 2006

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 42

Long-Term Firm Transmission Rights in Organized Electricity Markets; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 42

[Docket No. RM06–8–000; Order No. 681]

Long-Term Firm Transmission Rights in Organized Electricity Markets

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations under the Federal Power Act to require transmission organizations that are public utilities with organized electricity markets to make available long-term firm transmission rights that satisfy certain guidelines adopted by the Commission in this Final Rule. The Commission is taking this action pursuant to section 1233(b) of the Energy Policy Act of 2005, [Pub. L. 109–58, § 1233(b), 119 Stat. 594, 960 (2005).]

DATES: *Effective Date:* This Final Rule will become effective August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Udi E. Helman (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8080.

Roland Wentworth (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8262.

Wilbur C. Earley (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8087.

Harry Singh (Technical Information), Office of Enforcement, Division of Energy Market Oversight, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6341.

Jeffery S. Dennis (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6027.

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VII. Effective Date and Congressional Notification	505.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Order No. 681; Final Rule

1. In this Final Rule, the Commission is amending its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the guidelines established by the Commission in this Final Rule. We take this action pursuant to section 1233 of the Energy Policy Act of 2005 (EPAct 2005), which added new section 217 to the Federal Power Act (FPA).[1] This Final Rule will require each transmission organization subject to its requirements to file with the Commission, no later than January 29, 2007, either (1) tariff sheets and rate schedules that make available long-term firm transmission rights that satisfy each of the guidelines set forth in the final regulations, or (2) an explanation of how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines. A transmission organization approved by the Commission for operation after January 29, 2007 will be required to satisfy the requirements of this Final Rule.

2. The guidelines adopted in this Final Rule will give transmission organizations the flexibility to propose designs for long-term firm transmission rights that reflect regional preferences and accommodate their regional market designs, while also ensuring that the objectives of Congress expressed in new section 217(b)(4) of the FPA are met. As described in more detail below, the Commission will allow regional flexibility in setting the terms of the rights, but long-term firm transmission rights must be made available with terms (and/or rights to renewal) that are sufficient to meet the reasonable needs of load serving entities to support long-term power supply arrangements used to satisfy their service obligations.

[1] Pub. L. 109–58, § 1233, 119 Stat. 594, 957 (2005).

I. Background

A. The Development of ISOs and RTOs

3. In Order No. 888, the Commission found that undue discrimination and anticompetitive practices existed in the provision of electric transmission service in interstate commerce.[2] Accordingly, the Commission required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs (OATTs) containing certain non-price terms and conditions and to ''functionally unbundle'' wholesale power services from transmission services.[3] In addition, the Commission found in Order No. 888 that Independent System Operators (ISOs) had the potential to aid in remedying undue discrimination and accomplishing comparable access[4] and set out 11 principles for assessing ISO proposals submitted to the Commission.[5] Following Order No. 888, several voluntary ISOs were established and approved by the Commission.

4. In light of the creation of these ISOs and other changes in the electric industry, the Commission issued Order No. 2000.[6] In that order, the Commission concluded that traditional management of the transmission grid by vertically integrated electric utilities was inadequate to support the efficient and reliable operation of transmission facilities necessary for continued development of competitive electricity markets[7] and that opportunities for undue discrimination continued to exist.[8] As a result, the Commission adopted rules to facilitate the voluntary development of Regional Transmission Organizations (RTOs). The Commission concluded that RTOs would provide several benefits, including regional transmission pricing, improved congestion management, and more effective management of parallel path flows.[9] In Order No. 2000, the Commission established the minimum characteristics and functions that an RTO must satisfy to gain Commission approval.[10] Under Order No. 2000, the Commission has approved the voluntary formation of a number of RTOs.

5. Most of the RTOs and ISOs operate organized markets for energy and/or ancillary services in addition to providing transmission service under a single transmission tariff. Most of these markets utilize a congestion management system based on Locational Marginal Pricing (LMP). Congestion is defined as the inability to inject and withdraw additional energy at particular locations in the network due to the fact that the injections and withdrawals would cause power flows over a specific transmission facility to violate the reliability limits for that facility. The market operator manages congestion by scheduling and dispatching generators that can meet load in the presence of congestion. Financially, in LMP markets the price of congestion is measured as the difference in the cost of energy in the spot market at two different locations in the network. When such price differences occur, a congestion charge is assessed to transmission users based on their nodal injections and withdrawals. These price differences can be variable and difficult to predict. In order to manage the risk associated with the variability in prices due to transmission congestion, these markets use various forms of financial transmission rights (FTRs)[11] to allow market participants who hold the rights to protect against such price risks. In most cases, these FTRs have terms of one year or less. In general, load serving entities receive FTRs through either direct allocation or through a two-step process in which the load serving entity is first allocated auction revenue rights (ARRs) and then either uses those rights to purchase FTRs, or has the ability under the transmission organization tariff to convert them to FTRs.[12]

B. Interest in Long-Term Firm Transmission Rights

6. In recent years, interest in long-term firm transmission rights in organized electricity markets has increased, stemming in large part from a desire of some market participants to obtain rights that replicate the transmission service that was available to them prior to the formation of the organized electricity markets and remains available today in regions without organized electricity markets. The principal concern of these market participants is the inability to obtain a fixed, long-term level of service under pricing arrangements that hedge the congestion cost risk that they face in the organized electricity markets.

7. There are several important differences between transmission service under the Order No. 888 *pro forma* Open Access Transmission Tariff (OATT) and transmission rights in organized electricity markets that use LMP and FTRs.[13] However, the differences that are most relevant for purposes of this Final Rule concern the management of congestion, the recovery of congestion costs and the availability of long-term service arrangements.

8. Under the OATT, the transmission provider in the first instance manages congestion by redispatching its own or its customers' network resources as needed to accommodate a transmission constraint; the OATT provides no mechanism by which firm point-to-point transmission customers can participate directly in congestion management.[14] However, in the organized electricity markets that use LMP, the transmission organization manages congestion through the use of locational prices that are determined by bids and offers by markets participants at given locations. This means that all available resources under an LMP system can participate in redispatch for congestion management because they all receive the congestion price signal. As a result, a transmission organization in a region with an organized electricity market is less likely to have to invoke

[2] *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 at 31,682 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (March 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), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[3] Under functional unbundling, the public utility is required to: (1) Take wholesale transmission services under the same tariff of general applicability as it offers its customers; (2) state separate rates for wholesale generation, transmission and ancillary services; and (3) rely on the same electronic information network that its transmission customers rely on to obtain information about the utility's transmission system. *Id.* at 31,654.

[4] Order No. 888 at 31,655; Order No. 888–A at 30,184.

[5] Order No. 888 at 31,730.

[6] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 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).

[7] Order No. 2000 at 30,992–93 and 31,014–15.

[8] *Id.* at 31,015–17.

[9] *Id.* at 31,024.

[10] *Id.* at 31,106 *et seq.*

[11] While ''FTR'' is sometimes used to refer to ''firm transmission rights,'' in this Final Rule we use this acronym to refer to the various forms of financial transmission rights that exist in organized electricity markets. In some markets, these are referred to as congestion revenue rights or transmission congestion contracts.

[12] For a more detailed discussion, *see Long-Term Firm Transmission Rights in Organized Electricity Markets*, Notice of Proposed Rulemaking, 71 FR 6693 (Feb. 9, 2006), FERC Stats. & Regs. ¶ 32,598 at P 27 (2006) (NOPR). As we noted in the NOPR, ARRs confer the right to collect revenues from the subsequent FTR auction.

[13] A detailed discussion of transmission rights in traditional and organized markets was presented in the NOPR at P 15–33.

[14] The transmission provider may also need to curtail service to certain customers.

transmission loading relief procedures and service curtailments than a transmission provider under the OATT.

9. The recovery of congestion costs also differs greatly between regions with and without organized electricity markets. In regions where transmission service is provided under the OATT, a transmission customer that takes network service or firm point-to-point transmission service is not charged directly for the costs of the redispatch that may be required to accommodate its use of the transmission system. For example, a firm point-to-point transmission customer is allowed to take service up to its contractual entitlement while paying only a fixed demand charge. Also, although a network customer must pay a share of any redispatch costs that the transmission provider and other network customers incur, its cost responsibility is determined after the fact as a load ratio share of the total redispatch costs that are incurred on behalf of all users of the system over a given time period. While this type of pricing may not present the customer with a price signal that accurately reflects all of the costs occasioned by the customer's use of the system, it does provide price certainty. In addition, both network service and firm point-to-point transmission service can be obtained under long-term contracts. These attributes of OATT transmission service result in a less volatile price for transmission service over the long-term, which in turn can help facilitate the planning and financing of large generation facilities and other long-term power supply arrangements.

10. In contrast, a transmission organization in a region with an organized electricity market recovers congestion costs measured as differences in the locational price of energy. Because locational prices include a congestion cost component (which can be positive, negative or zero), a participant in an organized electricity market faces the prospect of paying a congestion charge for many of its transactions. Locational pricing and price-based congestion management provide the market participant with much of the information it needs to make cost effective decisions regarding energy consumption and use of the transmission system (as well as investment in new generation and transmission upgrades). However, the FTRs that transmission organizations currently provide to hedge congestion charges for using existing transmission capacity (as opposed to incremental transmission expansions) are generally available for terms of only one year or less. This can create uncertainty for the market participant who wants to procure supplies on a long-term basis because it will not know from year to year with any degree of certainty whether its award of FTRs will be sufficient to meet its needs. Some market participants have expressed concern that this uncertainty makes it more difficult to finance long-term power supply arrangements.

C. Staff Paper on Long-Term Transmission Rights

11. In May 2005, the Commission released a Staff Paper that provided background and solicited comments on whether long-term transmission rights were needed in the ISO and RTO markets, and if so, how to implement them.[15] A number of commenters on the Staff Paper argued that the failure of transmission organizations to offer transmission rights with terms greater than one year is a key deficiency in the markets that produces increased financial risk due to congestion price uncertainty, the failure of forward energy markets to form, and barriers to investment in new generation capacity. Most of the parties in this group stressed that not all transmission capacity should be given over to long-term rights, but that there should be an amount sufficient to cover at least base-load generation resources and perhaps renewable energy generators.

12. A second group of commenters on the Staff Paper largely agreed with the first that long-term rights should be introduced, but argued that this should take place within the framework of existing FTR market designs and follow a cautious, incremental approach. They also supported limiting the quantity of system capability given over to long-term FTRs for at least an initial period.

13. Finally, some respondents felt that long-term rights should not be introduced at this time. These parties were concerned that the introduction of multi-year rights could introduce inequity and inefficiency into the organized electricity markets because such rights will reduce the availability of FTRs with terms of one year or less that can be used to hedge shorter-term transactions. They also assert that introducing long-term rights could cause cost shifts if holders of long-term rights are given congestion risk coverage greater than that accorded to other parties.

[15] Notice Inviting Comments On Establishing Long-Term Transmission Rights in Markets With Locational Pricing and Staff Paper, Long-Term Transmission Rights Assessment, Docket No. AD05–7–000 (May 11, 2005) (Staff Paper).

D. Energy Policy Act of 2005

14. On August 8, 2005, EPAct 2005 [16] became law. As noted above, section 1233 of EPAct 2005 added a new section 217 to the FPA, which provides:

> The Commission shall exercise the authority of the Commission under this Act 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 (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.[17]

Section 1233(b) of EPAct 2005 requires:

> Within 1 year after the date of enactment of this section and after notice and an opportunity for comment, the Commission shall by rule or order, implement section 217(b)(4) of the Federal Power Act in Transmission Organizations, as defined by that Act with organized electricity markets.[18]

E. Notice of Proposed Rulemaking

15. On February 2, 2006, the Commission issued a NOPR that proposed to amend its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy guidelines established by the Commission.[19] As discussed in more detail below, the NOPR proposed eight guidelines, and sought comments on various issues raised by the introduction of long-term firm transmission rights in the organized electricity markets.

II. Discussion

A. Overview

16. In adopting this Final Rule, the Commission seeks to provide increased certainty regarding the congestion cost risks of long-term transmission service in organized electricity markets that will help load serving entities and other market participants make new investments and other long-term power supply arrangements. The guidelines we adopt in this Final Rule are designed and intended primarily to ensure that

[16] Pub. L. 109–58, 119 Stat. 594

[17] Pub. L. 109–58, § 1233, 119 Stat. 594, 958.

[18] *Id.* at 960. Transmission organization is defined in EPAct 2005 as ''a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.'' Pub. L. 109–58, § 1291, 119 Stat. 594, 985. Below, we adopt this definition with a minor modification for purposes of this Final Rule.

[19] *See supra* note 12.

the long-term firm transmission rights that are made available by transmission organizations that are subject to the rule have characteristics that will support a long-term power supply arrangement. These guidelines provide a framework within which transmission organizations and their market participants can design and implement long-term firm transmission rights in the organized electricity markets that are compatible with the design of those markets, in particular retaining the advantages of price-based congestion management, and meet the reasonable needs of market participants.

17. Many of the comments received by the Commission express concern that the provision of long-term firm transmission rights will result in a drastic redistribution of transmission rights, with transmission organizations required to provide long-term rights to load serving entities regardless of feasibility or impact on other market participants. This concern is unfounded. While this Final Rule unequivocally requires transmission organizations to offer long-term firm transmission rights with characteristics that will support long-term power supply arrangements, in most cases, offering such rights should not require major changes in allocations or allocation procedures.[20] Our intent with regard to the existing transmission system is that load serving entities be able to request and obtain transmission rights up to a reasonable amount on a long-term firm basis, instead of being limited to obtaining exclusively annual rights.[21] Offering such rights should not force transmission organizations to provide rights to the existing system to one party that are infeasible. We expect that transmission organizations will be able to integrate long-term firm transmission rights into their existing procedures for assessing the feasibility of requests for transmission service.

18. While it is difficult to generalize, given the flexibility afforded in this Final Rule, we expect that in most transmission organizations with organized electricity markets the process for obtaining a long-term firm transmission right will not be substantially different from the current procedures. Most transmission organizations will be able to use their current allocation/auction systems to allow load serving entities to nominate source-to-sink transmission rights on a longer-term basis than is currently available. Transmission organizations will then assess those requests for feasibility and award a feasible set of transmission rights, as they do today. This Final Rule also allows the transmission organization to place reasonable limits on the total amount of capacity it will offer as long-term rights. Thus, this Final Rule does not necessarily guarantee that a load serving entity will be able to obtain long-term firm transmission rights to hedge its entire resource portfolio or be able to obtain all the long-term firm transmission rights it requests. Once long-term rights are awarded to a load serving entity, however, this Final Rule requires that they be fully funded over their entire term, as discussed in guideline (2) below.

19. As we noted in the NOPR and reaffirm in this Final Rule, transmission organizations must provide the opportunity for market participants to obtain long-term firm transmission rights that are not currently available by supporting an expansion or upgrade of grid transfer capability. The Commission's policy is that market participants that request and support an expansion or upgrade in accordance with their transmission organization's prevailing rules for cost responsibility and allocation must be awarded a long-term firm transmission right for the incremental transfer capability created by the expansion or upgrade. The transmission organization tariffs must clearly and specifically provide for this arrangement, if they do not already. Guideline (3) addresses this requirement. This will enable load serving entities to obtain long-term rights that they may have requested but not received due to infeasibility.

20. Moreover, in this Final Rule we also require transmission organizations with organized electricity markets to explain how their transmission system planning and expansion policies will ensure that long-term firm transmission rights, once allocated, remain feasible over their entire term.

21. Together, these provisions will ensure that transmission systems are expanded where necessary to ensure the continued feasibility of allocated long-term firm transmission rights, while also giving market participants an explicit right to obtain new incremental transmission rights on a long-term basis, in accordance with the prevailing cost allocation methodology in the region.[22]

22. We understand that specifying and allocating long-term firm transmission rights supported by existing transfer capability will raise difficult issues that must be addressed by transmission organizations and their stakeholders as proposals are developed to comply with this Final Rule. As we discuss in more detail, we believe that the approach we adopt in this Final Rule will give transmission organizations and their stakeholders sufficient flexibility to design long-term firm transmission rights that fit their prevailing market design while also ensuring that the rights have certain fundamental properties necessary to achieve Congress's objectives in section 217(b)(4) of the FPA. We also clarify below that while each guideline permits flexibility in its implementation, transmission organizations with organized electricity markets must satisfy each of the guidelines in this Final Rule.

23. This Final Rule largely adopts the overall approach as well as the specific guidelines and definitions proposed in the NOPR. In response to the comments received, however, the Commission has made the following changes to the proposal, as discussed in this preamble:

- *Guideline (3) (Rights Made Available by Expansion Go to Parties That Pay for the Upgrade):* We have removed the requirement that the term of long-term rights from expansion be equal to life of facility or a lesser term requested by the party paying for the upgrade. Based on the comments on the difficulty of defining life of facility, we will defer to transmission organizations to develop terms based on existing market rules and stakeholder needs. We encourage transmission organizations to harmonize the terms for long-term rights awarded for new capacity with the terms of long-term rights to existing transmission capacity as much as possible.
- *Guideline (4) (Term of Rights Must Be Sufficient To Hedge Long-Term Power Supply Arrangements):* We have added a provision that transmission organizations and stakeholders may determine the length of terms and use of renewal rights to provide long-term transmission rights, but must offer coverage for at least a 10-year sequence. Our objective is to balance regional flexibility in defining terms of rights with the need to ensure that those terms are sufficient to allow load serving entities to hedge their long-term power supply arrangements.
- *Guideline (5) (Load Serving Entities With Long-Term Power Supply Arrangements Have Priority to the Existing System):* We have revised this guideline in two respects. First, we have eliminated the preference for load serving entities with long-term power

[20] As we discuss in more detail below, while we do not believe major changes to existing allocation procedures will be necessary, Congress did not intend to protect existing or future allocation methodologies from the implementation of section 217(b)(4) of the FPA. *See* new section 217(c) of the FPA, Pub. L. 109–58, § 1233, 119 Stat. 594, 958–59.

[21] Capacity available would be limited to that which is generally available and excludes capacity that is the exclusive right of a participant, *e.g.*, a participant that paid for such capacity and obtained FTRs for that payment.

[22] We are not requiring any ''obligation to build'' that does not already exist under Order No. 888.

supply arrangements and replaced it with a broader preference for load serving entities in general vis-à-vis non-load serving entities. This broader preference is fully supported by the statute and better meets the needs of organized electricity markets. We believe that Congress's intent in enacting section 217 was to provide long-term firm transmission service to load serving entities and that load serving entities in general should be ''first in line'' for long-term transmission rights when existing capacity is limited. As originally proposed, guideline (5) could have disadvantaged load serving entities who do not engage in long-term power supply arrangements, a result that we do not believe Congress intended. Proposed guideline (5) could have also presented difficult administrative burdens for transmission organizations, including the burden of evaluating power supply contracts to determine if they qualify for the preference. In addition to addressing these concerns, broadening the preference also makes it possible for transmission organizations to apply the same basic principles for allocating long-term firm transmission rights that they currently use for the initial allocation of short-term firm transmission rights, or auction revenue rights. As a result of this change in the guideline, load serving entities will not be required to provide evidence of a long-term power supply arrangement.

We have also revised guideline (5) to allow transmission organizations to place reasonable limits on the amount of existing transmission capacity made available for long-term firm transmission rights. We have done so in recognition of the expected reluctance of transmission organizations to commit all of their existing grid capacity to long-term firm transmission rights due to uncertainty regarding load growth, changes in power flows and the full funding requirement of this Final Rule. This will also help to accommodate load serving entities that prefer short-term rights. In addition, commenters claim that the principal need for long-term firm transmission rights is to support long-term power supply arrangements for base load generation, not peaking or intermediate generation.

- *Guideline (8) (Balance Adverse Economic Impacts):* We have elected not to adopt this guideline in the Final Rule. This guideline is not needed as it requires, in effect, nothing more than adherence to the FPA requirement that public utility tariffs must be just and reasonable and not unduly discriminatory. Moreover, it could have been misinterpreted to require long-term firm transmission right proposals to meet a different or higher standard, something the Commission did not intend or believe that Congress intended.
- *Definition of ''Long-Term Power Supply Arrangement'':* Because we have deleted the reference to ''long-term power supply arrangements'' from guideline (5), that term is only used in guideline (4), relating to the term of long-term firm transmission rights. The Final Rule removes the specific definition of long-term power supply arrangements proposed in the NOPR, and addresses issues related to our definition of long-term power supply arrangements under guideline (4).
- *Transmission Planning and Expansion:* This Final Rule requires that each transmission organization with an organized electricity market implement transmission system planning and expansion procedures to accommodate long-term firm transmission rights that are allocated or awarded to ensure that they remain feasible over their entire term. We also require each such transmission organization to make its planning and expansion practices and procedures publicly available, including both the actual plans and any underlying information used to develop the plans.

B. Definitions

1. Organized Electricity Market

24. In the NOPR, the Commission proposed to define ''organized electricity market'' as ''an auction-based market where a single entity receives offers to sell and bids to buy electric energy and/or ancillary services from multiple sellers and buyers and determines which sales and purchases are completed and at what prices, based on formal rules contained in Commission-approved tariffs, and where the prices are used by a transmission organization for establishing transmission usage charges.'' [23] The Commission stated that it proposed this definition to ensure that the Final Rule in this proceeding applies to any transmission organization that is the transmission provider in its region and has a day-ahead and/or real-time bid-based energy market, administered by the transmission organization itself or by another entity. We sought comment on the scope of this proposed definition.

Comments

25. AMPA [24] and Public Power Council both argue that the proposed definition is too narrow and should be expanded to include ''Day 1'' RTO/ISO markets, non-RTO/ISO markets, and other forms of ''organized markets'' (which can include bilateral markets that use a form contract).[25] Public Power Council argues that the proposed definition could lock the Commission into adopting the types of markets described in the definition to the exclusion of other types of markets, and that section 217 of the FPA does not support the Commission's narrow reading.

26. Other commenters argue that the definition should be narrowed. TAPS, for example, asserts that the Final Rule should not apply in regions where the OATT provides for long-term physical transmission rights, particularly the Southwest Power Pool. According to TAPS, the last clause of the definition of organized electricity markets (''where the prices are used by a transmission organization for establishing transmission usage charges'') excludes SPP because the prices produced by its imbalance market will not establish transmission usage charges. TAPS requests that the Commission clarify that as currently designed SPP will not be subject to the Final Rule.

27. PG&E, EPSA and TAPS all state that because the proposed rule primarily addresses markets that use locational market-based congestion management mechanisms like LMP and have FTRs, the Final Rule should clearly state that it only applies to those markets, and only addresses long-term financial transmission instruments. PG&E recommends that the Commission issue a parallel rule providing for long-term transmission rights in markets that do not use a market-based congestion management mechanism.

28. In reply comments, NRECA opposes proposals to narrow the definition of organized electricity market, arguing that the need for long-term firm transmission rights and the language of the statute are not limited to transmission organizations with locational pricing structures.

29. APPA states that it supports the proposed definition of organized electricity market, but suggests that it be revised to replace ''auction-based market'' with ''a centralized market'' because use of ''auction-based'' implies that buyers and sellers in RTO markets have more choice and autonomy than they do in practice.

Commission Conclusion

30. We will adopt the definition of organized electricity market proposed in the NOPR with one modification. Specifically, we modify the first clause of the definition to state that organized electricity market ''means an auction-based *day ahead and real time wholesale* market * * *.'' We make this modification to clarify the application of this Final Rule and ensure that the definition captures the transmission organizations with organized electricity markets using LMP and FTRs to which Congress directed the Commission to apply this Final Rule to in section 1233(b) of EPAct 2005. Today, those electricity markets do not offer financial transmission instruments supported by

[23] NOPR at P 8.

[24] A list of commenters on the NOPR and the acronyms used to refer to them in this preamble is attached as Appendix A.

[25] NRECA, while not recommending any change to the proposed definition, notes that the issues raised over the availability of long-term firm transmission rights also arise in transmission organizations without Day 2 markets and on the systems of non-independent entities.

existing capacity with terms longer than one year, and thus entities are not able to obtain a ''firm'' transmission right on a long-term basis in those markets as section 217(b)(4) of the FPA directs. As a result, they are appropriately the focus of this Final Rule.

31. The Commission will not expand the definition to include other RTO/ISO regions (sometimes called ''Day 1'' markets), non-RTO/ISO transmission providers, or any other electricity market structure. Applying the Final Rule to non-RTO/ISO markets would not be appropriate because EPAct 2005 requires us to implement section 217(b)(4) in this rulemaking in ''transmission organizations with organized electricity markets,'' and non-RTO/ISO transmission providers by definition are not transmission organizations.[26] And while Public Power Council is correct that there may be other electricity market structures, the definition we adopt here is only for the purposes of this Final Rule and is crafted to ensure that the appropriate entities are subject to the Final Rule. Additionally, as we noted in the NOPR, non-RTO/ISO transmission providers and other RTO/ISOs offer long-term physical transmission service under the Order No. 888 OATT without rates that vary with congestion costs.[27] The Commission recently issued a NOPR in Docket Nos. RM05–25–000 and RM05–17–000 that would institute reforms to the OATT. It is more appropriate to consider in that rulemaking any issues related to the application of section 217(b)(4) of the FPA to the other markets identified by commenters, particularly issues related to coordinated, open and transparent transmission system planning.

32. In response to TAPS, we clarify that SPP is not subject to this Final Rule because its current market design does not fit within the definition of organized electricity market that we adopt for purposes of this rule.

33. Finally, we decline to revise the ''auction-based'' language as APPA requests. This language simply recognizes that the organized electricity markets Congress intended to be subject to this Final Rule are those that utilize auction mechanisms for the buying and selling of electric energy. We note that we are adopting this definition for the purposes of this Final Rule only, and do not intend that it will necessarily apply in other contexts.

2. Load Serving Entity and Service Obligation

34. We proposed to define ''load serving entity'' and ''service obligation,'' for purposes of the proposed rule, exactly as Congress defined those terms in new section 217 of the FPA. Specifically, we proposed to define load serving entity as ''a distribution utility or electric utility that has a service obligation.'' [28] We proposed to define service obligation as ''a requirement applicable to, or the exercise of authority granted to, an electric utility under federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.'' [29]

Comments

35. APPA, E.ON, NRECA, PG&E and Public Power Council all express support for the proposed definitions.

36. Several commenters (including Industrial Consumers, CAISO, NARUC, National Grid and SDG&E) argue that the proposed definitions in the NOPR would exclude several entities that should be eligible for long-term firm transmission rights because they are not a ''distribution utility'' or ''electric utility.'' These entities include industrial customers who serve their own load pursuant to state law, several types of retail service providers, community aggregators, and various non-public utilities. The comments generally seek clarification that all of these various entities are ''load serving entities'' for purposes of this rule.

37. More specifically, Industrial Consumers and Alcoa explain that while many large industrial customers are permitted under state law to self-supply their own load, usually by registering as a retail provider, not all of these states use the term ''load serving entity.'' Industrial Consumers argue that entities who have qualified as retail electric providers under state law meet the definition of ''electric utility'' under EPAct 2005, and request that the Commission unambiguously state that entities who are qualified to serve retail load under state law, including those self-supplying, are load serving entities for purposes of the Final Rule and thus qualify for long-term firm transmission rights.

38. Regarding retail service providers, several commenters (including CAISO, EEI, NARUC and National Grid) seek clarifications regarding whether various types of service providers in retail access states are load serving entities under the proposed definition. NARUC notes that states with retail choice programs either may have multiple sellers of electricity to end users, or may use an auction process whereby the distribution utility takes delivery of the power supply and bills the cost to customers, making it the only seller.[30] To protect and accommodate these choices made by the states, and to be consistent with Congress' intent that the protections in section 217 of the FPA be available to all customers, it asks the Commission to clarify that all of these entities are ''electric utilities'' and/or ''distribution utilities,'' thereby making them load serving entities and eligible to obtain long-term firm transmission rights.[31] OMS, noting specifically that Illinois utilities will soon be required to use an auction process to procure supply and that auction winners under this format would not meet either definition, asks the Commission to revise the definition of load serving entity to replace ''a distribution utility or electric utility'' with ''an entity,'' and revise the definition of service obligation to replace ''electric utility'' with ''entity.'' EEI and National Grid both note that under certain retail access structures service obligations (including the default service obligation) may be reassigned for terms that are less than the term of long-term firm transmission rights. EEI asserts that the proposed definition of load serving entity should be clarified to be simply the distribution utility, unless its service obligation has been reassigned, while National Grid suggests that the load serving entity

[26] This is not to say that there might not in the future be types of transmission organizations other than ISOs and RTOs approved by the Commission that operate transmission facilities and provide transmission service. The new FPA definition of transmission organization leaves open this possibility. At the current time, however, RTOs and ISOs are the only such organizations approved by the Commission.

[27] While transmission organizations with organized electricity markets are also expected to have OATTs that meet the requirements of Order No. 888, the total cost of transmission service in those transmission organizations varies with the cost of congestion, and such transmission organizations only offer FTRs to hedge congestion costs with short-terms.

[28] NOPR at P 7, *citing* Pub. L. 109–58, § 1233, 119 Stat. 594, 957. EPAct 2005 defines electric utility as ''a person or Federal or State agency (including an entity described in section 210(f)) that sells electric energy.'' Pub. L. 109–58, § 1291, 119 Stat. 594, 984.

[29] NOPR at P 7, *citing* Pub. L. 109–58, § 1233, 119 Stat. 594, 958.

[30] National Grid notes that pursuant to state law, its distribution utilities have at various times been required to contract with wholesale suppliers to meet their load obligations (including congestion cost exposure), while in other retail choice programs those responsibilities have been directly assigned to retail suppliers.

[31] In its reply comments, NARUC reiterates its request, further stating that the Commission should clarify that vertically-integrated utilities, municipal utilities and cooperatives in traditionally regulated states, power suppliers in retail states, and distribution utilities or auction winners in other states are all ''electric utilities'' and/or ''distribution utilities,'' and thus eligible to obtain long-term firm transmission rights.

should be the electric utility when it holds the service obligation, and the distribution utility in the first instance. National Grid also asserts that the Commission should clarify that the term ''electric utility'' is defined in section 3(22) of the FPA (any ''person or Federal or State agency * * * that sells electric energy''), which would encompass both municipal utilities and merchant suppliers not normally subject to state regulation.

39. Santa Clara asserts that the definition of load serving entity should include non-public utilities (as defined in section 201(f) of the FPA), subsidiary agencies of non-public utilities, and entities in which non-public utilities hold an interest (such as joint action agencies), since each either serve load under statutory obligations to serve or facilitate such service. Similarly, California DWR and MWD argue that the Commission should revise the definition of load serving entities to include water pumping entities.[32] They assert that in new section 217(g) of the FPA, Congress recognized a need to expand the definition of load serving entity to include such entities.[33] To comply with section 217(g), California DWR and MWD contend that the Commission should revise the proposed definition to define load serving entity to mean ''a distribution utility, or an electric utility that has a service obligation, *or other wholesale transmission user that owns generation facilities, markets the output of federal generation facilities, or holds rights under one or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation.''* [34]

40. MSATs seek clarification that as stand-alone transmission companies that do not own generation or distribution facilities, buy or sell energy, serve loads or act as transmission customers or market participants, they are not considered load serving entities under the Commission's proposed regulations.

41. Ameren asks the Commission to clarify that the definition of service obligation includes future obligations, and not just obligations existing at the effective date of the Final Rule, which it states will provide certainty and reassure load serving entities that long-term firm transmission rights will continue to be made available in the future.

42. Commenters (including CAISO, PG&E and NU) also raise issues and seek clarification specifically with regard to the application of the service obligation definition in retail access frameworks, and particularly seek clarification as to whether a default service obligation is a ''service obligation.'' According to CAISO, these clarifications are important because they will impact the eligibility rules for long-term firm transmission rights and the rules for transferring those rights as end-users switch providers. Commenters such as PG&E assert that entities holding the default service obligation, even though they may not be serving the load now, must be able to plan to meet that load should they be required to serve it in the future. Coral Power states that the definition of service obligation should be expanded because as proposed by the Commission, it only applies to distribution companies or entities that provide electric service to end-users under contracts. It argues that the definition should include wholesale power suppliers that provide hedging services to competitive retail suppliers or that have assumed load obligations under default service or retail access programs.

43. Commenters (including NU and PG&E) also raise issues with the ''long-term contracts'' language in the definition, arguing that it has the potential to discriminate against load serving entities in retail access jurisdictions, since such entities do not typically enter into long-term power supply contracts. NU argues that in New England, the definition would favor municipal utilities (whose customers are not included in retail access programs) and utilities from outside the region that serve load through New England resources.[35] Accordingly, it asks that the Commission narrow the definitions to limit eligibility for long-term firm transmission rights to entities that serve customers within the same region.

Commission Conclusion

44. In the Final Rule, the Commission is adopting the definitions of load serving entity and service obligation provided by Congress in EPAct 2005 and proposed in the NOPR. We believe using these definitions as Congress provided them will most closely effectuate the intent of Congress in section 217(b)(4) of the FPA. We will, however, offer several clarifications.

45. At the outset, we note that the definition of load serving entity is important in this Final Rule only in that it establishes a priority in the allocation of long-term firm transmission rights when necessary under guideline (5). It does not determine eligibility for long-term firm transmission rights, as some commenters suggest. All market participants are eligible for long-term firm transmission rights.

46. In response to National Grid, we clarify that the term ''electric utility,'' as used in the definition of load serving entity, is defined in section 3(2) of the FPA as ''a person or Federal or State agency (including an entity described in section 201(f)) that sells electric energy.'' [36] This expansive definition will cover many of the entities for which commenters seek clarification as to their status as load serving entities.

47. With regard to large industrial customers who self-supply their own load, while some of these entities may not technically ''sell * * * electric energy,'' we construe them to be load serving entities for purposes of this Final Rule, to ensure that Congress's objectives in section 217 of the FPA are fulfilled. Thus, transmission organizations should treat them as such when complying with this rule.

48. With regard to non-public utilities, the Commission notes that the definition of electric utility discussed above, as amended by EPAct 2005, includes ''an entity described in section 201(f)'' of the FPA, *i.e.* non-public utilities. As a result, they are within the definition of load serving entity, provided, of course, that they have a service obligation. Additionally, in response to California DWR and MWD, we note that the definition of load serving entity provided by Congress appears to already capture water pumping entities, which are non-public utilities. New section 217(g) of the FPA provides that ''[t]he Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load serving entities pursuant to this section.'' [37] In light of this Congressional

[32] MWD notes that its water pumping operations require large amounts of power (roughly 2–3 percent of California's total energy requirement), and that these operations require long-term transmission rights to achieve reliable water delivery.

[33] Specifically, section 217(g) provides that ''[t]he Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load serving entities pursuant to this section.'' *See* Pub. L. 109–58, § 1233, 119 Stat. 594, 959.

[34] Reply Comments of California DWR at 9.

[35] Comments of NU at 3–4.

[36] 16 U.S.C. 796(22) (2000), as amended by EPAct 2005, Pub. L. 109–58, § 1291(b)(1), 119 Stat. 594, 984.

[37] Pub. L. 109–58, § 1291(b)(1), 119 Stat. 594, 984.

directive, we clarify, to the extent necessary, that water pumping entities with the characteristics described in section 217(g) are load serving entities for purposes of this Final Rule.

49. MSATs request that we clarify that stand-alone transmission companies are not load serving entities for purposes of this rule. We clarify that as described by MSATs, stand-alone transmission companies that do not own generation or distribution facilities, buy or sell energy, serve loads or act as transmission customers are not load serving entities for purposes of this Final Rule. We emphasize, however, that this clarification should not be read broadly to suggest that other types of stand-alone transmission companies (either existing or that might be developed) with different characteristics from those described by MSATs will not be load serving entities under this Final Rule. The Commission will consider these issues on a case-by-case basis, as necessary.

50. In response to those seeking clarifications regarding various types of retail service providers, we note that many retail service providers will be a ''person * * * that sells electric energy,'' thus making it an electric utility and, consequently, they can be a load serving entity provided they have a service obligation. The Commission cannot decide here, however, whether each possible entity operating in state retail electric markets will meet the definition of load serving entity. We agree with NARUC, however, that Congress intended to broadly protect the ability of load serving entities with service obligations to obtain transmission service. Thus, transmission organizations should ensure that different types of retail service providers that have service obligations are accommodated when implementing the Final Rule.

51. As noted above, commenters raising issues regarding the application of the service obligation definition in retail access frameworks focus primarily on the default service obligation, which generally (with variation from state-to-state) requires the entity subject to that obligation to provide electric service to customers who do not have another supplier (either because they did not choose one or because their supplier left the market). Under the definition provided by Congress, a default service obligation only becomes a service obligation for purposes of this rule when the entity holding the default obligation is actually required to serve the load, *i.e.* when the competitive supplier either stops serving the load or the load switches to the default supplier. A default service obligation only becomes ''a requirement applicable to, or the exercise of authority granted to'' the default supplier when it must actually serve the load. We understand the concerns expressed by PG&E and others that a utility holding the default service obligation must plan to serve that load should it be required to do so in the future. Transmission organization rules currently provide that auction revenue rights (ARRs) or FTRs will generally ''follow the load'' in instances where load switches suppliers; guideline (6), discussed below, also requires that long-term firm transmission rights allocated to load serving entities be reassignable. As a result, when default suppliers assume the service obligation, they will receive transmission rights that they can use to serve the default load. While we are aware that those transmission rights may not match the resources that the default supplier will use to serve the load, this is a problem that already exists today, and is not a result of our adoption of Congress's definition of service obligation. Transmission organizations may consider whether any rules are necessary (such as allowing or requiring holders of long-term transmission rights to turn back those rights for reallocation) to deal with this problem.

52. We decline to revise the definitions of load serving entity and service obligation to replace ''distribution utility or electric utility'' and ''electric utility'' with ''an entity,'' as requested by OMS. Congress chose to use these terms to limit these definitions, and we are not persuaded to change them here, and do not believe such a change is necessary to address OMS's concern. While OMS may be correct that auction winners under Illinois' procurement mechanism may not meet these definitions, the Illinois utilities that procure electric energy under this mechanism and resell it to their customers (under their service obligation) presumably meet the definitions of load serving entity and service obligation, and thus should be able to obtain long-term firm transmission rights to deliver that energy to load. Similarly, we decline to define load serving entity to be only the distribution utility, unless its service obligation has been reassigned, as requested by EEI, or to be the distribution utility in the first instance, as requested by National Grid. This would limit the definition provided by Congress, which chose to include electric utilities (other than distribution utilities) that have service obligations in the definition, and we are unsure how these revisions would address EEI and National Grid's concerns. As we note above, when load serving obligations are reassigned, the new entity serving that load will be a load serving entity and have a service obligation under the definitions in this Final Rule, and associated transmission rights will ''follow'' that load. Any problems associated with transmission rights whose term is longer than the transferred service obligation may be addressed in proposals to implement this rule; revising these definitions do not appear to resolve such concerns.

53. In response to Ameren, we clarify that the definition of service obligation, as written by Congress and adopted by the Commission in this Final Rule, includes future service obligations and not simply those existing on the effective date of this rule. Nothing in that definition, or in section 217(b)(4)'s charge that the Commission exercise its FPA authority in a manner that facilitates the planning and expansion of transmission facilities and enables load serving entities to obtain long-term firm transmission rights, suggests that service obligations should be limited to those existing as of the effective date of this rule.

54. Finally, we will not revise the definition in response to the concerns raised by NU and PG&E regarding the ''long-term contracts'' language in the definition of service obligation. The definition provides that a service obligation is either ''a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law *or* under long-term contracts * * *.'' (emphasis added). Thus, having a long-term contract to serve load is not necessary to have a service obligation under this definition. Load serving entities in retail access jurisdictions will be interpreted to have a service obligation under this rule if they are either required, or have been given authority, under state law to provide electric service. Thus, we do not believe the definition results in any discrimination against load serving entities in those jurisdictions or gives any favor to municipal utilities not included in retail access programs.

3. Long-Term Power Supply Arrangement

55. We noted in the NOPR that while new section 217(b)(4) of the FPA requires the Commission to exercise its authority to enable load serving entities to obtain long-term firm transmission rights ''for *long-term power supply arrangements* made * * * or planned''

to meet service obligations, Congress did not define ''long-term power supply arrangements'' in the legislation.[38] Based on language in section 217(b)(1) of the FPA, we proposed to define long-term power supply arrangements as ''the ownership of generation facilities, rights to market the output of Federal generation facilities with a term of longer than one year, or rights under one or more wholesale contracts to purchase electric energy with a term of longer than one year, for the purpose of meeting a service obligation.'' [39]

Comments

56. NRECA and PG&E support the proposed definition. Public Power Council also supports the proposed definition with two ''editorial suggestions.'' First, it suggests removing the phrase ''with a term of longer than one year'' after ''Federal generation facilities'' because it is redundant. Second, it suggests replacing the word ''rights'' where it appears before the phrase ''to market the output of Federal generation facilities'' with ''authority or obligation,'' since federal Power Marketing Agencies (like BPA) have a statutory obligation, rather than a ''right,'' to market the output of their facilities.[40]

57. Commenters taking issue with the proposed definition addressed three primary issues: (1) The ''longer than one year'' language, (2) whether the definition should include specific criteria, and (3) whether the definition unduly discriminates against load serving entities in retail access states.

58. APPA argues that the Commission should not define ''long-term power supply arrangements'' as ''longer than one year,'' and should instead harmonize this definition with minimum term of long-term firm transmission rights discussed in guideline (4). PJM and TAPS also state that this language is unreasonable, and argue that ''long-term power supply arrangements'' should be defined as those with a minimum term of 10 years. According to TAPS, this change would appropriately limit the availability of long-term rights to those long-term power supply arrangements most poorly served by annual FTRs, particularly baseload and renewable power arrangements with terms longer than 10 years.

59. Some commenters suggest that the Commission revise the definition of ''long-term power supply arrangements'' to require that they have certain specific characteristics. CAISO and PG&E, for example, suggest that to make more transparent the process of validating requests for long-term rights, ''long-term power supply arrangements'' should designate specific resources. Others argue that to prevent inefficient allocations of long-term firm transmission rights, the Commission's definition should require ''long-term power supply arrangements'' to be firm for their entire term, specify specific amounts of energy, and be for both capacity and energy. Wisconsin Electric suggests that the definition exclude peaking facilities. Wisconsin Electric also asks that the Commission clarify that long-term leasing arrangements or other arrangements, in addition to ownership, qualify as ''long-term power supply arrangements.''

60. In response to CAISO, CMUA states that while it agrees that contracts with flexible points of delivery are an implementation issue that must be addressed, it is concerned that CAISO's proposed modification is too narrow. According to CMUA, if CAISO's proposed modification would make long-term transmission rights available only for unit contingent contracts, it would create upheaval in the bilateral markets of the West, where power supply contracts with multiple resources are common.

61. NSTAR suggests that the combination of this definition and guideline (5) results in a long-term firm transmission right that is not available to (and thus unduly discriminates against) load serving entities that provide default service in retail access states because such entities do not enter into ''long-term power supply arrangements,'' as defined in the rule. According to NSTAR, these entities do not generally own generation and do not enter into long-term power supply contracts either because of the variable nature of their service obligation from year to year or because state regulatory requirements limit them to short-term power purchase agreements. According to NSTAR, requiring long-term power supply arrangements (including generation ownership or purchased power contracts) would conflict with section 217's overall purpose to protect the transmission rights of all end users and deal a blow to competitive retail electric markets by benefiting long-term rights holders at the expense of retail access loads holding shorter-term rights. NSTAR suggests that the Commission correct this problem by adding ''or other arrangements for the purpose of meeting a service obligation on a long-term basis'' to the definition.

Commission Conclusion

62. As discussed in more detail below, the Commission is removing from guideline (5) the requirement that, in order to have priority in the allocation of long-term firm transmission rights from existing capacity, a load serving entity must hold long-term power supply arrangements. Therefore, that term is only used in the final regulations in guideline (4), relating to the term of long-term firm transmission rights. Accordingly, we are removing the definition of long-term power supply arrangements from the Final Rule, and will generally discuss issues related to our definition of long-term power supply arrangements under guideline (4), particularly with regard to the length of such arrangements. The discrimination arguments raised by certain parties in response to the proposed definition are discussed under guideline (5).

4. Transmission Organization

63. In the NOPR, we proposed to define ''transmission organization'' as ''a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other independent transmission organization finally approved by the Commission for the operation of transmission facilities.'' [41] This proposed definition is similar to the definition of transmission organization provided by Congress in EPAct 2005, except that we added the term ''independent.'' We explained in the NOPR that we added ''independent'' because we interpret section 1233(b) of EPAct 2005 to require that long-term firm transmission rights be made available by independent entities that are approved by the Commission (either currently or in the future) to operate transmission facilities and have organized electricity markets.

Comments

64. EPSA, PG&E and PJM all support the Commission's proposal to include ''independent'' in the definition of transmission organization.

65. APPA and AMPA, while supportive of the Commission's addition of the word ''independent'' to the definition of ''transmission organization'' provided by Congress, note that this addition raises questions regarding the level of independence required to be considered a ''transmission organization.'' Both raise

[38] NOPR at P 9 *citing* Pub. L. 109–58, § 1233, 119 Stat. 594, 958.

[39] NOPR at P 9.

[40] Public Power council notes that the Commission could also interpret rights as a description of these statutory obligations.

[41] NOPR at P 6.

the question of whether ICT's are ''transmission organizations.'' APPA argues that an ICT should not be considered an independent transmission organization because it is employed and paid solely by the transmission-owning utility. APPA adds, however, that it assumes the Commission will apply a ''flexible, yet vigilant'' standard to determine the independence of transmission organizations.[42] AMPA, for its part, asserts that given the broad intent of EPAct 2005, the Commission should consider applying the NOPR to all organized electricity markets with independent transmission providers, to ensure that all load serving entities will receive protection for their service obligations and long-term price certainty.

66. Public Power Council, on the other hand, specifically opposes the addition of the word ''independent,'' arguing that it unduly restricts the definition adopted by Congress, which intended that any organization finally approved by the Commission for the operation of transmission facilities (whether or not independent) would fall under the statute. According to Public Power Council, Congress instead chose to qualify ''other transmission organization'' with the phrase ''finally approved by the Commission for the operation of transmission facilities,'' meaning any such transmission organization falls under the statute whether or not it is independent.

Commission Conclusion

67. The Commission will adopt the definition of transmission organization proposed in the NOPR. In section 1233(b) of EPAct 2005, Congress narrowed the Commission's implementation efforts to ''Transmission Organizations * * * with organized electricity markets,'' even though the overall directive of section 217(b)(4) applies more broadly. We believe that it is reasonable to interpret the more focused directive in section 1233(b) as principally requiring that the Commission implement section 217(b)(4), through rulemaking, in the current independent RTOs and ISOs that operate centralized markets for the purchase of electric energy and/or ancillary services, and any similar transmission organizations that are created in the future. This does not mean, however, that the requirements of section 217(b)(4) will not apply to other transmission providers. The Commission is simply adopting a definition of transmission organization for purposes of this Final Rule that it believes comports with Congress's intent, expressed in section 1233(b) of EPAct 2005, that the Commission act specifically with regard to transmission organizations with organized electricity markets.

68. In response to comments concerning the level of independence required to be a transmission organization, we note that prior to approving transmission organizations (such as RTOs and ISOs) with organized electricity markets, the Commission makes specific findings, based on established standards, that the entity is independent from market participants. We do not believe any further determination or separate standard is required for purposes of this rule.

69. With regard to comments seeking to clarify whether proposed independent coordinators of transmission are transmission organizations under this Final Rule, we note that these proposals are still developing. Moreover, to date none of these proposed entities has proposed to implement an organized electricity market as defined in this Final Rule. As a result, the Commission will not address whether such entities meet the definition of transmission organization unless and until such time as they propose to establish an organized electricity market.

C. Commission Interpretation of EPAct 2005 Requirements

70. In addition to the comments below regarding our flexible approach in the NOPR, several entities submitted comments generally addressing our interpretation of the requirements of new section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005 with respect to long-term firm transmission rights in organized electricity markets. Comments regarding specific interpretations of the statutory requirements that we made in connection with the proposed guidelines are addressed elsewhere in this Final Rule.

Comments

Long-Term Transmission Rights from Existing Capacity

71. Some commenters, particularly Cinergy, Coral Power and NYISO, argue that the Commission misinterprets section 217(b)(4) and section 1233(b) of EPAct 2005 as requiring the long-term firm transmission rights be made available from existing capacity. They assert that those provisions only require the Commission to exercise its authority to facilitate the planning and expansion of transmission facilities in a manner that allows load serving entities to secure long-term transmission rights. Thus, they contend that the Commission inappropriately gives independent effect to the second clause of the statute (''enables load serving entities to secure firm transmission rights * * * on a long-term basis''), when the true thrust of the law is its first clause (''[t]he Commission shall exercise * * * [its] authority * * * in a manner that facilitates the planning and expansion of transmission facilities * * *''). The second clause, they contend, only modifies the first.

72. In reply comments, APPA, New England Public Systems, NRECA, Peabody, and TAPS urge the Commission to reject Cinergy's interpretation of the statute. In general, they state that the Commission correctly reads section 217(b)(4) as providing two directives: (1) Facilitating transmission planning and expansion, and (2) enabling load serving entities to obtain long-term transmission rights for their long-term power supply arrangements. TAPS argues, for example, that nothing in the statute's long-term rights clause restricts such rights to new capacity, as Cinergy and others suggest, and further asserts that such a reading would inappropriately ''sell short'' and render both the long-term rights and planning provisions a nullity. Similarly, APPA contends that if planning and expansion were all Congress sought to address, it would not have included the second clause of section 217(b)(4).

Need To Require Long-Term Financial Rights

73. Cinergy and others note a difference between long-term transmission rights and long-term FTRs. According to Cinergy, load serving entities can already acquire long-term transmission rights, and Congress would have used ''and'' instead of ''or'' if it intended to require RTOs to also provide long-term FTRs.[43] IPL similarly argues in its reply comments that the creation of long-term firm transmission rights or long-term financial transmission rights is not statutorily mandated, and as a result must be justified in the record, since it is a ''stark departure from past practices.''[44] IPL states that section 217(b)(4) is properly implemented by ensuring that load serving entities can obtain either firm or financial transmission rights on a long-term basis.

74. In response to these arguments, APPA argues that the term ''firm

[42] Comments at APPA at 11.

[43] Comments of Cinegry at 14.

[44] Reply comments of IPL at 7.

transmission rights'' was meant to refer to the physical transmission rights that exist in non-transmission organization markets (since the statute covers all regions), and that the inclusion of the phrase ''or equivalent tradable or financial rights'' was intended to address the FTRs used in transmission organization markets. According to APPA, the network service contract and associated payment toward the fixed cost of the transmission system does not cover transmission congestion costs. Only an FTR covers these costs and ''firms up'' the total cost of transmission service, APPA contends. Finally, it, along with NRECA and TAPS, state that if Cinergy's assertion that transmission organizations already provide long-term transmission rights in compliance with the statute is correct, then section 217(b)(4) was unnecessary and did nothing.

Disruption of Current Market Designs or Allocation Methods

75. Some entities, including IPL, Midwest ISO and NYISO, argue that Congress did not intend for the Commission, when implementing section 217(b)(4), to disrupt current market designs or existing transmission rights allocation methodologies. Of these entities, some argue that nothing in section 217 suggests that the Commission require major changes to the existing auction-based FTR systems, and that it would be consistent with section 217 for the Commission to allow transmission organizations to retain their current systems so long as they offer long-term financial transmission rights. Midwest ISO, for example, asserts that section 1233(c) of EPAct 2005 provides that Congress did not intend for the Commission to disrupt existing market designs that already offer long-term FTRs. Similarly, NYISO asserts that nothing in section 217 requires major changes to auction-based FTR systems, noting that this section expressly recognizes that financial rights can be equivalent to physical rights and expressly protects established FTR allocation systems. According to NYISO, the Commission could, consistent with section 217, allow transmission organizations and their stakeholders to retain their current systems so long as they offer long-term FTRs. IPL states, in part, that Congress was aware of the current transmission rights constructs in the organized markets, and by using the phrase ''or equivalent tradable or financial rights,'' ''at the very least left open the possibility that the Commission might use existing financial rights designs to achieve the statutory objectives.'' [45] NYISO also contends that nothing in section 217 requires transmission organizations to offer any rights with longer terms than they already do, noting that section 217 only requires that rights be ''long-term'' without saying what that means. PJM, while generally supportive of the Commission's NOPR, nevertheless notes that section 217(c) preserved existing FTR allocation methodologies, and argues that Congress sought to complement rather than replace current transmission rights allocation methods.

76. NYAPP, in reply comments, objects to NYISO's contention that nothing in section 217 requires transmission organizations to offer any rights with longer terms than they already do, arguing that this interpretation would render section 217(b)(4) a nullity.

77. Midwest TDUs notes in its reply comments that Midwest ISO is subject to a specific directive to consider the preservation of existing transmission rights. Specifically, Midwest TDUs point out that under section 217(c), which shields the other established transmission organizations from the impact of section 217(b)(1) through (b)(3), Midwest ISO is subject to that section's ''provided, however'' clause, thus requiring the Commission to take into account existing rights held by a load serving entity as of January 1, 2005 (prior to the commencement of the Midwest ISO organized electricity market).

Commission Conclusion

78. As noted above, many of the specific interpretations of section 217(b)(4) of the FPA made by the Commission are discussed below with regard to the guidelines adopted in this Final Rule. However, in this section we address more general comments regarding our interpretation in the NOPR of the requirement of section 217(b)(4) and section 1233(b) of EPAct 2005.

79. First, the Commission believes it correctly interpreted section 217(b)(4) of the FPA as containing two separate directives: (1) To exercise its authority to facilitate planning and expansion of transmission facilities, and (2) to enable load serving entities with long-term power supply arrangements used to meet their service obligations to obtain firm transmission rights on a long-term basis. We conclude that this interpretation of the statute is the most reasonable.[46] Cinergy's interpretation of the relevant statutory language as requiring only that the Commission facilitate planning and expansion of transmission facilities in a manner that that allows load serving entities to secure long-term transmission rights is unreasonable in light of the actual statutory language used by Congress. When it drafted section 217(b)(4), Congress separated the first clause (requiring that the Commission exercise its FPA authority to facilitate the planning and expansion of transmission facilities) and the second clause (''and enables load serving entities to secure firm transmission rights * * * on a long-term basis'') with a comma, indicating two separate requirements. The comma is also followed with the word ''and,'' further suggesting that Congress intended them as two separate directives. No language in the statute suggests that the two clauses are part of a single directive to the Commission.

80. Moreover, a reading of section 217 in its entirety suggests that Congress intended for the Commission to both facilitate planning and expansion and enable that load serving entities can obtain long-term firm transmission rights. As a whole, section 217 is directed to protecting the ability of load serving entities with native load service obligations to obtain firm transmission service to satisfy those service obligations.[47] Directing transmission organizations with organized electricity markets to provide long-term firm transmission rights from both new and existing capacity is fully consistent with this statutory directive. Furthermore, if Congress only intended to direct the Commission to facilitate planning and expansion of transmission facilities in a manner that enables load serving entities to obtain long-term firm transmission rights, it would not have included the long-term firm transmission rights language in a second, separate clause. Finally, the directive in section 1233(b) of EPAct that the Commission implement this provision within one year in transmission organizations with

[45] *Id.*

[46] *See e.g., Chevron, U.S.A., Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 844–45 (1984) (noting that where Congress has expressly left a gap for an agency to fill, the agency's interpretation of the statute is giving weight unless it is ''arbitrary, capricious, or manifestly contrary to the statute''); *see also Acosta* v. *Gonzales,* 439 F.3d 550, 552–53 (9th Cir. 2006) (noting that courts defer to agency regulations that are based on a permissible construction of the statute).

[47] Common principles of statutory interpretation support reading section 217 as a whole to ascertain its intent. *See. e.g., United States* v. *Andrews,* 441 F.3d 220, 223, (4th Cir. 2006) (noting that statutory phrases are not construed in isolation, and are instead read as a whole).

organized electricity markets (where only annual rights to existing capacity are available) strongly suggests that Congress intended for the Commission to direct such transmission organizations to begin offering long-term rights from existing capacity. A reasonable interpretation is that Congress believed FTRs to capacity at the time of enactment were not sufficiently long, and therefore directed the Commission to make longer-term rights to existing capacity available.

81. We disagree with comments suggesting that section 217(c) immunizes existing market designs and transmission rights allocation methods from the implementation of section 217(b)(4). The ''savings clause'' in section 217(c) specifically provides that ''[n]othing in subsections (b)(1), (b)(2), and (b)(3)'' of section 217 shall affect the existing or future methodologies of certain transmission organizations; that clause *expressly* omits subsection (b)(4) from its protections. As a result, section 217 permits the Commission to require changes to existing market designs and transmission rights allocation methods if necessary to implement section 217(b)(4). This does not mean that the Commission will require such changes or that section 217(b)(4) requires changes to existing designs and allocations in all cases; if a transmission organization can offer long-term firm transmission rights that satisfy each of the guidelines in this Final Rule while retaining its current systems, it may do so. We emphasize, however, that transmission organizations must provide long-term firm transmission rights that satisfy each of the guidelines in this Final Rule even if doing so requires changes to existing systems.

82. Additionally, we disagree with suggestions that transmission organizations already provide long-term firm transmission rights, and that creation of long-term financial transmission rights in this rulemaking is unnecessary. While transmission organizations may provide firm ''physical'' transmission rights on a long-term basis, the cost of transmission service in transmission organizations that use LMP to manage congestion is dependent on the cost of that congestion. We agree with APPA that for a transmission right to be ''firm,'' it must be firm as to both quantity and price. In the LMP context, this means ''firm transmission rights'' must be firm as to both the ''physical'' component of the right and the ''financial'' component of the right. FTRs can hedge congestion costs (when matched to the physical path of the transmission right) and make transmission rights in an LMP system ''firm,'' but are currently only available for one year. As a result, to comply with the directives of section 217(b)(4) and section 1233(b) of EPAct 2005, transmission organizations with LMP and FTRs will need to offer FTRs with longer terms to truly enable load serving entities to secure firm transmission rights on a long-term basis. Further, we disagree with Cinergy's contention that the ''or equivalent tradable or financial rights'' language in the statute suggests that transmission organizations can offer either long-term physical rights or long-term financial rights. Rather, we agree with APPA that this language was intended to address the FTRs used in transmission organizations with organized electricity markets and congestion management systems (primarily LMP) that impact the cost of transmission service. We read this language as requiring the Commission to exercise its FPA authority to enable all load serving entities to obtain firm transmission rights on a long-term basis, whether they are located in a region with more traditional ''physical'' transmission rights or a region that uses LMP and FTRs.

83. Finally, we disagree with NYISO's contention that section 217 does not require transmission organizations to offer transmission rights with longer terms than those they currently offer. While some transmission organizations could in theory have sufficiently long-term transmission rights and thus would not be required to offer longer terms, if the current transmission rights offered by all transmission organizations were sufficient, it is unclear why Congress would have included the second clause of section 217(b)(4) at all. Moreover, it is reasonable to conclude that Congress believed not all transmission organizations were offering sufficient long-term firm transmission rights given that it focused the Commission's attention in section 1233(b) of EPAct 2005 on those entities, and given the fact that long-term firm transmission rights are available today in regions without transmission organizations with organized electricity markets. We believe it is reasonable to conclude that Congress was aware that the current terms for transmission rights offered by transmission organizations were insufficient and drafted section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005 together to require that they offer rights with longer terms.

D. Commission's Approach, Regional Flexibility, and Regional Seams Issues

84. In the NOPR, the Commission proposed a flexible regional approach to satisfying the requirements of section 1233(b) of EPAct 2005. Specifically, we proposed to establish a set of guidelines for the design and administration of long-term firm transmission rights in organized electricity markets. Following the establishment of these guidelines in the Final Rule, we proposed to allow each transmission organization subject to the rule to develop specific long-term firm transmission right designs through its usual stakeholder process that would fit the prevailing regional market design.

85. We stated that this flexible approach was appropriate because there is no ''one size fits all'' long-term firm transmission right design that could be implemented in each of the various transmission organization markets. However, we stated further that flexible regional development must occur within guidelines, to ensure that the specific long-term firm transmission rights ultimately proposed by transmission organizations have certain properties that are fundamental to meeting the objectives of section 217(b)(4) of the FPA. Nonetheless, the NOPR stated our intent that the guidelines form only a framework for further, more specific development of long-term firm transmission right designs through the usual stakeholder process of each transmission organization, and noted that the guidelines should provide enough flexibility to allow transmission organizations and their stakeholders to develop a specific long-term firm transmission right design that fits the prevailing market design and meets the needs of market participants in that region.

86. Finally, we noted the potential that this flexible regional approach could lead to regional seams issues, and sought comments on any features of long-term firm transmission rights that, if not consistent across transmission organizations, could interfere with the effective operation of regional markets.

Comments

87. Several commenters, including Industrial Consumers, Kentucky PSC, LADWP, LIPA, Midwest ISO, MSATs, NARUC, National Grid, NYDPS, NYISO, PJM, Public Power Council, SoCal Edison, and Wisconsin Electric all support the Commission's proposal to develop guidelines, as opposed to specific long-term firm transmission rights designs, to allow for regional flexibility. Many of these commenters argue that regional flexibility is essential, given that each transmission organization has developed its own market design to meet the needs of its stakeholders and to accommodate regional differences (including different

operating practices). They contend that regional flexibility is also necessary to honor the transitions already agreed to by transmission organization stakeholders.

88. While the commenters were virtually unanimous that a ''one-size fits all'' approach to implementing long-term firm transmission rights would not be appropriate, the comments raise issues regarding the amount of flexibility that the Commission should provide. Some commenters, including Dominion, EEI, ISO–NE, and NSTAR argue for more flexibility, including flexibility within the requirements of each guideline. For example, EEI states that the Commission should issue only ''basic principles'' that focus on ''reasonable outcomes,'' and should treat the guidelines as ''a general direction for future action'' instead of imposing them as prescriptive requirements.[48] EEI also suggests that the Commission alter the general direction under section (d) of the proposed regulations to provide that ''[t]ransmission organizations * * * *should to the extent they find reasonable given their existing arrangements* make available long-term transmission rights that satisfy the following guidelines.''[49] Further, EEI contends that no single guideline can or should be mandatory, and that transmission organizations and their stakeholders should be given the first opportunity to balance the guidelines to best meet market participant needs. ISO–NE argues that section 217(b)(4) permits substantial flexibility, since it does not require several design features (including creating a ''perfect hedge'' for load serving entities, a particular length of term, or a priority mechanism.) New York Transmission Owners argue that the Commission should clarify that the guidelines are not binding or mandatory obligations, and that they do not predetermine any particular result or design for long-term firm transmission rights.

89. Some commenters in New England and New York, including NU and Coral Power, note that there has not been great demand for long-term firm transmission rights in those regions. Accordingly, NU argues that the Commission should allow regional flexibility in determining the extent to which such rights are needed.[50] In reply, New England Public Systems assert that the clear statutory directive makes arguments regarding the lack of interest in long-term rights or the lack of need for such rights irrelevant.[51]

90. NSTAR states more generally that imposing a Final Rule on long-term firm transmission rights that is inconsistent with the structure of a transmission organization market, particularly a well-developed market reflecting an extensive history of market operations, would be ''disruptive and counter-productive.''[52] Accordingly, NSTAR advocates that the Final Rule allow the greatest latitude possible to stakeholders in established transmission organization markets to develop rules for long-term firm transmission rights. It argues that section 217(c) of the FPA (stating that subsections (b)(1), (b)(2) and (b)(3) do not affect existing or future transmission right allocation methodologies) recognizes the historical practices followed by transmission organizations and permits the Commission to defer to such practices, even if they are deemed to differ from practices embodied in subsections (b)(1) through (b)(3) of section 217.[53]

91. Reliant states that the Commission should recognize ongoing stakeholder-driven efforts in several existing transmission organizations to develop long-term firm transmission rights, and provide sufficient leeway for such markets to provide access to long-term rights.

92. BPA states that in general it supports the Commission's flexible approach, and states that the Commission should allow sufficient flexibility so as not to preclude formation of transmission organizations with regionally-developed characteristics, such as the developing proposals in the Northwest.[54] It argues that the Final Rule should address how the guidelines will apply to transmission organizations in the process of forming organized electricity markets.

93. Midwest ISO states that the Commission should consider the detrimental effect some of the proposed guidelines could have on Midwest ISO market participants and should ensure that the terms it ultimately adopts allow sufficient flexibility to ensure that they can work in the Midwest ISO markets.

94. Others, including APPA, New England Public Systems and TAPS, argue that regional flexibility should not be offered too broadly. They assert that the Commission should make clear that the Final Rule gives regions the flexibility to decide how to implement long-term rights, but not the flexibility to decide whether to implement them at all. NRECA also supports some regional flexibility, but states that there must be adequate minimum guidelines to ensure that the objectives of section 217 of the FPA are met. APPA and TAPS both assert that the Commission explicitly require transmission organizations to fully comply with the provisions of the Final Rule, and also suggest that the Commission consider renaming the guidelines ''requirements'' or ''standards'' to ensure that there is no implication that the guidelines are only advisory and may be disregarded. Similarly, PG&E, while also supportive of the Commission's approach, recommends that the Commission further require transmission organizations ''to fulfill the guidelines of the ultimate rule to the maximum extent compatible with the realities of their market and legal environment.''[55]

95. Some commenters, including Midwest TDUs and Industrial Consumers, express concern that the use of stakeholder procedures will not result in the development of long-term firm transmission rights that satisfy the intent of the Commission and Congress. Midwest TDUs express concern that ''the stakeholder process will be used to eviscerate long-term rights'' given the Midwest ISO's ''evident resistance to long-term rights'' and the opposition of some Midwest ISO stakeholders.[56] They state further that ''[i]mplementation of these Congressionally-mandated rights in a manner that achieves their crucial purpose cannot depend on TDU's ability to overcome Midwest ISO's resistance or out-vote other stakeholders.''[57] Industrial Consumers state that they and other industrial and customer groups have had concerns that some transmission organization stakeholder processes do not have the proper balance to guard against one side of the market gaining an upper hand over the other. Accordingly, Industrial Consumers recommend that the Commission provide guidance to ensure that the stakeholder processes used to develop long-term firm transmission rights will include a balanced composition of stakeholders, and require each compliance filing to

[48] Comments of EEI at 11.

[49] *Id.* at 18.

[50] NU notes in reply comments that a working group has been formed within NEPOOL to ''address whether the development of [long-term transmission rights] in New England can be accomplished.'' Reply Comments of NU at 1.

[51] Reply Comments of New England Public Systems at 6–7.

[52] Comments of NSTAR at 11.

[53] New England Public Systems argues in response to NSTAR that section 217(c) does not provide any basis for the wide flexibility NSTAR advocates, since that section expressly omits reference to section 217(b)(4).

[54] *See also* Reply Comments of BP Energy at 10 (agreeing).

[55] Comments of PG&E at 5.

[56] Reply Comments of Midwest TDUs at 6–7.

[57] *Id.* at 7.

include a statement by the transmission organization that the stakeholder process was fair and impartial and did not discriminate against load and load serving entities.

96. With regard to the potential for the Commission's flexible approach to create regional seams issues, comments address both the potential for seams between transmission organizations and between transmission organization regions and non-transmission organization regions. Some commenters, including APPA and PG&E, note that different term lengths for long-term firm transmission rights and different processes for the allocation of long-term rights (including different timetables) are two areas where seams could arise. TAPS states that the Commission should require transmission organizations to provide a mechanism that allows load serving entities to obtain long-term transmission rights that cross seams and ensure that those rights continue if new or different seams emerge, and should require transmission organizations to coordinate their schedules for allocating long-term rights that cross seams. BPA also notes the possibility that a load serving obligation might be met with a resource outside the transmission organization, and states that in such situations ''the transmission organization should continue to provide long-term transmission service for such deliveries under existing and renewed transmission contracts.'' [58]

97. TAPS and Wisconsin Electric express specific concerns regarding the potential for seams to develop between Midwest ISO and PJM. TAPS contends that the Commission should require close coordination between Midwest ISO and PJM with regard to the definition of long-term firm transmission rights and the process for obtaining such rights, arguing that a load serving entity should be able to obtain rights crossing the border on a consistent timeline (ideally through a single process) to support a commitment to baseload resources needed in both transmission organization regions. Wisconsin Electric argues that there must be consistency between the two regions with regard to the allocation of long-term firm transmission rights to ensure that a ''financial wall'' does not develop, which would inhibit the ability to flow energy under long-term contracts between the regions.

98. MidAmerican states that the Commission should require compliance filings to address resulting seams and how they will be resolved. MidAmerican, as well as NARUC, also note that these issues can and should be addressed in the Joint Operating Agreements and Seams Operating Agreements between transmission organizations. NARUC urges the Commission to clarify that tariff provisions designed to award long-term transmission rights will not adversely impact these seams agreements, and clarify that long-term rights granted within a transmission organization will not confer rights on the holder outside that market. According to NARUC, these clarifications are necessary to ensure that costs for upgrades or expansions are not transferred between transmission organizations or a transmission organization and non-transmission organization utility and to ensure that transmission rights in other regions are not adversely impacted.

99. Comments also generally addressed seams that might arise between transmission organizations and non-transmission organization regions. APPA, for example, notes that non-transmission organization regions use physical rights, and as a result financial and physical rights must coexist to ensure that future power supply and transmission service arrangements are not adversely impacted. CMUA states that because CAISO operates a market based on financial rights, while the rest of the Western Interconnection consists of bilateral markets with physical rights, any regional stakeholder process to develop long-term firm transmission rights in CAISO should include the Western Electricity Coordinating Council (WECC), neighboring control areas and relevant transmission owners in the West.[59]

Commission Conclusion

100. In this Final Rule, the Commission adopts the guidelines approach and the allowance for regional flexibility set forth in the NOPR. This approach will appropriately recognize regional differences in market design, while ensuring that long-term firm transmission rights have certain properties that are fundamental to satisfying the mandate of Congress in section 217(b)(4).

101. In response to comments seeking additional flexibility, we emphasize that we are adopting the guidelines approach to ensure that transmission organizations have the flexibility to design long-term firm transmission rights that fit their prevailing market design. This flexibility is not intended and should not be interpreted to allow transmission organizations the latitude to decide whether long-term firm transmission rights should be implemented at all. Congress has directed in both section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005 that load serving entities have the ability to obtain long-term firm transmission rights to meet their reasonable needs to satisfy their service obligations. Congress also specifically directed that such rights be implemented in the transmission organizations with organized electricity markets, through section 1233(b)'s charge that the Commission implement section 217(b)(4) within one year in those regions. As a result, the implementation of long-term firm transmission rights by transmission organizations with organized electricity markets is mandatory.

102. We reject comments suggesting that the guidelines be treated as merely general directives. As noted above, the guidelines are intended to ensure that long-term firm transmission rights have certain properties we believe are necessary to fulfill Congress' directives. Particularly, the guidelines are designed to ensure that the long-term firm transmission rights are truly ''long-term'' and ''firm,'' and that they can be used to deliver the output of long-term power supply arrangements to load serving entities, as section 217(b)(4) requires. As a result, transmission organizations must satisfy each of the guidelines when complying with the Final Rule. We have modified the proposed regulatory text to clarify this requirement.

103. With regard to flexibility within each guideline, the Commission believes that each of the guidelines already provides sufficient flexibility to allow transmission organizations to satisfy them in a manner that fits their individual market design. Each of the guidelines state basic, fundamental properties that long-term firm transmission rights must possess, but are not prescriptive market design mandates. Thus, while proposals to comply with this Final Rule must satisfy each of the guidelines, we believe each of the guidelines may be satisfied in any number of ways, and we do not intend that the guidelines predetermine any particular design.

104. In response to comments suggesting that there has been little demand for long-term firm transmission rights in New York and New England, we note that we agree with New England Public Systems that regardless of the level of interest in such rights, Congress has mandated that they be available to meet load serving entities

[58] Comments of BPA at 5.

[59] In response, CAISO notes that it has not and will not discourage such parties from participating.

reasonable needs. Thus, while we are adopting a flexible approach, that flexibility does not extend to deciding whether such rights are needed, as NU suggests it should. The fact that only a few stakeholders in a particular region seek long-term firm transmission rights can be a design consideration, however, as we discuss in more detail elsewhere in this Final Rule.

105. BPA asks that the Commission address how the guidelines will apply to transmission organizations with organized electricity markets that are being developed, and asks that we retain sufficient flexibility so that regional efforts to develop a transmission organization in the Northwest are not precluded. As we state above, we conclude that the guidelines approach in the Final Rule provides enough flexibility to ensure that long-term rights can be developed with regional characteristics while still meeting the statutory objectives of section 217(b)(4). Entities in the process of forming transmission organizations should take into account the requirements of this Final Rule and how the market designs they file will satisfy the rule.

106. In response to the comments of Industrial Consumers and Midwest TDUs regarding the use of stakeholder procedures to develop specific long-term firm transmission rights proposals, we do not believe it is necessary to specifically direct that any particular stakeholder procedures be used. Transmission organizations have Commission-approved procedures in place that specify the stakeholder process and conditions and criteria by which they may file proposals with the Commission. Comments suggesting that such procedures are flawed are outside the scope of this proceeding.

107. Regarding the potential for regional seams, the comments indicate that seams are most likely to develop where the terms of long-term rights and the procedures (including timelines) for allocating such rights are not sufficiently coordinated. We agree with commenters that transmission organizations should consider these issues when complying with the Final Rule. Additionally, we agree that revising the already existing seams agreements between transmission organizations, if necessary, could be one vehicle to address seams issues related to long-term rights that arise between transmission organizations. Accordingly, we direct each transmission organization to explain in its compliance filing how its proposal addresses potential seams issues, particularly with regard to the term of the long-term rights offered and the procedures and timelines for obtaining such rights. With regard to potential seams between transmission organizations, each transmission organization should also explain why it has or has not elected to revise its seams agreements.

E. Guidelines for the Design and Administration of Long-Term Firm Transmission Rights in Organized Electricity Markets

Guideline (1)—Specify Source, Sink and Quantity

108. As proposed in the NOPR, guideline (1) stated that the long-term firm transmission right should be a point-to-point right that specifies a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW). The discussion of this guideline pointed out that flowgate rights were not precluded from consideration as long as they could hedge a point-to-point transmission schedule.

Comments

109. Guideline (1) is generally supported by commenters. Most commenters recognize that current transmission organization market designs for specifying and allocating transmission rights largely adopt the source point and sink point requirements of guideline (1). But there are exceptions. In particular, some commenters note that ISO–NE does not allocate auction revenue rights on a point-to-point basis.

Flexibility in Source and Sink Designation

110. Several commenters request that guideline (1) explicitly recognize nodal aggregations, such as zones or hubs, as sources and sinks.[60] ISO–NE notes that spot market purchases by load are priced on a zonal basis in its system and that allocation of zone-to-zone long-term transmission rights would be more desirable than allocation of point-to-point rights. PJM Public Power Coalition, Public Power Council and Strategic Energy request that guideline (1) should not be interpreted to require that long-term rights are tied to specific generation resources, but rather to points or aggregates on the transmission system. Several commenters note that the boundary nodes can serve as sources or sinks.

111. Other source/sink designation issues pertaining to guideline (1) were raised by commenters that are, or will be, transmission customers but that are located outside the transmission organization markets. SMUD stresses that in California, long-term rights must be developed for transmission customers that use through and out service. SMUD argues that the Commission should require that allocation criteria for long-term rights will not be dependent upon where load is located, but rather on whether, by its use of the system, the customer will make substantial contribution to recovery of the transmission system's fixed costs.

Consistency of Current Market Rules With Guideline 1

112. Some commenters state that the current rules for allocating ARRs and auctioning FTRs in ISO–NE are not consistent with guideline (1) in combination with guideline (7). New England Public Systems notes that under the ISO–NE market rules, most ARRs are allocated among congestion-paying load serving entities on a zonal load ratio share basis. Each such load serving entity is paid the auction clearing price of an average FTR in the zone times the ratio of its peak load to the zonal peak load. This rule does not offer assurance that the revenues received will be sufficient to enable the load serving entity to acquire a specific point-to-point FTR across a particular congested path. New England Public Systems thus requests that the Commission confirm that in New England, FTRs awarded under the current rules cannot simply be extended in term. Instead, under guidelines (1) and (7), ISO–NE should provide either the allocation of point-to-point long-term transmission rights or point-to-point long-term ARRs that can be converted to long-term transmission rights.

Other Issues

113. CMUA, NRECA and SMUD argue that guideline (1) should be modified and clarified so that it does not rule out long-term rights with properties of Order No. 888 network service rights for network transmission customers. In particular, these commenters argue that long-term firm transmission rights should afford the customer the flexibility to change receipt and delivery points without penalty. In contrast, Cinergy argues that long-term rights should not be allowed to have characteristics of Order No. 888 network rights.

114. CMUA and SMUD request that guideline (1) not limit the ability of transmission organizations to consider other types of rights that meet the commercial needs of load serving

[60] *See, e.g.*, AEP, Coral Power, IPL, ISO–NE, NEPOOL, Reliant and TAPS.

entities. In particular, they discuss contractual rights that are ''bidirectional'' in nature to support seasonal power supply arrangements in the West and for which they propose option transmission rights in each direction of the transaction.

115. There were several miscellaneous comments on guideline (1). PJM states that the Final Rule would benefit from clarification that there are no requirements with respect to the nature of the right—i.e., physical versus financial—and explicitly state that this issue will be determined by the regions. We address this issue in Section II.F, ''Alternative Designs for Long-Term Firm Transmission Rights.'' APPA requests that as part of compliance with guideline (1), each transmission organization should be required to establish rules that prevent gaming of the long-term rights allocation by swapping of generation resources. This issue was raised by several other parties in conjunction with guideline (5) and we address it there.

Commission Conclusion

116. We will adopt guideline (1) without modification. The primary objective of guideline (1), consistent with section 217(b)(4), is to allow a load serving entity to obtain a long-term firm transmission right for purposes of hedging congestion charges associated with delivery of power from a long-term power supply arrangement to its load. Moreover, as several commenters noted, guideline (1) is largely consistent with existing designs for FTRs in the organized electricity markets operated by transmission organizations.

Flexibility in Source and Sink Designation

117. We clarify that guideline (1) permits specification of long-term firm transmission rights to hedge zonal or hub pricing where, for example, congestion prices are calculated using a weighted average of the locational marginal prices within a zone. Guideline (1) also permits specification of long-term transmission rights from points on the network, such as boundary locations, that are not the locations of specific generators. For customers with through and out service, we would expect that transmission organizations will establish long-term firm transmission rights corresponding to the terms and conditions of existing transmission contracts. However, if quantity limits are established for the allocation of long-term firm transmission rights, then rules may be needed to determine the eligibility of through and out service, based, for example, on historical usage patterns.

Consistency of Current Market Rules with Guideline (1)

118. Based on the comments, only ISO–NE has adopted a financial rights model for transmission rights that does not directly allocate rights that are point-to-point to eligible market participants. We will require ISO–NE to adopt rules for allocation of long-term firm transmission rights that are consistent with guidelines (1) and (7). However, as discussed below, we note that ISO–NE does not have to provide the same allocation rules for short-term rights as it does for long-term rights.

119. We understand that in some organized electricity markets, particularly in regions with substantial divestiture of generation capacity and retail choice such as that of ISO–NE, hedging particular generation resources with financial transmission rights is not the prevailing approach; rather, buyers and sellers have adopted portfolio approaches to power supply contracts and hold financial transmission rights based on their expected revenues from congested transmission paths rather than on their ability to hedge specific resources. We do not intend for this Final Rule to obstruct that business model, but note that other entities in these regions are not following such a business model. As a result, they seek transmission rights that hedge congestion charges associated with delivering power from particular generators to their load. Guideline (1) is intended to support the ability of load serving entities to obtain point-to-point long-term transmission rights that will hedge particular long-term power supply arrangements. Guideline (7) is intended to support the ability of load serving entities to obtain such rights without having to purchase the rights in an auction. We will thus require all transmission organizations to offer long-term firm transmission rights that are consistent with these guidelines. This is not to say that transmission organizations like ISO–NE must adopt new allocation rules and apply them for both short-term rights and long-term rights. To the extent that a transmission organization can satisfy requests for long-term firm transmission rights under these guidelines, but stakeholders prefer remaining with existing rules for short-term rights, we will consider proposals that use such a ''two-track'' approach. At the same time, as we discuss in guideline (2), there might be advantages to harmonizing at least some rules between short-term and long-term rights to ensure that the rules encourage efficient nominations and equitable allocations.

Other Issues

120. We will not modify guideline (1) to require allocation of long-term transmission rights with properties of Order No. 888 network service, as requested by NRECA and SMUD. In general, we have not precluded any design that stakeholders could agree on, but we do require that designs support equitable allocation of transmission rights (see discussion in Section II.F, ''Alternative Designs for Long-Term Firm Transmission Rights''). The right to change receipt and delivery points without penalty could, under most rules for allocation of financial transmission rights, deprive other load serving entities of their eligible rights.[61] Hence, the rules in organized electricity markets generally require parties that are converting Order 888 network rights to financial rights to select a fixed distribution of source points for their total MW eligibility over their network resources.

121. We will not modify guideline (1) to explicitly support ''bidirectional'' transmission rights. CMUA defines such rights as ''option'' rights in either direction. We discuss the difficulties in allocating option rights equitably in Section II.F, ''Alternative Designs for Long-Term Firm Transmission Rights.'' There are other solutions. Sufficient granularity of the transmission rights specified as obligation rights would allow the rights to better track the power flows in contractual arrangements. Guideline (1) also does not preclude flowgate rights, which have option properties. All of these approaches, and possibly others, could be used to address situations where power flows change direction on a regular basis.

Guideline (2)—Long-Term Hedge That Cannot Be Modified

122. As proposed in the NOPR, guideline (2) stated that the long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges (or other direct assignment of congestion costs) for the period covered and quantity specified. Once allocated, the financial coverage provided by the right should not be modified during its term except in the case of extraordinary circumstances or through voluntary

[61] For example, consider a load serving entity that is eligible for 100 MW of FTRs and that requests that the entire quantity is sourced at each of four network resources that it has historically used, each of which is capable of providing the full amount, thus encumbering up to 400 MW of transmission capacity.

agreement of both the holder of the right and the transmission organization. We refer to the provision that the payments from the rights should not be prorationed (with the exceptions as mentioned) as ''full funding.''

123. The NOPR sought comments on how to fully fund the long-term rights. Since the transmission organization is revenue neutral, fully funding the rights requires that a revenue shortfall is collected from some set of market participants to make holders of the rights whole. The NOPR asked whether such charges should be allocated to transmission owners that are responsible for maintaining and expanding the transmission capacity supporting the long-term firm transmission rights when the revenue shortfalls are due to inadequate maintenance or expansion. The NOPR further asked for comment on whether there are appropriate methods for allocating such charges that also provide appropriate incentives for transmission usage, maintenance and expansion. The NOPR also noted that payments to already awarded long-term rights may be prorationed in the case of extraordinary circumstances, such as a sustained unplanned outage of a large transmission line. Such situations may require alternative rules for financial settlement of the rights.

Comments

124. Guideline (2) drew strongly opposing views with regard to full funding for the term of the long-term transmission right and the question of who should pay to support full funding. Some commenters opposed full funding, arguing that it is not a viable option. Those who held this view also typically argued that full funding should be an option to be determined on a regional basis, and should not be mandated by the Commission. Other commenters strongly supported full funding. Among the latter commenters, and among those that opposed full funding but recognized that the Commission may nevertheless require it, there was significant disagreement over the set of market participants that should pay to provide the full funding guarantee and under what conditions. In particular, transmission owners were strongly against the proposal that they should provide a ''backstop'' to support full funding and rejected arguments that such a rule would have a positive incentive effect on transmission maintenance and investment.

125. There was general support for the proposal that extraordinary circumstances may result in a suspension of full funding, but several commenters requested clarification on what constitutes such circumstances.

Full Funding: Criticisms and Alternative Proposals

126. Several commenters oppose the proposed full funding requirement.[62] OMS and Midwest ISO state that full funding is inequitable, would cause significant cost shifting between market participants, and is beyond the scope of section 217(b)(4). Midwest ISO argues that requiring a ''perfect'' hedge clearly exceeds a load serving entity's ''reasonable'' needs. Moreover, cost shifting would take place because, if entities eligible for long-term firm transmission rights have priority in the allocation of transmission rights (as proposed in guideline (5) in the NOPR), they may limit the quantity of short-term rights available. Further, Midwest ISO is concerned that other parties may have to pick up revenue shortfalls associated with the long-term rights.

127. EEI, IPL, Midwest ISO, MSATs and OMS argue that full funding is a higher level of certainty for transmission rights than was available historically. Outside the organized markets, firm point-to-point and network transmission service have never been fully guaranteed. Rather, they have always been subject to potential curtailment through TLRs. They have also been subject to rate increases and redispatch costs. EEI argues that a long-term right that strives to provide a ''perfect hedge'' would be too expensive and that the Commission should instead aim for balance in the protection offered. IPL argues that section 217(b)(4) does not mandate a zero-risk solution for load serving entities, but rather to address their reasonable needs. IPL suggests that the Commission interpret what properties of financial transmission rights would provide reasonable risk mitigation equivalent to firm transmission rights under the OATT.

128. TAPS replies to such arguments by noting that it is seeking full funding only for long-term firm transmission rights used to deliver the output of baseload resources. Hence, for the remaining transmission usage, the holder would be exposed to uncertainty over the allocation of rights and hence congestion cost exposure.

129. Midwest ISO argues that full funding is not always necessary to provide a full hedge. This is because the revenues from point-to-point FTRs used to hedge congestion charges associated with a particular resource or portfolio of resources can be either greater than or less than the congestion charges paid by transmission customers.

130. CAISO argues that each transmission organization should be allowed to determine the rules for revenue sufficiency of financial transmission rights in a manner that best weighs the equities in each regional market. Similarly, CPUC is concerned that establishing a long-term revenue guarantee at the start of the CAISO's LMP markets will ''tie the hands'' of the CAISO if it needs to adjust the market design to improve implementation.

131. ISO–NE, which does not currently fully fund transmission rights, emphasizes the difficulty of assigning funding responsibility. ISO–NE urges the Commission to conserve stakeholder, transmission organization and Commission resources by not creating new sources of conflict in a region.

132. AEP argues that by creating fully funded long-term rights, guideline (2) does not provide flexibility to recognize system changes over the long-term. Similarly, IPL states that locking in rights shifts risks between parties rather than mitigating risk and may create greater risks over time. The transmission organization should be allowed to pre-define methodologies to adapt the rights to changing circumstances.

133. A number of commenters argue that full funding could provide disincentives for investment in transmission. For example, AEP argues that when doing proper planning and with the right incentives, the transmission organization must be continuously revising its forecasts of transmission and generation availability (*e.g.*, additions and retirements) to meet load growth. This will change the electrical configuration of the grid. By fixing transmission rights over the long-term with the full funding revenue requirements, the transmission organization could inhibit construction of new facilities that would provide greater benefits to customers.

134. Xcel argues that providing full funding in the event of a long-term change in grid capability could result in a perpetuation of windfall revenues or severe losses for holders of transmission rights and unjust socialization of those costs across the industry.

135. AF&PA believes that guideline (2) may be extremely difficult to implement in a nondiscriminatory fashion because of valuation issues associated with estimates of congestion cost for extended periods.

136. As an alternative to full funding, several commenters argue that in the event of revenue shortfalls, prorationing

[62] These include CAISO, EEI, IPL, ISO–NE, Midwest ISO, MSATs, NU, OMS, SoCal Edison and Xcel.

of payments should be the rule for long-term rights (as it is currently for annual FTRs in organized markets other than NYISO). NU argues that treating long-term rights differently from short-term rights would be discriminatory. Reliant argues that any prorationing of transmission rights payments due to revenue shortfalls should be allocated on a MW by MW basis to all transmission rights regardless of their terms. Beyond this principle, the Commission should let regional approaches determine the details. Cinergy and SoCal Edison state that in the event of revenue shortfalls, payments to holders of long-term rights should be rationed on a pro-rata basis. SoCal Edison argues that holders of long-term rights should factor the risk of revenue prorationing into the prices that they pay to procure those rights and into their long-term energy and capacity contracts.

137. In light of these concerns, a number of commenters argue, for various reasons, that the Commission should not mandate full funding, but rather leave it to regions to determine whether or not to pursue full funding.[63]

138. MSATs propose that full funding could be a voluntary insurance made available by third-party providers for an insurance premium. MSATs request that this option be considered in the Final Rule.

139. OMS argues that the full funding guarantee for long-term rights will make such rights more valuable relative to annual rights, assuming that the latter remain subject to prorationing. OMS argues that there could be two possible consequences: First, transmission organizations will be extremely conservative in the quantity of long-term rights that they allocate, and second, there will be a significant reduction in rights available for the annual allocation. Load serving entities will seek long-term rights and if the transmission organization cannot honor all requests, significant cost shifts will result. Hence, OMS proposes that fully funded long-term rights should be assessed a risk premium.

140. Ameren argues that rather than attempt to address the issue of revenue insufficiency through full funding guarantees, the solution is to address flaws in the transmission organization's simultaneous feasibility model. Ameren argues that if the modeling was more accurate, the allocation of financial transmission rights would be less likely to become revenue inadequate and uplift would be minimized. Ameren prefers that any remaining uplift associated with transmission rights should be assigned pro rata over all financial transmission rights holders.

Full Funding: Support and Clarification

141. A number of commenters are supportive of full funding of long-term rights.[64] However, there were differences in the scope of coverage that they proposed and how the costs of full funding would be allocated.

142. NYISO states that it is already in compliance with guideline (2) because its financial transmission rights (Transmission Congestion Contracts) are already fully funded, with transmission owners paying any revenue shortfalls. However, New York Transmission Owners argue that the transmission rights allocated in New York to support native load are not currently consistent with guideline (2) because they are allocated annually and the quantities may not be the same each year. To fix the quantities from year to year, they argue that NYISO would presumably have either to reduce the quantity allocated, create counterflow rights, or eliminate the simultaneous feasibility test, all of which could create congestion rent shortfalls in the day-ahead market. New York Transmission Owners argue that each of these choices is ''unpalatable'' and would upset the result of negotiations among them that led to the current allocation methodology. Hence, they argue that it is critical that the Commission ensure that NYISO and stakeholders have flexibility in the development of the rules for long-term rights.

143. TAPS argues that the full funding guarantee would place the burden on the transmission organizations to be accountable for the performance of the transmission rights that they allocate. TAPS further argues that to provide true certainty, guideline (2) should be paired with ''requirements that (1) the full cost associated with securing long-term rights (and applicable renewals) be established with reasonable certainty up front; and (2) RTOs broadly allocate responsibility for funding revenue shortfalls for long-term rights consistent with guideline (2)'s price stability goal.''[65]

144. New England Public Systems argue that full funding is consistent with the underlying principles of Order No. 888 and with section 217(b)(4). Under Order No. 888, holders of transmission contracts have the right to renew service when contracts expire, and transmission providers are required to plan and expand facilities to meet transmission customer needs. Transmission providers also bear redispatch costs, which provided a further incentive to expand transmission capacity to accommodate known or predictable uses. APPA similarly argues that full funding is consistent with section 217(b)(4). This is because that requirement is intended to provide financial certainty over the transmission component of the ''all in'' cost of a long-term generation resource.

145. A number of commenters, including TAPS, Public Power Coalition and Wisconsin Electric, propose that long-term rights should be allocated for a limited quantity of load serving entities'' load, specifically base-load. A few commenters, such as TAPS, also include rights to renewable generation resources. Hence, full funding would only extend to that quantity of rights. PJM agrees that a limited application of full funding is feasible.

146. A number of parties note that full funding will require a consistent approach to transmission planning and expansion to minimize the potential for cost shifting. We address the relationship of long-term firm transmission rights and transmission planning and expansion in Section II.E, ''Transmission Planning and Expansion.''

147. BPA suggests that while locational marginal pricing may not be the congestion pricing model adopted in the Pacific Northwest, the principles underlying guideline (2) should be upheld. BPA argues that cost stability for long-term transmission should prevail over concerns about equity and fairness of the allocation of long-term rights and associated costs among market participants.

Full Funding Cost Allocation

148. On the proper allocation of responsibility for revenue shortfalls, several commenters supporting full funding argue that some or all of the revenue shortfalls encountered by long-term rights should be funded by transmission owners. Industrial Consumers argues that transmission organizations cannot manage risks associated with financial transmission rights, and that such risks can only be managed by transmission owners.

149. A few commenters that support the assignment of full funding uplift to transmission owners argue for limits on the obligations of transmission owners. PJM Public Power Coalition states that transmission owners should be held accountable for inadequate maintenance

[63] *See, e.g.*, CAISO, CPUC, EEI, IPL, NEPOOL, NU, OMS, and Reliant.

[64] *See, e.g.*, Alcoa, Allegheny, APPA, BP Energy, CMUA, Coral Power, Industrial Consumers, New England Public Systems, NCPA, NRECA, NYISO, Peabody, PJM, PG&E, and TAPS.

[65] Comments of TAPS at 15.

practices or poor system planning and any resulting long-term rights funding shortfall should be assigned to them. Similarly, BP Energy argues that revenue shortfalls should be assigned to transmission owners only if they are due to negligence. NRECA and TAPS argue that the assignment of revenue shortfalls to transmission owners is appropriate only if the transmission owner fails to fulfill in good faith the transmission organization's instruction to plan and construct transmission facilities. Absent that situation, TAPS argues that funding responsibility should be broadly shared by all users of the transmission grid on a pro rata basis, since the failure is the transmission organization's failure to plan and expand the system.

150. Most transmission owning utilities and some other commenters argue that transmission owners should not be required to fully fund long-term rights (under most circumstances).[66] First, several of these commenters note that when a transmission owner joins a transmission organization, it cedes short-term control (*e.g.*, redispatch) of the transmission system, and as a result cannot manage any parties' exposure to congestion charges. Second, in the planning process, it is the transmission organization that must undertake the planning for upgrades and approve new transmission facilities to reduce congestion. Third, decisions of siting authorities and input of stakeholders significantly affect location of new facilities and when they are brought on-line. Fourth, due to the nature of power flows in a large regional transmission organization, it may be difficult to determine exactly which transmission owners are responsible for changes in transmission capability. Fifth, just as important to revenue adequacy as building new facilities is the design of the transmission rights and the modeling used in their allocation. Under most transmission organization rules, transmission owners cannot directly reduce the quantity of rights that are allocated or auctioned to manage their exposure to full funding uplift charges (although some commenters note that guideline (2) may create an incentive for the transmission owner to do so indirectly by providing the transmission organization with conservative ratings for transmission facilities). Moreover, transmission organizations control the development and implementation of the models that underlie FTR allocation. Sixth, transmission transfer capability is often affected by factors outside the transmission owners' and transmission organization's control, such as loop flow. Seventh, transmission owners would need the ability to raise transmission rates to cover funding obligations, through FERC and/or state commissions. IPL notes that since a proposed transmission facility (required for purposes of transmission rights held by others) may have limited local benefits, state approvals may be difficult to obtain.[67] Finally, IPL and PG&E argue that requiring transmission owners to fully fund long-term rights would serve as an incentive for transmission owners to leave transmission organizations.

151. IPL and Reliant argue that the Commission should not attempt to use the revenue sufficiency rules for long-term rights as an incentive for transmission investment, which is better addressed through separate incentives.[68] MSATs argue that the Commission cannot shift costs to transmission owners ''based solely on the mere *theory* that doing so might create some potentially worthwhile incentives.'' [69] MSATs argue that those supporting making transmission owners the ''backstop'' funders of long-term rights have failed to provide a ''sustainable justification'' for such a requirement.[70] Ameren argues that second guessing transmission owners' business decisions after a transmission outage or bottleneck would only distract attention and effort from planning, funding and designing needed expansions and repairs. For the reasons stated above, IPL and PG&E state that assigning full funding to transmission owners is arbitrary and unreasonable because it not consistent with cost causation principles.

152. MSATs note that transmission owners that are transcos (firms that own regulated transmission assets only) would be particularly problematic because such firms do not hold FTRs. MSATs ask that the Commission recognize that such a requirement would directly conflict with the transco business model for two primary reasons. First, transcos are neither transmission customers nor market participants. Hence, requiring transcos to take a position in the transmission rights markets would be inconsistent with their business model. It would also be inequitable to transcos. Second, transcos rely on a revenue stream that is far more concentrated than that of a vertically integrated utility. MSATs claim that the liability associated with underfunded transmission rights could exceed a transco's total transmission service-dependent revenue in some cases.

153. Allegheny argues that while it can support full funding, the transmission organization should be responsible for providing full funding through its transmission customers. Allegheny recommends that this charge be assessed on all long-term firm and network transmission customers. In a similar vein, PG&E argues that while full funding is desirable, it should be allocated to transmission organization customers, who benefit from long-term investment in energy infrastructure.

154. Several commenters propose that only the holders of long-term transmission rights be collectively allocated the costs of any revenue inadequacy associated with the rights.[71] For example, Duquesne recommends that holders of transmission rights be allocated any costs associated with deficiencies in transmission revenues, because these parties benefit from the transmission rights markets. IPL argues that pro rata sharing of funding shortfalls by all load serving entities with long-term rights is the only reasonable approach in the absence of a clear cost-causation relationship.

155. Midwest ISO proposes that to the extent that market participants should be responsible for long-term rights revenue shortfalls, a mechanism to ensure such cost recovery should be made part of ''economic'' transmission upgrades. Economic upgrades should be defined to include those required to maintain FTR feasibility based on a cost-benefit analysis. In contrast, APPA argues that the transmission planning process should take account of long-term rights and designate transmission facilities to maintain the feasibility of the rights as ''reliability'' upgrades.

156. TAPS argues that assignment of revenue shortfalls to holders of long-term rights would be the equivalent of pro-rationing the rights. Similarly, in its reply comments, APPA argues that holders of long-term rights should not be assigned funding shortfalls due to the

[66] *See, e.g.*, AEP, Ameren, BP Energy, Constellation, Dominion, Duquesne, EEI, IPL, Midwest ISO, MSATs, NU, NSTAR, PG&E, SoCal Edison and Xcel.

[67] For example, Allegheny argues that if the Commission requires full funding by transmission owners, it must also establish a mechanism that allows for automatic pass-through of the costs to ratepayers.

[68] For example, IPL cites the Commission's rulemaking efforts with regard to establishing Electric Reliability Organizations and Transmission Pricing Reform, and also the work of Midwest ISO's Regional Expansion Criteria and Benefits (RECB) Task Force. Comments of IPL at 6.

[69] Comments of MSATs at 11 (citing *North Carolina* v. *FERC*, 584 F.2d 1003, 1014 (D.C. Cir. 1978) (emphasis in the original)).

[70] Reply Comments of MSATs at 9.

[71] *See, e.g.*, Duquesne, E.ON, IPL, MSATs, NSTAR, and SoCal Edison.

failure of the transmission organization to plan for and ensure construction of necessary transmission facilities. APPA also notes that holders of long-term rights that are not transmission owners are least able to ensure that the transmission system can support them.

157. A number of parties express concern that funding of transmission rights may not be equitable between long-term and short-term rights.[72] CAISO argues that when considering rules for revenue inadequacy, long-term rights should not have elevated status over short-term rights. They maintain that even holders of long-term rights will typically hold some level of short-term rights. In parts of the West, where patterns of supply have a great deal of annual variability, giving longer-term rights preferential status will be inequitable with respect to the holders of short-term rights.

158. Cinergy, Midwest ISO and Suez are concerned that the funding guarantees in guideline (2) will shift costs from long-term contract holders to short-term contract holders. They argue that such cost-shifting will be unduly discriminatory and preferential and violate the Federal Power Act. Reliant agrees that cost-shifting will occur and proposes that the Commission provide a forum for discussion of ''best practices'' to maximize the availability of short-term and long-term rights to all customers.

159. In reply, APPA argues that because long-term firm transmission rights support long-term power supply arrangements, and the holders of such rights would be committed to paying a share of transmission fixed costs over the period of the rights, there is a legal and policy rationale for giving long-term rights more protection from proration or revenue insufficiency than holders of short-term rights.

Definition of Extraordinary Circumstances

160. Several commenters supported generally the inclusion of the exception to full funding under ''extraordinary circumstances.''[73] No commenters argued against such an exception, although several asked for clarification. ISO-NE encourages the Commission to clarify the definition of ''extraordinary circumstances'' that would permit modification of the financial coverage provided by long-term transmission rights.

161. TAPS asks that the definition of ''extraordinary circumstances'' be clarified such that it is only applied in the event of a catastrophic regional problem such as a widespread blackout or a massive *force majeure* event. TAPS argues that the example in the NOPR of a sustained unplanned outage of a large transmission line is ''precisely the type of situation when an LSE should not be stripped of its long-term rights.''[74] TAPS argues that in the event of a sustained line outage, long-term rights should remain fully funded and the shortfall uplifted, for example, on a load ratio basis. Similarly, APPA argues that the suspension of full funding should take place only if the situation should be ''truly extraordinary'' and not a contingency that should have been anticipated in routine transmission planning.

162. NRECA is concerned that the exception for ''extraordinary circumstances'' will undermine the certainty that guideline (2) is supposed to confer. NRECA requests that the Commission clarify when this exception would apply or remove it from the guideline.

Other Issues

163. BP energy argues that the full funding rule could result in market gaming in the event of a transmission outage. BP Energy suggests that the Commission consider the methodology to limit gaming adopted by ERCOT and the Texas PUC. When there is a revenue insufficiency, ERCOT limits the payment on an oversold FTR to its ''legitimate hedge'' value as established by substituting the resource's marginal cost for the LMP at the source (generation) node of the FTR. Any remaining revenue shortfall is uplifted to all FTR holders.

Proposed Revisions of Guideline 2

164. Several commenters propose revisions to guideline (2). EEI proposes to revise the guideline to state that the rights are financial, apply only to day-ahead congestion charges, and are subject to the transmission organization's rules and terms established prior to the introduction of long-term rights. EEI suggests that the guideline specify that the long-term right ''should'' rather than ''must'' provide a fully funded hedge.

165. In their reply comments, APPA, NRECA and TAPS oppose EEI's proposed revisions, arguing that they seek to weaken guideline (2) and frustrate Congress's purpose in enacting section 217(b)(4). In particular, they argue that EEI seeks to make full funding non-mandatory and subject to the transmission organization's existing rules rather than the Commission's guideline. In addition, NRECA argues that the rights should not be limited to financial rights or to day-ahead markets.

166. In addition to removing the requirement of full funding, IPL proposes adding the requirement that ''revenue shortfall funding shall be shared by all load serving entities that receive allocations of long-term financial transmission rights unless the transmission organization identifies a clear cost causation relationship that warrants other treatment and develops an appropriate allocation methodology through the stakeholder process and specifies that methodology in its tariff and contractual arrangements.''[75]

167. PJM proposes that guideline (2) be revised such that the ''quantity specified'' in the guideline is modified by ''such quantity to reflect, at a minimum, the baseload requirements of LSEs, as determined by the respective transmission organization/ISO regions.''[76]

Commission Conclusion

168. We will adopt guideline (2) with minor modifications.[77] Given that the term full funding has become shorthand for the financial coverage requirements of this guideline, we add this term in parentheses. Finally, because under market designs approved heretofore it is financial rights that provide revenues explicitly, we specify that the full funding requirement applies to financial long-term rights.

169. Thus guideline (2) as adopted in this Final Rule reads as follows:

> The long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term transmission right should not be modified during its term (the ''full funding'' requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

Requirement of Full Funding

170. We believe that the full funding requirement satisfies Congress' express directive in section 217(b)(4) that load serving entities with service obligations be able to obtain ''firm'' transmission rights or their equivalent on a long-term basis. In our view, ''firmness'' in this

[72] *See, e.g.*, CAISO, Cinergy, Midwest ISO, NSTAR, Reliant and Suez.

[73] In support, *see* BP Energy, NYISO, and PJM Public Power Coalition.

[74] Comments of TAPS at 16.

[75] Comments of IPL at 8.

[76] Reply Comments of PJM at 4.

[77] PJM's suggestion that the guideline incorporate quantity restrictions on the allocation of long-term firm transmission rights is addressed under guideline (5).

context refers primarily to two properties of the long-term transmission rights: stability in the quantity of rights that a load serving entity is allocated over time and ''price certainty'' for the load serving entity that seeks to hedge congestion charges associated with a particular generation resource or transmission path. If the rights are financial, which they are in almost all organized electricity markets, the latter property essentially requires minimizing the uncertainty in the ability of the rights' holders to cover congestion charges with the revenue from their transmission rights over the term of the rights. In our view, the objective of less uncertainty in revenues over the period of financial long-term rights will be aided by full funding. Hence, we find that full funding is consistent with the objectives of section 217(b)(4).

171. Full funding may have additional positive effects. By stabilizing the expected congestion hedge offered by the right, full funding should assist in financing generation investments that are dedicated to particular loads and assume consistent use of particular transmission paths over long periods, such as base-load plants. Stabilizing the expected value of the long-term rights may also improve their tradability. Further, the transmission organization and transmission owners may have incentives to minimize any resulting uplift through improved transmission system operations, planning and investment. We recognize that there may also be negative incentives from full funding, depending on how any uplift costs are allocated. For example, a transmission owner with long-term rights that poorly maintains its transmission network and causes more instances of deratings that result in congestion revenue shortfalls could be partially subsidized by other transmission owners that have better maintained systems. As we discuss below, transmission organizations and their stakeholders have latitude to propose a full funding uplift allocation to provide better transmission maintenance incentives, if they so choose.

172. There are also methods that could be used to minimize exposure to uplift caused by full funding. First, all current organized electricity markets that allocate financial transmission rights bank congestion surpluses (congestion revenues collected in excess of payments owed to transmission right holders) in a reserve fund over time so as to pay transmission rights in periods of congestion revenue shortfall. For example, in PJM, payments to transmission rights are only pro-rationed when the surplus fund is exhausted. If there is surplus remaining at the end of the year, it is distributed to market participants. This same principle could be applied to long-term financial rights, except that the surplus would be retained across multiple years. Second, as a few commenters suggested, a premium could be charged for fully funded long-term rights, which the transmission organization could additionally apply to such a reserve fund to minimize uplift charges or to set up an insurance policy for the rights holders themselves. Finally, as we discuss elsewhere in this Final Rule, transmission expansion provides a hedge against congestion revenue shortfalls.

173. A number of commenters, including AEP and IPL, are concerned that full funding will reduce the transmission organization's flexibility in adjusting holdings of transmission rights over time as system conditions change and perhaps render some rights infeasible. AEP is concerned that this might adversely affect transmission investment. While we appreciate these concerns, we must note that the purpose of this Final Rule is to provide more assurance regarding congestion charge hedges over a longer time frame than is available now. This necessarily implies a decreased ability to adjust holdings of transmission rights over time. This Final Rule allows substantial latitude to transmission organizations regarding such things as setting terms and renewal rights for long-term firm transmission rights, placing limits on the amount of capacity made available to those rights, and allowing full funding to be relaxed under extraordinary circumstances. We believe this strikes an appropriate balance between assuring long term congestion charge hedges and reliable operation of the grid. We encourage transmission organizations and stakeholders to consider other measures that allow the transmission organization to deal with revenue insufficiencies over time.

174. Several commenters argue that the Commission should not establish financial rights that offer some load serving entities a ''perfect hedge'' financially that is superior to the physical rights that they held prior to the formation of the organized market. We agree. We do not envision full funding as a perfect hedge. Since the transmission organization is revenue neutral, costs associated with the full funding guarantee must be allocated on some basis among market participants. Our guidelines do not establish a subset of load serving entities that would be exempt from such costs, although we discuss how the costs should be distributed in the paragraphs that follow.

Full Funding Cost Allocation

175. In general, we will allow transmission organizations the discretion to propose a method for allocating any uplift charges that result from fully funding long-term firm transmission rights. However, certain options proposed by commenters could result in unreasonable outcomes. We discuss some of these below.

176. One approach proposed by commenters would be to charge uplift necessary to support full funding directly to the load serving entities that hold the long-term firm transmission rights that have been made infeasible. Such a rule would largely undercut the relative congestion price certainty provided by full funding and would hence probably not be a reasonable outcome.

177. A second related approach would be to charge uplift to support full funding to a subset or the full set of load serving entities that hold long-term firm transmission rights. In this case, the degree to which the full funding requirement was adversely impacted would depend on the size of the set. In some regions, a small group of load serving entities may opt for long-term rights, in which case this rule could have almost the same impact as assignment of uplift directly to the holders of the rights made infeasible. On the other hand, if most load serving entities in a region opted for long-term rights (up to their eligibility), then the distribution of uplift charges over the set of rights holders would have a lesser impact and could be reasonable from all parties' perspective. Further, if transmission organizations decide to apply full funding also to short-term transmission rights, as discussed below, another potentially reasonable approach would be to distribute uplift charges over holders of both short- and long-term rights.

178. Both the NOPR and many of the comments on the NOPR discussed the possible assignment of uplift necessary to support full funding to transmission owners. Commenters discussed several variants, including the current NYISO rules that assign all or most of such uplift to support full funding of annual FTRs to transmission owners, and other more targeted proposals, such as the assignment of uplift costs in relation to performance of transmission maintenance. The Commission will allow regional discretion on these options and will examine the

reasonableness of such proposals on a case-by-case basis.

179. Some commenters argue that full funding of long-term rights would cause cost-shifting that would be unduly discriminatory and preferential with respect to short-term rights holders. We find that section 217(b)(4) can be reasonably interpreted to establish a due preference for load serving entities that seek to obtain long-term firm transmission rights. We have explained our interpretation of the relationship of firmness and full funding. However, as noted above, we encourage transmission organizations to evaluate whether the requirement to fully fund long-term rights, should be paired with full funding of short-term rights. Currently, most transmission organizations pro-ration payments to short-term FTRs in the event of a revenue shortfall. When fully funded long-term firm transmission rights become available, entities that would prefer to hold short-term rights may have an incentive to seek longer-term rights if the former are not fully funded and depending also on any other rules that affect the properties of transmission rights. Providing the same funding guarantee to all financial transmission rights and focusing on mechanisms to minimize the potential for uplift, as discussed above, could help load serving entities choose rights with term lengths that best suit their needs.

Definition of Extraordinary Circumstances

180. As noted above, we will adopt the provision in guideline (2) that allows for full funding of long-term firm transmission rights to be suspended in the event of extraordinary circumstances. This exception was intended to relieve the burden on parties that could be unreasonably impacted by the full funding requirement in such situations. There was general support for this provision, although a number of commenters sought further definition and clarification of extraordinary circumstances so that the exception would not be used to unreasonably narrow the application of the full funding requirement.

181. We agree with commenters that if the extraordinary circumstances exception is defined too broadly, it could be used to unreasonably diminish the value of full funding. Accordingly, we clarify that the definition of extraordinary circumstances, for purposes of this Final Rule, is limited to force majeure events that both render the set of outstanding long-term transmission rights infeasible and leave the transmission organization revenue inadequate, including both revenues from collection of congestion charges and availability of funds from a congestion charge surplus fund.

182. In response to APPA, we further clarify that transmission system contingencies that were considered in the allocation of transmission rights should be excluded from the definition of extraordinary circumstances. In general, the allocation of transmission rights will be subject to a contingency-constrained simultaneous feasibility test and hence such contingencies should not lead to revenue inadequacy if they occur as expected in the modeling assumptions. We recognize that the set of contingencies modeled by the transmission organization may change over time and this should be taken into account in the allocation of transmission rights. There may be further restrictions on the definition of extraordinary circumstances that are needed, and we will consider these as they are presented in compliance proposals.

183. TAPS argues that the conditions for suspension of full funding or application of alternative funding rules should be limited to ''catastrophic'' regional problems. TAPS is concerned that otherwise, holders of long-term rights will be exposed to congestion charge risk in periods when they most need coverage. While we recognize TAPS' concern, there is no obvious standard approach to this issue and so we find it more appropriate to allow transmission organizations and stakeholders to develop proposals. For example, in the event of extraordinary circumstances there could be a dollar amount that the transmission organization stakeholders agree to as an upper limit for full funding uplift before pro-rationing of payments to transmission rights holders begins. In addition, the rules for pro-rationing payments may themselves include averaging of uplift similar to full funding. Finally, in all likelihood, system emergencies that are catastrophic will lead to a suspension of market pricing and financial settlement rules and long-term transmission rights would presumably fall under those rules.

Other Issues

184. In response to BP Energy's concerns about market gaming associated with fully funded transmission rights in the event of a transmission outage, we will not endorse the methods being adopted by ERCOT, but will consider any approach that transmission organizations propose to ensure that the full funding guarantee is not subject to market manipulation.

Guideline (3)—Rights Made Available by Expansions Go to Parties That Pay for the Upgrade

185. As proposed in the NOPR, guideline (3) stated that long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions. The term of the rights should be equal to the life of the facility (or facilities) or a lesser term requested by the party paying for the upgrade or expansion. We also sought comment on the appropriate rules in the event that an entity that funds a capacity expansion seeks rights on existing transmission capacity to support a request for long-term rights.

Comments

186. Guideline (3) was generally supported by commenters, a number of whom noted that it roughly paralleled the existing rules for awards of transmission rights to parties that fund transmission upgrades and expansions. Of the existing transmission organizations, ISO–NE and PJM already provide long-term incremental rights for transmission upgrades, although their rules for assignment of such rights differ. New York ISO and Midwest ISO are developing such rules.

187. ISO–NE states that it awards auction revenue rights for transmission upgrades consistent with the intent of guideline (3) and that their term continues as long as the costs of the upgrades are supported or for the life of the upgrade, if shorter. PJM states that guideline (3) is generally consistent with its current rules, but notes that its rules for term lengths are slightly different from the proposed guideline, as discussed below.

188. New York ISO states that its tariff provides for the creation of incremental Transmission Congestion Contracts (TCCs) for upgrades. However, LIPA argues that NYISO has not finalized its process for awarding expansion rights, and that this has a negative impact on parties that construct additional transmission capacity.

189. As discussed above, Cinergy takes issues with what it argues is the Commission's overly broad reading of section 217(b)(4) of the FPA. Cinergy urges the Commission to ''provide a clear distinction between rights associated with transmission expansion and those for other long-term uses'' and

adopt a shorter term for long-term firm transmission rights over existing capacity, to provide a trial period to assess impacts on the system.[78] Similarly, NSTAR argues that only customers who finance transmission capacity expansion are entitled to long-term rights.

190. Conversely, New England Public Systems and NRECA seek clarification that load serving entities that are not directly paying for upgrades or expansion are not prevented from obtaining long-term rights.

Scope of Guideline 3

191. Many commenters ask that the scope of guideline (3) be clarified. In particular, commenters sought clarification of the types of transmission expansions the guideline was describing.

192. IPL and Midwest ISO argue that the long-term rights awarded for expansions should be subject to the same rules that will apply to other long-term rights. IPL proposes that guideline (3) be modified to emphasize that rights are awarded subject to the transmission organization's annual allocation metholodogies. Midwest ISO argues that rights for expansions should have no more or less certainty in terms of MW quantity or funding than any other long-term financial instrument.

193. Cinergy requests that guideline (3) make clear that entities who fund upgrades or expansions should ''enjoy the same rights to compensation and the same access to existing transmission capacity whether or not they are LSEs.'' Cinergy also asks for clarification that long-term rights for expansion are to be made available only to entities that make an upgrade for the purposes of transmission service from generation to load, and that such rights should not be available for upgrades that are undertaken through the transmission organization planning process for pool facilities.

194. Similarly, SDG&E requests that the Commission clarify that the recipients of long-term rights are those that actually pay the revenue requirements associated with the expansion or upgrade. In particular, SDG&E is concerned that third-party transmission sponsors that seek revenue recovery through rate base are not awarded transmission rights. E.ON argues that load serving entities that request transmission upgrades but do not fund such upgrades nor purchase a long-term transmission contract should not be eligible for long-term rights.

195. Several commenters, including Industrial Consumers and TANC, seek clarification that long-term rights will not be awarded to transmission projects that are subsequently rolled into rates.

196. A number of commenters raised questions about the relationship of guideline (3) and cost allocation methods for transmission upgrades and expansion. National Grid requests confirmation that guideline (3) does not require regions to revise their prevailing cost allocation methods. National Grid infers that guideline (3) refers to a model of participant funding and requests clarification that regions that have not adopted participant funding do not need to revise their methods. PJM also argues that the Commission should not disturb existing cost allocation methodologies by addressing the issue of participant funding versus socialization of costs.

197. TAPS requests that the Commission make clear that guideline (3) does not tie the availability of long-term rights from new transmission capacity to participant funding. TAPS asks that at a minimum, the guideline should make clear that where transmission organizations have moved to other methods of funding upgrades, long-term rights should be available from that capacity.

198. AEP cautions that because transmission upgrades are lumpy in nature, it is often difficult to assign properly the costs of transmission additions to those parties that receive the benefits. AEP notes that due to the difficulties in assigning such costs, there may be free-riders. Consequently, the transmission organization should conduct a regional planning process that identifies the upgrades and expansions that provide the greatest benefit to the region and funds this capacity through regional rate design.

Term of Rights for Upgrades and Expansion

199. Commenters differed over guideline (3)'s provision that long-term firm transmission rights allocated to the builders of new transmission facilities should be for the life of the facility. AF&PA and NRECA supported the proposal. However, other commenters argued for a fixed term of a long period rather than life of facility, which could be difficult to define. PJM currently offers rights for a maximum of 30 years and argues that this places a realistic term on the life of the facility and balances the rights of the party paying for the upgrade with market efficiency. Midwest ISO and Xcel similarly argue that awards should be of fixed terms and not facility life. PJM Public Power Coalition supports the PJM term of 30 years, but urges that holders of such rights should be given the opportunity to refuse the rights on an annual basis. CAISO notes that once a transmission project is built and energized, the responsibility for its maintenance may be transferred to a transmission owner separate from the merchant sponsor. Hence, CAISO recommends that the Commission consider allowing transmission organizations to develop standardized terms of long-term transmission rights to be allocated to merchant transmission projects, rather than require allocation for the life of the facility.

200. Several commenters, including EEI, National Grid and PG&E, suggest that the transmission planning horizon presented a natural limit to at least the initial term of rights awarded for new facilities. National Grid argues that awards of rights for the life of facility are impractical because transmission plans currently are only 5–10 years in length and hence any awards beyond the planning horizon are ''speculative.'' Instead, rights should be granted for the duration of the planning horizon and as they expire, new rights can be reconfigured and allocated based on the capacity conditions and relative cost contributions prevailing at the time. Similarly, EEI and PG&E argue that based on the planning horizon, the terms of awarded rights should be the shorter of the expected feasibility of the transmission rights or the expected lifetime of the new facility.

201. In reply comments, APPA, NRECA and TAPS oppose arguments to shorten the term of rights awarded for expansion to the term of the planning horizon of the organized market. APPA notes that planning horizons could be much shorter than the life of the transmission facility for which the long-term rights holder has paid or the duration of a long-term power supply arrangement.

202. Cinergy argues that section 217(b)(4) does not specify awards of rights for the life of new transmission facilities and suggests instead that long-term rights should be awarded for the repayment period of the initial investment. At the end of this period, according to Cinergy, the investor will have recovered its investment and the transmission expansion will be rolled into the transmission charges paid by transmission users. Cinergy also suggests retiring the long-term rights on a schedule that reflects the repayment of the invested capital.

[78] Comments of Cinergy at 8. Cinergy states that this approach would involve adopting guidelines (1), (6) and (8) without modification, and guidelines (3) and (4) with modifications (discussed below).

Incremental Upgrades and Use of Existing Capacity

203. In response to our question in the NOPR regarding whether rights for upgrades would require rights to the existing transmission system to make a long-term firm transmission right feasible and whether specific rules were necessary to accommodate such needs, a number of commenters argued that the Commission misunderstood the procedures for awarding incremental rights for expansion. For example, NYISO notes that any awards for new transmission facilities are evaluated in terms of their incremental transmission capacity, under which existing rights will be simultaneously feasible with the new rights. NYISO urges that the Final Rule clarify that new firm transmission rights can be awarded for increasing transfer capacity that is feasible and that does not render existing rights infeasible. Similarly, Ameren and Cinergy argue that for transmission expansion, the default rule should be that the entity that pays for the expansion should be entitled only to incremental rights. Such entities could obtain rights to existing capacity through subsequent reconfiguration auctions.

204. Reliant states that entities that fund expansions should unambiguously receive the full allocation of rights associated with the expansion and the same non-discriminatory access to obtain rights to existing capacity as all other market participants. Further, Reliant states that to the extent an expansion needs access to the existing capacity, each region should have the flexibility to develop procedures to account for how existing capacity can be utilized to facilitate new investment.

205. Some commenters have other questions about the relationship of rights awarded for expansions and those assigned on existing transmission capacity. CPUC questions whether awards for expansions might interfere adversely with rights to existing capacity awarded based on service obligations. PG&E and SoCal Edison request that the Commission clarify that under guideline (3), parties that fund transmission upgrades or expansions do not obtain priority to existing transmission capacity. Further, the final rule should clarify the method for determining the amount of rights made feasible by the upgrade.

Other Issues

206. CAISO requests that the Commission make clear within this rulemaking that transmission organizations have the responsibility and authority for determining, based on their own engineering studies, the incremental transfer capacity added to the grid by a merchant transmission project.

207. OMS reads guideline (3) as applying to cases where a load serving entity requests a new or changed designated network resource and is required by the ISO to make transmission upgrades. The OMS notes, referring to Midwest ISO, that such upgrades are based on zonal deliverability and not on the ability to grant transmission rights from the resource to load. OMS argues that if the generator is located distantly from load, and the potential transmission rights for the required upgrade are valuable, then the entity eligible for those transmission rights may nominate them in early tiers of the nomination and thus take up transmission capability that others may need. That is, the process of awarding transmission rights for capacity deliverability upgrades may create a result inconsistent with the goal of allocating transmission rights on a priority basis to parties that are seeking to serve load. TAPS similarly argues that the Commission must recognize that transmission planning based on point-to-point transmission rights is ''at odds'' with the increasing reliance on the aggregate deliverability standard for network resource designation in Midwest ISO. In reply comments, Midwest ISO argues that deliverability upgrades are related to the ability to meet supply adequacy requirements and not to guarantee the ability to receive FTRs from point to point.

208. Midwest ISO argues that care must be taken such that parties that fund upgrades are not given the opportunity to seek awards of rights in excess of the actual change in transmission capability.

209. APPA argues that load serving entities that funded transmission upgrades should be given the opportunity to own the facilities (in addition to collecting transmission rights). CMUA also supports joint ownership, but notes that in California, such ownership may require long-term rights of different kinds over the same facility.

Commission Conclusion

210. We will modify guideline (3) in the Final Rule to remove the proposed requirement that transmission rights be granted for the life of a new transmission facility (the last sentence of the proposed guideline). The revised guideline will now read:

Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

Scope of Guideline (3)

211. Our intention in guideline (3) was to address transmission rights awarded to entities that fund transmission upgrades and expansions through direct cost assignment. Our subsequent discussion in this section applies only to such upgrades or expansions. All transmission organizations now allow transmission customers to fund capacity expansions and receive the transmission rights that are made possible by those expansions, although some of these transmission organizations have yet to develop exact term lengths and rules for awarding such rights. Guideline (3) does not address the award of transmission rights made possible by transmission upgrades that are rolled into transmission rates. When such transmission upgrades come into service, the transmission rights that result from such investments will be made available as rights from ''existing capacity'' and are thus addressed in guideline (4). Prevailing cost allocation rules will apply.

Term of Rights for Upgrades and Expansion

212. As noted, we will modify guideline (3) by removing the last sentence, which requires that the term of a long-term transmission right awarded for an upgrade or expansion is equal to life of facility. Based on the comments of PJM and other parties on the difficulty of defining life of facility, we will let transmission organizations and stakeholders determine the appropriate terms. However, we encourage transmission organizations to harmonize the terms for long-term rights to existing transmission capacity and new transmission capacity as much as possible.

213. Some commenters, such as National Grid, PG&E and EEI, argue that the term of rights to new transmission capacity should be shortened from the terms offered currently (e.g., PJM currently offers 30 year fixed terms) because transmission planning horizons are only 5–10 years. We believe that this change would unnecessarily introduce uncertainty into the development of merchant funded transmission facilities and, in most cases, it would not allow the funding party to receive the full benefits of its investment. Since the rights awarded for expansion are incremental rights, there is less

possibility that they will be made infeasible by changes in the allocated set of rights to the remainder of the grid.

214. In response to LIPA's concern that New York ISO has not finished its rules for awards of long-term rights for transmission expansion, this guideline will require that transmission organizations develop and file tariff sheets and rate schedules for long-term rights for the types of expansions discussed in this section by the time that they award long-term rights for existing capacity.

Incremental Upgrades and Use of Existing Capacity

215. We clarify that under guideline (3), parties that fund transmission upgrades and expansions will be eligible for incremental transmission rights and not entitled to obtain transmission rights to existing transmission capacity held by others. However, each transmission organization will need to establish rules by which interconnection customers that construct new generation facilities and are eligible for long-term firm transmission rights can obtain rights to existing transmission capacity, as per guidelines (4) and (5).

Other Issues

216. We agree with OMS that rights awarded for transmission expansions made to support deliverability requirements for generator interconnection are not necessarily consistent with rights to hedge congestion charges associated with delivering power from the generator to load. This distinction between upgrades to support reliability (*e.g.*, to qualify as a capacity resource) and those made to support transmission usage has been long-standing in the transmission organizations with organized electricity markets. However, we do not believe that the allocation of such transmission rights to support deliverability upgrades should interfere with the allocation of rights to others, since the rights would be incremental. Therefore, we will not address the rules for awards of such rights here.

Guideline (4)—Term of Rights Must be Sufficient to Hedge Long-Term Power Supply Arrangements

217. As proposed in the NOPR, guideline (4) stated that long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. The discussion of guideline (4) emphasized that term lengths and/or rights to renewal should be sufficient to meet the needs of transmission customers seeking to hedge congestion charges associated with long-term power supply arrangements made or planned to satisfy a service obligation.

218. The NOPR sought comment on the appropriate lengths of terms, whether regional flexibility in setting term lengths is needed, or whether a more specific set of terms (i.e., standardized, such as 10 years) should be established by this rule. The NOPR also sought comment on the relationship between the term of the long-term rights and the transmission organization's planning cycle and whether the planning cycles should be modified to accommodate the issuance of long-term rights. On the issue of rights to renewal, the NOPR allowed that transmission organizations may propose reasonable criteria regarding the availability of renewal rights and the price for renewal. Further, we proposed that the transmission organization may require minimum notice periods for initiation, renewal, cancellation or conversion that accommodate the transmission organization's planning cycle or other administrative considerations. The NOPR further sought comments on the relationship between rights to renew and transmission planning.

Comments

219. Many commenters requested that the Commission allow regional flexibility when establishing the rules for long-term firm transmission rights to existing transmission capacity.[79] However, as discussed below, some of these parties made suggestions for minimum terms and rules for renewal rights.

220. Several of the transmission organizations cautioned against the Commission mandating term lengths. Midwest ISO states that the transmission organization must have sufficient flexibility to define and allocate long-term FTRs of different terms. OMS argues that the coordination of the term of the rights with the planning process must be left to each transmission organization. CAISO also argued that many different combinations of term lengths and renewal rights could be implemented that would meet the objectives of Section 217(b)(4). Each transmission organization should be allowed to examine the appropriate rules with its stakeholders.

221. In contrast, Santa Clara argues that load serving entities should set the terms that they need, and that transmission organizations should be required to accommodate those terms.

222. ISO–NE argues that guideline (4) presents a number of concerns, including the difficulty in analyzing the feasibility of the rights, uncertainty over how to evaluate load serving entities' arrangements ''planned'' to satisfy a service obligation, necessity for administrative arrangements to review long-term power supply arrangements that qualify a load serving entity for long-term rights and to monitor for manipulation, and accounting for potential terminations of and modifications to such arrangements. ISO–NE asks that because of the difficulties in determining feasibility of long-term rights, the Commission should ''avoid specifying excessive terms lengths,'' rather letting transmission organizations and stakeholders develop appropriate proposals.

223. Reliant suggests that if the stakeholder process is ineffective in determining term lengths, then the Commission may find it appropriate to develop a more specific set of terms.

224. Cinergy argues that guideline (4) goes beyond the intent of Section 217(b)(4), which it argues is directed exclusively toward transmission expansion. However, Cinergy agrees that transmission organizations should individually develop long-term rights. Cinergy also objects to the notion that the Section 217(b)(4) requires providing load serving entities with hedges.

Comments on Specific Term Lengths

225. Some commenters propose specific term lengths, ranging from shorter to longer terms. Beginning with proposals for shorter terms, Midwest ISO asks that the definition of ''long-term'' be redefined to include terms of one year to offer the transmission organization maximum flexibility to establish rights of short durations but with renewal options that may suit participants in retail choice states. DC Energy proposes adding one year to the term of FTRs each year to allow the market to develop in an orderly and incremental fashion. Strategic Energy supports terms of two years as a starting point.

226. CAISO discusses, for purposes of illustration, the possibility of two year rights with priority for renewal over

[79] *See*, *e.g.*, Ameren, BPA, CAISO, Cinegy, EEI, IPL, KY PSC, Medwest ISO, NARUC, NRECA, NYISO, New York Transmision Owners, NU, OMS, PJM, Reliant, SDG&E, SoCal Edison, Strategic, and Wisconsin Electric.

requests for new rights. SDG&E recommends that one year CRRs are implemented for the first year of the CAISO MRTU project (''Release 1''), with longer-term CRRs reserved for the next phase of the market (''Release 2'').

227. CAISO further argues that because transmission owners have the ability to withdraw from the ISO with a two-year exit notice, duration of transmission rights longer than two years is ''potentially questionable coverage as the CAISO will not be capable of enforcing such instruments upon a transmission owners' exit.'' [80] CAISO asks that the Commission consider this issue. In reply comments, SMUD notes that CAISO has signed 20 year firm transmission agreements with WAPA on the Pacific intertie. SMUD suggests that CAISO condition exit of a transmission owner on honoring existing contracts. It also notes that since transmission organization membership is voluntary, there is no long-term rights construct that does not involve the risk of exit.

228. NYISO argues that it is ''quite possible that one-year, two-year or five-year rights'' will be sufficient to meet the needs of transmission customers with long-term power supply arrangements. NYISO notes that it has previously offered 2 and 5 year Transmission Congestion Contracts, but that market participant interest is limited, due in part to the retail competition in New York state. Coral Power also supports terms in the one to five year range. IPL supports terms of no longer than three years, at least for an initial period to gain market experience. Similarly, Cinergy proposes an initial trial period of rights with terms from 2–5 years. Morgan Stanley proposes terms ranging from three to five years. It argues that terms shorter than three years are not likely to be sufficient for investor certainty, while terms longer than five years will fail to create sufficient liquidity to attract buyers and increase the risk of revenue insufficiency.

229. A number of commenters suggested minimum terms. BPA suggested a minimum term of 5 years to support stability in transmission system planning. Other commenters suggested a 10 year term, including AEP, APPA, CMUA, PJM Public Power Coalition, NCPA and TAPS. APPA suggests a minimum term of 10 years outside of retail access environments, and also supports longer terms for transmission rights to support new baseload and renewable generation resources. PJM Public Power Coalition also states that ideally, terms would span 20 to 30 years or more, reflecting the terms of financing.

230. PG&E supports fixed terms and/or renewal rights that provide coverage of 5 to 30 years, consistent with the term and quantity of the service obligation. PG&E further states that transmission organizations should have the flexibility to propose more granular rights to ease administration and transfer when appropriate as well as potentially to increase the availability of short-term rights during the effective term.

231. NRECA states that long-term rights should have maximum periods that match the term of the long-term power supply arrangement. Central Vermont, NYAPP, Redding, Santa Clara, SMUD and Wisconsin Electric present similar views.

232. A number of commenters emphasized that the term of the long-term rights should be commensurate with, or at least not exceed, the transmission planning horizon.[81] For some commenters, such as Industrial Consumers, this would be a maximum term length with no opportunities for renewal. For others, this would be the basic term length with renewal rights. Some observers, such as Industrial Consumers, note approvingly that some transmission organizations are considering extending the planning horizon from 5 years to 10 years. National Grid requests that the Commission clarify that the ''sufficiency'' standard under guideline (4) ''means nothing more than a term based on rational planning studies.'' [82] National Grid argues that terms beyond such planning studies would make the associated rights ''purely speculative.'' NU argues that rights with terms extending beyond the planning horizon would ''unreasonably transfer risk of congestion to participants who are not in a position to control that risk.'' [83]

233. NRECA argues that the transmission planning cycle should be at least 10 years to provide adequate support for infrastructure investment. AEP and Allegheny support the alignment of the term of long-term firm transmission rights with the 10-year transmission planning cycle that is being developed by PJM. PJM Public Power Coalition argues that transmission planning cycles should be modified to account for the terms of transmission rights that extend beyond current cycles.

234. EEI supports the concepts of long-term transmission rights with terms commensurate with the length of the planning horizon, but states that the planning horizons are just one of a number of issues that might be considered in determining term length. Other factors could include whether the system is constrained, the length of time it reasonably takes to expand the system, existing uses of the system, and the demand for long-term and short-term rights on the system. Further, stakeholders may consider the volume of grandfathered rights and their expiration dates, expected generation retirements, and the nature of renewal rights.

235. In contrast, CAISO does not see a compelling reason for tying the terms of transmission rights to the transmission planning cycle. CAISO argues that financial transmission rights do not carry physical characteristics. Hence, the problem of insuring their value over the long-term is fundamentally a cost allocation issue and is only one of many factors to be taken into account in assessing particular transmission projects. CAISO thus asks that the Commission allow transmission organizations to consider the issue of term length as a matter both of market design and transmission planning without imposing any specific linkage between the two.

236. New England Public Systems similarly argues that the creation of long-term rights should not in and of itself change the transmission organization's planning cycle. In its reply comments, New England Public Systems argues that long-term rights should be integrated into the planning process, becoming part of the baseline for each planning cycle. In that sense, it contends, the planning cycle should not be a constraint on the term of the rights.

237. Similarly, IPL argues that planning cycles can not be designed to support financial transmission rights because of the large number of variables that determine a feasible allocation and the likelihood of changes in those variables over time. Hence, regardless of whether the terms of the long-term rights are linked to transmission planning cycles, there will be a need to periodically re-examine the feasibility of particular allocations of rights and make corresponding modifications in the allocation if needed. IPL further argues that this periodic evaluation and revision of the rights would still allow the holder an ''adequate hedge.'' IPL supports this position by arguing that the load serving entity is entitled only to a reasonable hedge, not an absolute guarantee that it will never bear

[80] Comments of CAISO at 13.

[81] *See, e.g.*, Allegheny, Cinergy, DTE, EEI, National Grid, NRECA, NU and Xcel.

[82] Comments of National Grid at 21.

[83] Reply Comments of NU at 4.

congestion costs. IPL proposes that guideline (4) be revised to link term length to the concept of a ''reasonable'' hedge and to limit the potential for revenue shortfalls.[84]

238. PG&E argues that the relevant issue in determining the length of the term is not the planning horizon but rather the term of the service obligation. PG&E notes that ''the Commission has approved many contracts with terms beyond ten years, and has never suggested that such obligations should be limited to the planning horizon.'' Similarly, TAPS argues that the transmission organization's planning horizon cannot be a basis for restricting terms, including renewals, to a period shorter than the load serving entity's resource commitment.

239. Finally, PG&E argues that the effectiveness of long-term transmission rights will be best served if the terms have sufficient granularity, such as peak and off-peak periods in the day, the week, the month or season.

Renewal Rights, Minimum Notice Periods and Termination

240. A number of commenters argue that renewal rights can be used to extend the period covered by long-term transmission rights. Ameren suggests that rather than prescribe a single term length for all long-term rights, transmission organizations should focus on providing renewal rights. For example, Ameren argues that FTRs with annual rollover rights would be far more flexible than long-term FTRs with set terms. Ameren proposes that a load serving entity with a power supply arrangement of longer than one year be given the option to roll over the FTR each year subject to verification that the power supply arrangement will be in effect for the next year and the load serving entity is nominating no more than its forecast load for the subsequent year. Ameren points out that this approach is consistent with the auction requirements in states with retail choice, where load serving entities will need access to long-term rights even though their power supply contracts will only be one-year in length.

241. Similarly, Cinergy argues that one-year transmission rights with renewal rights would ''provide a measure of long-term benefit while still preserving the ability to modify the underlying rights themselves on an annual basis.''[85] Cinergy is also concerned that entities with long-term transmission rights not simply be able to cancel the rights unilaterally. Instead, the ''rights must be relinquished in a manner than allows the market to value and ration them appropriately.''[86]

242. TAPS supports Ameren's proposal for one-year rights with assured rollover rights (but offers also its own proposal for rolling 10-year terms, discussed below). TAPS suggests that such regional variations might be acceptable as long as load serving entities can achieve long-term price stability for the full duration of their long-term resource commitments. Similarly, New England Public Systems argues that the combination of term lengths, renewal rights and cancellation rights must be ''sufficiently flexible'' to enable load serving entities to tailor their long-term rights coverage to their specific needs. It is willing to support rights of short duration ''so long as LTTR renewal rights [are] sufficiently robust to ensure the continuation by [load serving entities] of needed rights.''[87]

243. TAPS, Industrial Consumers and New England Public Systems support a rolling 10-year term that affords the holder unconditional renewal rights. For example, in the first year, the holder of the 10-year right would inform the transmission organization whether it wanted the right in year 11, in year two whether it wanted the right in year 12, etc. Industrial Consumers states that there is a critical need that investors for new base-load generation perceive that firm transmission rights and renewal rights are available for up to 20 years or longer. Xcel similarly argues that at the end of the initial term of long-term rights, which could be up to the length of the planning horizon, renewal would take place on a one year basis as long as the obligation to serve still exists.

244. Other commenters were concerned that reliance on renewal rights would erode the durability of long-term rights. CMUA states that renewal rights introduce uncertainty over issues such as changes in rates, changes in the simultaneous feasibility test, and the incorporation of other changes since the long-term right was granted.

245. Industrial Consumers argues that renewal rights should be limited to load serving entities that can demonstrate that the renewal is needed to support a long-term power supply arrangement. Similarly, BPA supports the principle that renewal rights may be subject to limitations that tie the long-term transmission service to long-term power supply arrangements, to ensure that renewal rights are not over-allocated.

246. National Grid argues than any renewal right should be ''narrowly tailored,'' as any renewal beyond the applicable planning horizons would be ''just as speculative'' as a long-term right with an initial term beyond such horizons.[88] Instead, renewals would have to be subject to evaluation and reconfigured to reflect system conditions through the renewal term.

247. NSTAR argues that renewal rights for long-term rights are discriminatory because the ''guidelines do not allow direct access load served under short-term contracts to qualify for long-term rights on a renewal basis, even though the contracts under which they are served will be extended into the future or will be replaced by new contracts.''[89] For example, under some interpretations the guidelines could allow a load serving entity with a 2-year right to extend the right indefinitely while the holder of a one-year right would not be eligible for such renewals.

248. NYISO argues that the Commission should allow auction-based renewal systems, such as that offered by NYISO. NYISO argues that renewal of rights without market pricing would be ''inimical to the design of auction-based systems that are meant to fairly re-allocate rights based on economics and the interests of end-users.''[90] Moreover, renewals without market pricing would likely reduce the availability of transmission rights because holders of the rights could retain them indefinitely. Another issue is that through the annual auctions, counterflow transmission rights are purchased, making additional transmission rights feasible. If the counterflow rights were not renewed, then at least some of the long-term renewal rights would be rendered infeasible. NYISO further argues that the concept of a set ''price'' for renewal may also be antithetical to the market auction model that it employs, because such prices may not be consistent with the auction outcomes.

249. In contrast, TAPS argues that renewals should be at no additional cost. TAPS argues that firm delivery and long-term rights are part of the ''core responsibility'' of the transmission provider and not an additional cost. TAPS states that at an absolute minimum, any renewal charges should be fixed and fully disclosed by the transmission organization before the initial term begins.

[84] Comments of IPL at 12.

[85] Comments of Cinergy at 33.

[86] *Id.* at 35.

[87] Reply Comments of New England Public Systems at 20.

[88] Comments of National Grid at 22.

[89] Reply Comments of NSTAR AT 9.

[90] Comments of NYISO at 18.

250. SMUD argues that rather than renewal rights, the Commission should allow holders of long-term rights the ability ''to apply the right of first refusal protections accorded OATT customers under Order No. 888.'' [91]

251. Regarding minimum notice periods for renewal or cancellation. APPA supports an ''appropriate'' notice period. BPA argues that the minimum notice period for exercising a right to renew should be one year. Cinergy is concerned that holders of the rights should not be able to cancel them ''unilaterally.'' [92] Rather, the rights must be relinquished in a manner that allows the market to value and ration them appropriately. Wisconsin Electric states that any long-term protection should terminate when a unit is taken out of service or the agreements are terminated, even if that is prior to the expected life or term of the agreement.

Other Issues

252. There was some concern among commenters regarding the seams implications of different term lengths among organized markets. NRECA expresses concern that adjoining regions may assign different terms for long-term rights that this will cause seams problems. NRECA requests the Commission require coordination between adjoining transmission organizations to ensure that the rights are not ''illogically matched'' to their supply arrangement.[93]

253. A number of commenters emphasized the need for short-term transmission rights to co-exist with long-term rights. Allegheny stated that the final rule should preserve the ability of market participants to obtain allocations of shorter-term rights, including first priority FTR allocations to historic resources. Cinergy is concerned that in states with retail choice, load serving entities would often have to overcome state regulatory obstacles to make long-term power supply arrangements, needed to acquire long-term transmission rights. This would leave such entities limited to a ''second-tier'' allocation.

254. EEI proposes specific revisions for guideline (4) to reflect consideration of existing uses of the system. It suggests that the availability of long-term rights should be limited ''to the extent reasonable in light of the existing uses of the system.'' [94] In addition, it argues that the term ''should'' should be substituted for ''must'' with respect to provision of the rights. Finally, it suggests modifying the last sentence of the guideline as follows (additions underlined): ''The length *and conditions under which* the term of renewals *is offered* may be different than the original term.'' APPA and NRECA oppose EEI's proposed modifications to guideline (4). Both commenters are concerned with the substitution of the term ''should'' for ''must'', which they argue is intended to weaken the requirement.

Commission Conclusion

255. We will adopt guideline (4) with a modification to indicate a 10-year minimum term that transmission organizations must be able to offer. Transmission organizations and stakeholders will have substantial latitude to determine how to achieve long-term coverage through combinations of transmission rights of specific terms and renewal rights along with transmission planning and expansion procedures that support long-term rights.

256. The revised guideline (4) reads as follows:

> Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. *Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10-year period.*

Term Lengths for Rights to Existing Capacity

257. We agree with those commenters, including most transmission organizations, who state that this guideline should not mandate a standard term length for long-term firm transmission rights. Given that there is little experience with long-term transmission rights in organized electricity markets, and that different regions may find that different combinations of terms lengths and/or renewal rights best fit their stakeholder interests and pre-existing rules for transmission rights, we will allow regional flexibility in defining the terms of long-term transmission rights that are offered. However, section 217(b)(4) of the FPA makes clear that long-term transmission rights should be made available to allow load serving entities to hedge congestion charges associated with deliveries from long-term power supply arrangements. Hence, term lengths must be sufficient to achieve that objective, either alone or in concert with renewal rights.

258. While we allow regional flexibility in defining the terms of long-term firm transmission rights, we will require that transmission organizations make available transmission rights and renewal rights that provide coverage for a period of at least 10-years. This will ensure that transmission rights are offered that meet the reasonable needs of load serving entities to obtain transmission service for long-term power supply arrangements used to meet service obligations while allowing transmission organizations and their stakeholders flexibility in designing rights that suit regional needs. Transmission organizations can offer this 10-year coverage through any mix of term lengths and renewals that stakeholders agree to, as long as the coverage is ''firm'', meaning that the quantity of the rights allocated is fixed over the 10 year period and that the rights are fully funded. Renewal rights may be subject to provisions, such as adequate notice, that address the transmission organization's planning needs and adequate hedging of the load serving entity's long-term power supply arrangements.

259. A number of commenters urged that the term of rights remain relatively short, for example, two to three years, for at least an interim phase. Again, our requirement for a minimum 10-year coverage does not necessarily require 10-year transmission rights if no load serving entity requests such rights. Other commenters argued that the rights should be of sufficient length, such as a minimum of 5 years, to assist in transmission planning. The 10-year coverage period that we require here will assist such planning, but we leave it up to transmission organizations and stakeholders to determine how best to harmonize the long-term firm transmission rights and transmission planning cycles.

260. Further, as we note above with regard to the proposed definition of long-term power supply arrangements, APPA, PJM and TAPS generally argue that long-term power supply arrangements should be considered those with a minimum term of at least 10 years. This Final Rule focuses primarily on providing long-term firm transmission rights to cover power supply arrangements with those lengths of terms. Nonetheless, in different transmission organizations, the accommodation of other lengths of power supply arrangements might be considered important. Here, however,

[91] Comments of SMUD at 24.

[92] Comments of Cinergy at 34.

[93] NRECA invokes the ''affected systems'' approach of the Commission's generator interconnection policies as the basis for this requirement. Comments of NRECA AT 13.

[94] Comments of EEI at 21.

our focus is providing load serving entities with long-term power supply arrangements to meet their service obligations with the opportunity to obtain long-term firm transmission rights that will support the financing and construction of new infrastructure. Therefore, we find that setting a 10-year minimum term as a benchmark is appropriate, while also leaving the transmission organizations with sufficient flexibility to offer terms of other lengths.

261. We emphasize that the 10-year minimum term in this guideline is a benchmark. The fundamental requirement of this guideline is that transmission organizations offer rights with terms that are sufficient to hedge long-term power supply arrangements. In regions where such rights are typically longer than this benchmark, transmission organizations may need to offer longer terms and/or renewal rights beyond the initial term. Hence, we expect that most transmission organizations will develop rules to either begin new 10-year coverage terms at the end of each 10-year period or to provide renewals on a rolling basis to support long-term power supply arrangements. We understand from the comments that because of the likelihood that transmission system changes will take place over the 10-year period, stakeholders may have to agree to some reasonable process for modifications of holdings of transmission rights in between allocation periods. We will consider proposals that address such issues in the individual transmission organization compliance filings.

262. PG&E urged sufficient granularity in the terms of long-term rights, such as monthly rights, daily peak and off-peak rights, etc. We agree that more granularity assists in creating transmission rights terms that can better fit actual transmission usage patterns, and thus improves market efficiency. Stakeholders and transmission organizations must determine how much granularity is desirable at the introduction of long-term rights; increased granularity can be introduced over time.

263. In answer to NYISO's concern that entities in its service territory may not desire long-term rights, we reiterate that such rights must be offered and available to load serving entities. As we discuss above, EPAct 2005 mandates that such rights be available.

264. While we recognize CAISO's concern that load serving entities awarded long-term rights could withdraw from the ISO's market before the termination of the right, we do not see this as a limitation on granting rights with terms greater than the notice period for withdrawal. A transmission organization may establish rules for disposition and possible termination of allocated rights in the event of a withdrawal.

Other Issues With Renewal Rights, Minimum Notice Periods and Termination

265. Currently, load serving entities in most organized electricity markets are generally eligible to nominate financial transmission rights or auction revenue rights up to their peak load if they pay transmission access charges. The eligibility to nominate rights (or to renew a load serving entity's rights) is currently long-term; it is available each year to entities that serve load and pay the access charges, but is subject to the simultaneous feasibility test for nominations or the results of an auction. These latter requirements help ensure revenue adequacy but introduce some uncertainty into the actual year-to-year awards of transmission rights that this rule seeks to stabilize for some percentage of eligible rights. Also, as discussed in guideline (2), there may not be full funding of the annual rights, which adds further uncertainty as to their value.

266. Some commenters suggest additional restrictions or eligibility requirements on renewal rights. Under guideline (2), we discuss that full funding of the rights may require, for example, a premium payment. However, to renew the rights for new terms, there is not an obvious need for new conditions. Given the current rules for short-term rights, there should be little to change in the renewal process when long-term rights are offered as long as the transmission system is being planned and upgraded to accommodate the rights. As suggested by APPA, to renew allocated long-term rights, load serving entities should be required to commit to paying the transmission access charges for the period of the allocated right, whether an auction revenue right or a financial transmission right.

267. In response to NSTAR's concern that renewal rights for long-term firm transmission rights are discriminatory with respect to short-term rights, as we note above, short-term transmission rights are renewable each year for an annual term.

268. We agree with commenters that a minimum notice period should be required for renewing a long-term right. In general, the longer the term of the right, the longer should be the minimum notice period. We will allow transmission organizations and stakeholders to determine the specific notice periods they will propose to apply, however.

Other Issues

269. As noted above, several commenters stated in response to the proposed definition of long-term power supply arrangements that the Commission should require that such arrangements have certain specific characteristics, including specific designation of generating resources. The Commission will decline to adopt specific criteria for long-term power supply arrangements. First, as discussed in more detail below, we are removing from guideline (5) the requirement that a load serving entity must hold ''long-term power supply arrangements'' to receive an allocation priority, which should alleviate concerns regarding the difficulties associated with the validation of such arrangements by transmission organizations. Moreover, the comments suggest that long-term power supply arrangements may have different characteristics in different regions based on the prevailing practices of load serving entities in those areas. Accordingly, to the extent transmission organizations and their stakeholders believe that specification of criteria for long-term power supply arrangements remains necessary to comply with the Final Rule, we will allow the regions the flexibility to develop such specifications and propose them in compliance filings to this rule.

270. In response to NRECA's concern with seams issues, we discuss these issues above with regard to regional flexibility.

271. Several commenters seek to revise guideline (4) to include restrictions on the quantity of long-term rights that can be obtained. We discuss such restrictions under guideline (5).

272. With regard to EEI's proposed modifications of guideline (4), we agree with APPA and NRECA that the substitution of the word ''should'' for the word ''must'' in the first sentence of the guideline would weaken the requirement. Hence, we will not adopt that modification.

Guideline (5)—Load Serving Entities with Long-Term Power Supply Arrangements Have Priority to the Existing System

273. As proposed in the NOPR, guideline (5) stated that load serving entities with long-term power supply arrangements to meet a service obligation must have priority to existing transmission capacity that supports long-term firm transmission rights requested to hedge such arrangements.

In the NOPR, the Commission noted that, while section 217 does not require that long-term firm transmission rights be made available only to load serving entities with service obligations, the Commission interprets that section to require that load serving entities with long-term power supply arrangements to satisfy a service obligation be given a preference in securing long-term firm transmission rights. Therefore, the NOPR proposed that when rights requested by eligible parties with priority (or parties without priority that are being accommodated) are not simultaneously feasible given existing transmission capacity, the transmission organization may adopt methods to allocate the requested rights to the parties prior to granting such rights. The NOPR asked for comments on such methods, and on whether section 1233 of EPAct 2005 and new section 217(b)(4) of the FPA support placing reasonable limits on the award of long-term rights. Section 217(b)(4) states that the Commission must exercise its authority to meet the ''reasonable needs'' of load serving entities to satisfy their service obligations.

274. Also, the NOPR noted that, in making available long-term firm transmission rights, the transmission organization may have to incorporate estimates of load growth into the award of such rights. This raises the concern that if the load growth assumptions are overstated some load serving entities could be awarded more long-term firm transmission rights than needed, and the associated transmission capacity would not be available for allocation of transmission rights to others. The NOPR asked for comment on this issue and any rules or other safeguards that address it.

Comments

General Arguments For and Against the Proposed Priority

275. A number of commenters support the proposal to give priority to load serving entities with long-term power supply arrangements to meet a service obligation.[95] For example, APPA states that load serving entities that are willing to make a long-term commitment to pay their allocated share of the RTO's fixed transmission system costs (including the costs of transmission upgrades allocated to customers under that RTO's Commission-approved transmission cost allocation mechanism) should have a priority claim on the transmission facilities for which they are obligated to pay. FirstEnergy argues that the Commission's guidelines should grant preferential access to load serving entities with long-term power supply arrangements in order to promote development of generation and transmission infrastructure, and to dampen price volatility.

276. However, many commenters oppose the priority granted in proposed guideline (5),[96] with some claiming that the proposed priority would be unduly discriminatory.[97]

277. Cinergy states that FPA section 217 does not require the Commission to grant preferential rights to load serving entities, and SDG&E states that there is absolutely no statutory support for the ''preference'' or ''priority'' language of guideline (5). According to SDG&E, a much more faithful and economically sound reading of the ''meets the reasonable needs'' language of the EPAct 2005 is that long-term purchasers of power should be accommodated by the new guidelines by providing opportunities for them to secure long-term firm transmission rights, but they should not be able to acquire such rights at the expense of holders of power supply arrangements of a shorter duration. Morgan Stanley asserts that the Commission has a fundamental duty to prevent unduly discriminatory practices in transmission access, and allowing for a preference-based allocation approach as part of the Final Rule would run counter to such a duty. Moreover, NYISO states that interpreting section 217 to grant preferences to certain classes of load serving entities would contradict section 206 of the Federal Power Act, as well as Commission precedent and policy against undue discrimination and preferences in a competitive marketplace.

278. Allegheny recommends that, consistent with the process currently used in PJM, firm transmission rights should be allocated based on load and be available to all load serving entities serving that load. It believes that no preference should be given in the firm transmission right allocation process to load serving entities with longer-term power supply contracts to serve the same load or to load serving entities that were serving load first. BP Energy states that, as currently written, guideline (5) might be interpreted to permit a load serving entity to displace an existing holder simply because the existing holder's power supply arrangements last for a shorter period of time.

279. Reliant states that, among the unintended consequences of the Commission's proposal are that such a preference: (1) Encourages load serving entities to enter into sham long-term agreements and other gaming, (2) distorts the competitive playing field in a manner that undermines and complicates progressive retail choice models, (3) forces load serving entities to hold long-term rights to avoid being shortchanged in the short-term allocation processes, and (4) discourages independent generation investment.

280. NSTAR states that the deficiencies of the proposed rule can be corrected by following the statutory language. According to NSTAR, this would be accomplished by redefining ''long-term power supply arrangements'' as contained in proposed section 41.1(a)(5) by deleting ''or'' and by adding at the end of that provision the following phrase: ''or other arrangements for the purpose of meeting a service obligation on a long-term basis.''

281. With regard to the argument that a load serving entity with a long-term commitment to pay its allocated share of the RTO's fixed transmission costs is deserving of priority access to long-term firm transmission rights, BP Energy claims that the argument is flawed because all electric consumers end up paying their allocated share, whether they receive service underlain by long-term or shorter-term supply arrangements. Also, National Grid argues that establishing priorities to any new long-term transmission rights based on the length of terms of supply transactions makes little economic or operational sense. From the standpoint of fundamental fairness, National Grid believes that the allocation of transmission rights should be based on the relative contributions of the customers to the costs of the transmission system at the time the rights are made available. Coral Power believes that creating a perpetual preference for remaining capacity based on the theory that customers have paid for some type of service in the past is unreasonable.

282. Cinergy believes that if the Commission permits load serving entities to secure long-term transmission rights to existing transmission capacity on the basis of existing long-term contracts, then it will not only separate load serving entities as a favored class above other transmission customers, it will also create a favored class among load serving entities themselves.

[95] *See, e.g.*, SoCal Edison, Minnesota Power, CMUA, FirstEnergy, APPA, Central Vermont, Redding and SMUD.

[96] *See, e.g.*, Cinergy, Allegheny, Reliant, CAISO and NSTAR.

[97] *See, e.g.*, AF&PA, Xcel, Allegheny, EEI, NARUC, Morgan Stanley, BP Energy, Strategic Energy, ISO–NE, NYISO, EPSA, SDG&E, Midwest ISO, NYDPS and Constellation.

283. Several commenters, however, express the view that there is nothing inherently unduly discriminatory about the priority set forth in proposed guideline (5).[98] For example, NRECA states that it is not discriminatory to grant a higher priority to longer-term transmission service; Order No. 888 has done that for years. In any event, NRECA argues that new section 217(b)(4) of the FPA requires that the Commission regulate under the FPA in a manner that enables load serving entities to obtain long-term transmission rights for their long-term power supply arrangements; so the priority for long-term power-supply arrangements is built into the statute, and there is no undue discrimination, as section 217(k) makes clear.

284. APPA states that assuming that a situation were to arise in which the RTO had insufficient rights available to grant both full long-term firm transmission right and firm transmission right allotments, APPA does not believe that it would constitute an ''undue preference'' to fulfill the needs of long-term firm transmission right holders first. New England Public Systems states that what is unduly discriminatory is the status quo, in which current market rules provide those who enter into short-term transactions the tools with which to hedge their risks but deprives load serving entities with longer-term power supply arrangements of the tools they need to hedge the risks they face. According to New England Public Systems, rectifying this situation cures undue discrimination; it does not create it.

Limits on Long-Term Firm Transmission Rights

285. A number of commenters that either support, or do not oppose, the priority for load serving entities as proposed in guideline (5), state that it may be reasonable to place limits on the amount of capacity that can be allocated as long-term firm transmission rights.[99] However, New England Public Systems submits that the specific nature and terms of any such mechanisms are best left to negotiation among the affected stakeholders prior to the transmission organizations' compliance filings.

286. TAPS states that ''reasonable needs'' of load serving entities in organized markets must at least include the long-term firm transmission rights needed to support investment in baseload and renewable resources. While TAPS believes that long-term firm transmission right coverage for peaking resources is not necessary, it states that intermediate resources are a closer question. PJM argues that at some baseline level of usage of the transmission system it is reasonable to expect long-term transmission rights to be fully funded (absent significant transmission system outages), as the transmission system should be designed and constructed to meet the baseline requirements of all of its users.

287. E.ON believes that priority firm transmission rights that would otherwise fail the simultaneous feasibility analysis should be allocated on an equitably reduced basis to all qualified load serving entities. However, BPA states that, for a new transmission organization forming in the Pacific Northwest's unique hydro-based system, it supports granting long-term transmission rights to all existing rights holders, even if those rights are not simultaneously feasible under the most conservative assumptions possible.

288. Several commenters, including some that do not support the priority of guideline (5), state that, if the priority is adopted, limits should be placed on the amount of transmission capacity allocated to long-term firm transmission rights in order to protect those entities that rely on short-term rights.[100] For example, DTE states that it expects the introduction of long-term firm transmission rights to reduce the availability of short-term firm transmission rights, and care should be taken to ensure that current users of short-term firm transmission rights are not negatively affected. It argues that allocations to other load serving entities should be made only after distribution utilities have been assured sufficient long-term firm transmission rights to meet their current and future native load requirements.

289. Xcel proposes that no more than 50% of an entity's peak load be eligible for a long-term financial transmission right. Xcel states that this value should be static (i.e. should not allow for load growth) based on a historical reference year such as the year preceding the first allocation. Strategic Energy suggests that an RTO might limit long-term hedges to the lowest daily system peak over the previous planning period.

290. Some commenters do not agree with proposals to limit the amount of transmission capacity that is available for long-term firm transmission rights.[101] NRECA states that it does not understand how such an approach does not run afoul of the language of new FPA section 217. Ameren states that the preference that EPAct 2005 gives to load serving entities with long-term power supply arrangements to meet their service obligations reflects Congress' judgment that load serving entities engaging in long-term contracting and investment to meet their service obligations should be supported with access to long-term firm transmission rights; therefore, Ameren submits that this preference should not be undermined by limiting capacity available for long-term firm transmission rights. TANC states that the Commission should not allow transmission organizations the ability to limit the amount of transmission capacity available to support long-term firm transmission rights, but should instead require transmission organizations to actively manage the level of long-term firm transmission rights necessary to meet entities' current native load obligations, including load growth estimates.

Rules for Determining Priority

291. Some commenters offer specific recommendations concerning the rules for determining when an entity is entitled to receive priority with respect to long-term firm transmission rights.[102] For example, Public Power Council recommends that, pursuant to section 217(d), the transmission rights not used to meet service obligations may be applied to other uses of the system. According to Public Power Council, this necessarily means that the transmission rights must first be offered to load serving entities and after their needs are met, they are released to others.

292. PG&E argues that the preference, at least with respect to initial allocations, should be in accordance with the term and quantity of the service obligation, reflected as load share in the future term. For those transmission organizations that adopt auctions to follow initial allocations, PG&E recommends that stakeholders should address the issue of whether shortage of available long-term firm transmission rights relative to demand should trigger a validation procedure such that load serving entities seeking to meet long-term service obligations are given preference, or whether the auction price should determine priority.

[98] *See, e.g.*, NRECA, TAPS, APPA, SMUD, Redding, TANC and New England Public Systems.

[99] *See, e.g.*, New England Public Systems, AEP, PJM, BPA, PJM Public Power Coalition and TAPS.

[100] *See, e.g.*, OMS, DTE, EEI, IPL, Reliant, Strategic Energy and Xcel.

[101] *See, e.g.*, NRECA, Ameren, Public Power Council and TANC.

[102] *See, e.g.*, Santa Clara, Public Power Council, PG&E, National Grid, Morgan Stanley, DC Energy, Cinergy, BP Energy and Wisconsin Electric.

293. Morgan Stanley states that it is not necessarily opposed to the auction revenue right allocation methodologies that are based on the amount of load served by a party. However, in Morgan Stanley's view, it is crucial that any auction revenue right grants be independent of the status of the organization, *i.e.*, whether it is a load serving entity.

294. As to the definition of a ''Long-term Power Supply Arrangement'' that would be eligible for the long-term protections, DC Energy states that the power supply agreement must be firm for its term and must provide for energy from one or more specific generators in specific amounts. Wisconsin Electric believes that a key eligibility criterion is whether such arrangement includes not just energy, but energy and capacity. It claims that an energy only transaction does not indicate long-term control of the unit. Cinergy believes that preferential access to existing transmission capacity that is secured on the basis of long-term power supply arrangements should be limited to new long-term power supply arrangements for new generation.

Using Long-Term Firm Transmission Rights to Grandfather Existing Uses

295. A number of commenters address the issue of whether or not historical uses of the transmission system should be given priority for granting long-term firm transmission rights.[103] FirstEnergy states that the Commission's proposal is a reasonable response to the legislative mandate so long as ''a preference'' means that current supply arrangements are given a priority over past or historical supply patterns no longer in place. Coral Power states that the guidelines are not being proposed against a clean slate, noting that many ISOs have already established grandfathered arrangements. Coral Power is concerned that a preference could be used to needlessly expand grandfather rights that were allocated to electric utilities when the RTO/ISOs were formed.

296. PJM states that, while it believes it is fair to establish a historical load/long-term firm transmission rights preference, it also recognizes the need to create a process to accommodate new long-term rights to cover load growth and new long-term contracts. PJM notes that its long-term firm transmission right proposal will address these issues.

Eligibility Issues

297. A number of commenters offer recommendations with respect to the rules for determining which entities should be eligible to receive priority in the allocation of long-term firm transmission rights.[104] For example, Manitoba Hydro submits that the Commission should ensure that the guidelines provide that if a market participant other than a load serving entity has a contractual obligation to a load serving entity to provide transmission rights and to take associated congestion risk, it should have priority to long-term transmission rights in the same manner as would the load serving entity.

298. ISO–NE contends that generators may need these firm transmission rights as much as load serving entities, because generators' bilateral contracts with load can place the congestion risk on the generator. In reply, New England Public Systems states that if load serving entities with service obligations and long-term power supply arrangements are given a priority in obtaining long-term firm transmission rights, contracts will be structured or restructured in order to place the congestion risk on the party that can most effectively hedge it. NRECA states that, if a load serving entity wishes to sell its long-term firm transmission rights for a period of years to a power supplier that is also the transmission customer, NRECA believes it should be able to do so.

299. LIPA contends that the guidelines in proposed section 40.1(d) do not specifically incorporate the standards of FPA section 217(b)(4) or make clear that long-term firm transmission rights must be available to all market participants consistent with a transmission organization's individual market design. LIPA states that, while the availability of long-term firm transmission rights to *all* participants could be implied within the rule, and while certain guidelines address necessary elements of long-term firm transmission rights to promote use of such rights by load serving entities, the existing ambiguity can be removed by modification of the general rule.

300. Some customers argue that the priority for long-term firm transmission rights should extend to customers that are outside the transmission organization's control area. E.ON claims that, as currently proposed, utilities that either do not belong to an RTO, or have no organized electricity market in which they can participate, cannot expect any priority in the allocation of long-term firm transmission rights into or out of an organized market. E.ON urges the Commission to consider granting priority to a load serving entity that satisfies the provisions of FPA section 217(a), either owns or has firm rights to the output of a capacity resource located within the boundaries of an adjacent RTO, and has acquired from that RTO transmission service necessary to deliver energy to the load serving entity's load located outside of the adjacent RTO. TANC states that long-term firm transmission rights should be provided first to entities with native load service obligations that contribute to the embedded cost of the transmission systems, including entities that may not be within the transmission organization's control area.

301. Industrial Consumers argues that load serving entities in trust for loads, or loads directly, should be allocated short-term and long-term transmission rights on a pro rata basis as necessary to serve the total load. Alcoa states that priority also should be extended without discrimination to end users that act as their own load serving entities. CMUA adds that entities eligible in California for long-term firm transmission rights should include California's large state and local water agencies, which represent a significant portion of the state's energy usage, and are part of wholesale markets, but which do not serve retail load.

Retail Access Issues

302. Many commenters claim that the proposed priority would undermine state-mandated retail access programs and harm competitive retail suppliers.[105] Allegheny submits that the Commission should not create a situation in which load serving entities that participate in state-mandated supply procurement programs will be given a lower priority in long-term firm transmission right allocations. Constellation claims that the preference for longer-term supply resources would discriminate against competitive retail suppliers with service obligations in two respects. First, vertically integrated utilities with long-term resources could receive a priority with respect to capacity, blocking smaller retail providers from gaining access or entry to markets to compete effectively. Second, a preference for longer-term

[103] *See*, *e.g.*, FirstEnergy, Coral Power, NYAPP, NRECA, PJM, Santa Clara, Redding and Suez Energy.

[104] *See*, *e.g.*, Manitoba Hydro, Coral Power, CMUA, ISO–NE, New England Public Systems, PPM Energy, Midwest ISO, NRECA, IPL, PJM and LIPA.

[105] *See*, *e.g.*, Allegheny, Cinergy, Constellation, Coral Power, Midwest ISO, Exelon, NARUC, OMS, Suez Energy, NEPOOL, National Grid, NU and NSTAR.

firm transmission rights would discriminate against the shorter-term firm transmission rights that allow competitive retail providers with service obligations to more closely match shifts in their load, which, according to Constellation, can occur frequently, even daily.

303. Exelon notes that, in New Jersey and Illinois, the state commissions have determined that the public utilities should procure customers' requirements through a competitive auction procedure approved by the Commission. Exelon states that the rules of the auction preclude the utilities from entering into contracts of more than a few years' duration.

304. Regarding the effect of long-term firm transmission rights on retail access, Redding, APPA and TAPS take a different view. APPA states that the desire of retail suppliers like Constellation and the members of EPSA for flexibility has to date prevented load serving entities in retail choice regions that wish to hedge transmission congestion associated with their long-term base load and renewable resources from doing so. APPA asserts that, while suppliers in retail choice areas may value flexibility, the associated short-term arrangements do not support the substantial new investments in generation needed to meet resource adequacy or fuel diversification needs. Similarly, TAPS states that is bad policy to force all load serving entities in all states to share that fate (i.e., denying all consumers the benefits of low cost energy) simply because some states may have concluded that is the right decision for those serving retail load within their state.

Obtaining Long-Term Firm Transmission Rights through Capacity Expansions

305. Some commenters argue that the long-term needs of load serving entities should be met through the transmission organization's planning and expansion process, not by granting priority access to long-term firm transmission rights supported by existing capacity.[106]

306. Constellation states that section 217(b)(4) requires the Commission to be proactive in ensuring that the needs of all load serving entities with a service obligation (regardless of the duration of that service obligation) are met through planning and expansion of transmission facilities and enabling load serving entities to secure firm transmission rights on a long-term basis, not to extend an undue preference for existing transmission capacity to load serving entities with long-term supply arrangements at the expense of other load serving entities with service obligations. NRECA agrees that the Commission does have an obligation under section 217 to facilitate transmission planning and expansion so as to support long-term power-supply and transmission arrangements. However, NRECA asserts that the Commission also has a specific duty to act in a manner that ''enables load serving entities to secure firm transmission rights * * * on a long-term basis for long-term power supply arrangements.''

Market, Efficiency and Gaming Issues

307. A number of commenters argue that the proposed priority will impede the development of competitive markets and create inefficient economic incentives.[107] For example, EEI states that long-term firm transmission right holders will have the incentive to resist infrastructure enhancements to the system that adversely affect the value of their long-term firm transmission rights. Also, SDG&E contends that, on transmission paths that are expected to have relatively higher levels of congestion, e.g., where the transmission rights are expected to be more valuable, an incentive is created to enter into long-term commodity transactions in order to secure the priority. According to SDG&E, such incentives are misplaced and could distort efficient contracting decisions. NYISO believes that rather than having an incentive to contract for the least cost resources to meet their load, load serving entities would have an incentive to enter into contracts on the ''wrong'' side of binding transmission constraints, because they would receive valuable transmission rights as a reward for executing such contracts.

308. Other commenters take the opposite view, arguing that the proposed priority would lead to more efficient investment decisions and lower costs in the long run.[108] FirstEnergy states that the availability of long-term service is needed to facilitate investment in new generation capacity and transmission infrastructure.

309. APPA argues that the primary role of long-term firm transmission rights would be to support base load and renewable generation resources needed to support load serving entity service obligations. Those resources are not sited based on whether they are on the ''right'' or ''wrong'' side of a constraint, but on a myriad of factors, including proximity to fuel sources, access to rail transportation and availability of renewable resources (e.g., wind or geothermal). APPA states that the failure of RTOs to offer long-term firm transmission rights is stifling investment in base load and renewable generation resources, and in the associated transmission facilities needed to bring these resources to loads.

310. Several commenters express concern that the proposed priority would create an incentive for load serving entities to acquire excess long-term firm transmission rights in order to sell the excess at a profit, and could lead parties to enter into ''sham'' contracts.[109]

311. ISO–NE contends that a direct, costless allocation of LT-firm transmission rights, or an auction in which only load serving entities may purchase LT-firm transmission rights, would amount to a wealth transfer to the load serving entities at the expense of other market participants. According to ISO–NE, this is because the load serving entities would acquire the LT-firm transmission rights at a price below their value and have every incentive to resell them on the secondary market for a profit. Midwest ISO states that this guideline may give parties an incentive to enter into ''sham'' contracts intended to accomplish nothing but establishing rights to valuable long-term firm transmission rights.

312. Ameren believes that the concern that load serving entities will nominate excessive amounts of long-term firm transmission rights is easily addressed by limiting the amount of long-term firm transmission rights allocable to a load serving entity based on its expected load, including load growth, during the upcoming year and using state regulatory processes to police nominations. APPA states that the RTO can take the matter up with the load serving entity on a case-by-case basis if it believes that the long-term firm transmission right allocation of the load serving entity does not appropriately reflect load growth.

313. PG&E notes that the EPAct 2005's focus on the ''long-term service obligation,'' its predication of the threshold amount of Transmission Rights on those ''power supply arrangements'' that constitute ''reasonable needs,'' as well as the EPAct 2005's provisions for shifting long-term Transmission Rights in

[106] *See, e.g.,* E.ON, Constellation, EPSA, NYISO and Strategic Energy.

[107] *See, e.g.,* EEI, EPSA, Reliant, Exelon, Constellation, SDG&E, NYISO and Midwest ISO.

[108] *See, e.g.,* APPA, NYAPP, NRECA, DWR, CMUA, FirstEnergy and New England Public Systems.

[109] *See, e.g.,* ISO–NE, Midwest ISO, NYISO, Coral Power, APPA and CPUC.

parallel with load migration, provides ample opportunity for protection against ''sham contracts'' and the possibility of windfall to load serving entities, so long as the statutory terms are well defined. APPA states that it and its members are willing to agree to reasonable limitations on long-term firm transmission rights, including restrictions on resale and requirements that holders actually have generation resource arrangements covering the specified sources and sinks, to avoid creating such perverse financial incentives. Also, New England Public Systems notes that TAPS has proposed dispatch-contingent option long-term firm transmission rights that only generate a payment to the load serving entity when the resource at issue is run and do not require payment by the load serving entity when congestion is reversed. Alternatively, New England Public Systems states that long-term firm transmission right settlements could be subject to true up at year end based on actual load levels.

Allowing for Load Growth in Long-Term Firm Transmission Rights and the Need for Accurate Load Forecasts

314. Some commenters argue that priority in the allocation of long-term firm transmission rights should extend to provisions for load growth and unforeseen changes in the need for long-term rights.[110] Public Power Council argues that the preference should require RTOs and ISOs to set aside future rights for the load growth of these entities and the Commission should ensure that the transmission system is planned and expanded to accommodate growth.

315. Allegheny argues that incremental firm transmission rights to cover increases in generation capacity resources, load growth or other factors should also be granted as part of the long-term firm transmission right allocation process, but only to the extent that the underlying transmission system can support the feasibility of such additional firm transmission rights. AEP believes it is inappropriate for auction revenue right allocations to be locked into a configuration that may bear no resemblance in year 10 to the simultaneous feasibility tests run in year one. Industrial Consumers believes that the load serving entity or a load that is serving itself should have access to additional capacity rights for unforeseen load growth, and similarly, the load serving entity or load serving itself should be required to surrender that portion of its rights for the amount of any permanent load reduction.

316. PJM Public Power Coalition argues that if, during the roll-over term of the long-term transmission rights, a load serving entity's load is reduced below the level of its long-term transmission rights, that entity's roll-over right should be reduced to its then current load level, so that the entity does not have priority to transmission capacity it will not use to serve its load.

Administrative Burden

317. Midwest ISO states that the Commission's requirement that transmission organizations provide load serving entities priority to existing transmission capacity is problematic for several reasons. First, transmission organizations will have to undertake extensive, burdensome, and costly administrative processes in order to evaluate contracts to determine whether they satisfy the criteria applicable and ensure that the power supply contracts are in fact necessary to serve load and are long-term. Midwest ISO argues that the transmission organizations should not be placed in the position of evaluating long-term contracts to ensure they legitimately qualify for priority of the transmission capacity. In response, APPA notes that many Regional Reliability Councils have long undertaken auditing of load serving entity power supply portfolios to determine if their regions have adequate generation resources. APPA claims that the term of power supply agreements is usually relatively easy to ascertain, and annual reporting by the load serving entities on their generation resource portfolios, plus oversight and investigation by the RTO's Market Monitor if gaming is suspected, should be sufficient to keep load serving entities honest. APPA also notes that, under section 30 of the Order No. 888 OATT, Network Customers have to designate new resources by providing the required information to the Transmission Provider. Hence, in APPA's view, Network Customers are accustomed to having to verify their claimed generation resources.

Commission Conclusion

318. We will adopt guideline (5) with revisions to eliminate the preference for load serving entities with long-term power supply arrangements and replace it with a general preference for load serving entities vis-à-vis non-load serving entities. Also, as discussed below, we will revise guideline (5) to allow the transmission organization to place reasonable limits on the amount of existing transmission capacity that it will make available for long-term firm transmission rights.

319. Although we believe section 217(b)(4) of the FPA would support a preference for load serving entities with long-term power supply arrangements, we agree with those commenters, such as SDG&E, that claim that EPAct 2005 should not be construed to require that a preference be given to this class of load serving entities at the expense of load serving entities that prefer short-term power supply arrangements. In our view, a broader preference for load serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and indeed better meets the needs of today's organized electricity markets.

320. The overall thrust of new section 217 of the FPA, read in its entirety, is the protection of transmission rights used to satisfy native load service obligations.[111] Given the reality that transmission capacity is limited, and that the amount that can reasonably be made available for long-term transmission rights may be lesser still, we believe that section 217 of the FPA provides a general ''due'' preference for load serving entities to obtain long-term firm transmission service. Moreover, section 217(d), which provides that the Commission may make transmission rights that are not used to meet a load serving entity's service available to other entities, strongly indicates that Congress intended for load serving entities to be ''first in line'' for long-term transmission rights that are made available.

321. An important advantage of revising guideline (5) in this manner is that, in most cases, the transmission organization will be able to apply the same basic principles for allocating long-term firm transmission rights that it currently uses for the initial allocation of short-term firm transmission rights, or auction revenue rights. To explain, we note that most transmission organizations now use straightforward methods to allocate firm transmission rights (or auction revenue rights) annually to all load serving entities that support the embedded costs of the transmission system. Some of these methods take explicit account of the load serving entity's current or historical power supply arrangements in determining its allocation priority. However, as revised, guideline (5)

[110] *See, e.g.*, Public Power Council, Allegheny, AEP, Industrial Consumers, PJM Public Power Coalition, Alcoa and FirstEnergy.

[111] As noted above, common principles of statutory interpretation support reading section 217 as a whole to ascertain its intent. *See, e.g., United States* v. *Andrews*, 441 F.3d 220, 223 (4th Cir. 2006) (noting that statutory phrases are not construed in isolation, and are instead read as a whole).

neither requires nor prohibits the consideration of power supply arrangements in determining this priority. Guideline (5), as revised, only requires that load serving entities have priority over non-load serving entities in the allocation of long-term firm transmission rights. This means that, in most cases, load serving entities can continue to receive the same allocation of firm transmission rights (or auction revenue rights) that they have received in the past. In addition, by eliminating from guideline (5) the priority for load serving entities with long-term power supply arrangements, we are making it possible for the transmission organization to propose an allocation method that eliminates any obligation on the part of either the transmission organization or the load serving entity to demonstrate or verify that the load serving entity holds a qualifying long-term power supply arrangement.

322. In addition, revising the guideline in this manner effectively addresses the objections of most commenters that oppose guideline (5) as proposed in the NOPR. Importantly, it largely eliminates the potential for load serving entities that prefer short-term power supply arrangements, or are precluded from entering into long-term arrangements, to be disadvantaged in the allocation of firm transmission rights. In particular, load serving entities in retail access states can continue to receive and use their allocated firm transmission rights as short-term instruments, if that best suits their business model. Also, load serving entities that prefer short-term firm transmission rights (or are limited to them by law) will not feel compelled to request long-term firm transmission rights (or enter into sham contracts) out of fear that they might otherwise lose out in the firm transmission right allocation process. We do not believe that Congress intended these results when it enacted section 217 of the FPA, particularly given the statute's overall focus on protecting the transmission rights of load serving entities with service obligations. Finally, the transmission organization will not face the administrative burden of having to evaluate power supply contracts to determine if they qualify for the preference.

323. In the NOPR, we asked for comments on whether section 1233 of EPAct 2005 and new section 217(b)(4) of the FPA support placing reasonable limits on the award of long-term rights. Because of uncertainty regarding load growth, changes in power flows and other factors, the Commission expects that the transmission organization may be reluctant to commit all of its existing capacity to long-term firm transmission rights, especially in light of guideline (2)'s full funding requirement. Also, commenters claim that the principal need for long-term firm transmission rights is to support long-term power supply arrangements only for base load generation, not peaking or intermediate generation. Therefore, we conclude that the transmission organization and its stakeholders should be given flexibility to determine the level at which a load serving entity may nominate long-term firm transmission rights as long as that level does not fall below the ''reasonable needs'' of the load serving entity. This level can be expressed in a variety of ways, for example as a straightforward measure of load, such as minimum daily peak load or 50 percent of maximum daily peak load. In this regard, we note that some commenters argue that the allocation of long-term firm transmission rights should include provisions for load growth, to include the loss of long-term firm transmission rights when load declines. Rather than specify an approach here, we will provide the transmission organization and its stakeholders with flexibility to propose an approach for incorporating load growth in the allocation process, if it is incorporated at all.

324. The Commission emphasizes that revising guideline (5) in this manner should not significantly reduce the access to long-term firm transmission rights that a load serving entity with long-term power supply arrangements would have had under guideline (5) as originally proposed. Under that proposal, load serving entities with power supply arrangements of more than one year (per our proposed definition of long-term power supply arrangements) would have qualified for an allocation preference; our revision only expands the preference to include load serving entities that have power supply arrangements of less than one year. Moreover, most supporters of proposed guideline (5) agree that a transmission organization will have valid reasons to place a limit on the amount of system capacity that it makes available to support long-term firm transmission rights. Also, most of the commenters that support guideline (5) as proposed do not include among the reasons for their support the need to link the award of long-term firm transmission rights to long-term power supply arrangements. Rather, their comments are principally directed against any notion that load serving entities with short-term firm transmission rights should receive special consideration in the allocation process. Finally, the other guidelines adopted here ensure that the long-term firm transmission rights will support long-term power supply arrangements, as Congress intended.

325. Our decision to make explicit the transmission organization's right to propose reasonable limits on the amount of capacity made available for long-term firm transmission rights, as well as to provide the more limited preference that we are adopting in the Final Rule, requires that we revise guideline (5) to read as follows:

> Guideline (5): Load serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing transmission capacity. The transmission organization may propose reasonable limits on the amount of existing transmission capacity used to support long-term firm transmission rights.

326. Commenters such as Manitoba Hydro and ISO–NE argue that the preference should extend to certain entities that do not meet the strict definition of load serving entity, such as generators that have a contractual obligation to a load serving entity.[112] The Commission disagrees. Extending the preference to entities that do not meet the definition of load serving entity, as clarified in this Final Rule, would likely defeat the purpose of providing the preference. Once load serving entities have received their allocated firm transmission rights, those firm transmission rights and any additional firm transmission rights available from remaining system capacity can be offered to non-load serving entities (as well as other load serving entities) through a secondary auction, bilateral trades or another method of allocation. This is consistent with section 217(d) of the FPA. Also, as noted by New England Public Systems, a load serving entity that has a contractual arrangement with a generator or other entity that allocates congestion risk in a particular way can structure its contract with that entity as necessary to achieve the desired risk sharing.

327. Industrial Consumers, Alcoa and CMUA state that certain end users should receive the preference provided by guideline (5). As we stated above in our clarification of the definition of load serving entity, any end user, such as an industrial consumer or a large water agency, that is allowed under state law and regulation to participate in wholesale markets as a power purchaser

[112] *See also* our discussion of the definition of load serving entity in section II.A. above.

should be construed as a load serving entity under the Final Rule and, accordingly, should receive all of the rights and obligations of a load serving entity.

328. E.ON asks that a load serving entity outside of a transmission organization's boundaries be given priority, under certain conditions, to long-term firm transmission rights on the transmission organization's transmission system. On this matter, the Commission agrees with TANC that long-term firm transmission rights should be made available first to those entities that have an obligation to serve load within the transmission organization's service territory and are required to contribute to the embedded cost of the transmission organization's transmission system. Any entity that has neither an obligation to serve load on the transmission organization's transmission system, nor an obligation to pay the embedded costs of that system, should not be given a preference to acquire long-term firm transmission rights supported by the system's existing capacity.

329. LIPA states that the proposed guidelines do not specifically incorporate the standards of FPA section 217(b)(4), or make clear that long-term firm transmission rights must be available to all market participants, and therefore should be revised. We do not believe that any revision is necessary. The guidelines, taken as a whole, are designed to implement the relevant requirements of EPAct 2005, including the provisions of FPA section 217(b)(4). We believe that the guidelines as revised in this Final Rule provide the clarity that LIPA seeks. Further, we have made clear both in the NOPR and in this Final Rule that long-term firm transmission rights must be available to all market participants; this guideline serves only as a ''tiebreaker'' between load serving entities and non-load serving entities when existing transmission capacity is limited.

330. Finally, we note that several commenters express concern that the preference as proposed in guideline (5) will lead market participants to resist infrastructure enhancements, enter into sham contracts, or make inefficient investment decisions. We conclude that, by eliminating the priority for load serving entities with long-term power supply arrangements, and by allowing limits to be placed on the amount of capacity available for long-term firm transmission rights, the Final Rule should virtually eliminate any incentive that a load serving entity might otherwise have to hoard long-term firm transmission rights, enter into sham agreements or resort to other types of gaming and inefficient decision-making. Indeed, the Commission agrees with APPA that a likely greater source of inefficiency is the unavailability of long-term firm transmission rights in organized electricity markets, which may be impeding needed investments in generation resources and transmission upgrades. Nevertheless, if a transmission organization and its stakeholders conclude that additional steps must be taken to avert such problems, the transmission organization may propose appropriate measures as part of its compliance filing.

Guideline (6)—Rights are Reassignable to Follow Load

331. As proposed in the NOPR, guideline (6) stated that a long-term transmission right held by a load serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation. The NOPR stated that a successor load serving entity should assume any cost responsibility that holding the long-term transmission right entails. We stated that this proposal is consistent with section 217(b)(3)(A) of the FPA, which requires that transmission rights held by a load serving entity as of the date of enactment of EPAct 2005 for the purpose of delivering energy it has purchased or generated to meet a service obligation be transferred to a successor load serving entity. The NOPR noted that the short-term transmission rights currently offered by transmission organizations are generally reassignable to successor load serving entities. The NOPR also noted that a transfer of a service obligation might occur pursuant to a state commission order, or might occur in a state with retail competition if load chooses a new supplier.

332. The NOPR asked for comments regarding whether reassignability should apply to all long-term firm transmission rights, regardless of how those rights were obtained, and whether a holder of long-term rights should receive compensation when its rights are reassigned.

333. Also, the NOPR noted that section 217(b)(4) of the FPA does not discuss whether long-term firm transmission rights should be fully tradable among market participants. We stated that allowing such rights to be fully tradable could raise issues of equity, since a load serving entity that acquired the rights through a preference could then possibly sell or trade the rights at a profit. This might give load serving entities the incentive to acquire excess long-term firm transmission rights in order to take advantage of profit opportunities. However, the NOPR noted that full tradability may bring benefits to the market, and allow those that could not obtain long-term rights in the initial allocation to obtain such rights later. The NOPR asked for comments on these issues.

Comments

General Support for Guideline (6)

334. Many commenters express strong support for proposed guideline (6).[113] AEP states that a transmission right to support a service obligation should stay with the load and, therefore, be re-assignable to another entity that may acquire the service obligation. APPA supports guideline (6) and states that such assignability should be required regardless of how those rights were obtained.

335. Cinergy supports the adoption of guideline (6) in principle because it believes that market liquidity provides for more efficient economic outcomes and that the problems associated with other guidelines may be mitigated to some degree by directing that long-term transmission rights be re-assignable. BPA states that this policy should accommodate other open access policies where the long-term transmission rights of the original load serving entity would transfer (1) to other load serving entities that successfully compete to serve loads under state retail access programs, or (2) to wholesale power suppliers that successfully compete to meet load serving entity service obligations.

Need for Flexibility

336. Some commenters urge the Commission to permit flexibility in the way transmission organizations implement this guideline. Reliant states that the Commission should permit organized electricity markets and their stakeholders to best determine the reassignment of long-term transmission rights. EEI states that flexibility is important in the application of this guideline because it will present administrative burdens with respect to tracking reassignments on a frequent basis. CMUA states that, given the different retail choice regimes in different regions, or the lack of retail choice in some, implementation is best left to the relevant regions.

[113] *See, e.g.*, PJM, NRECA, CMUA, Santa Clara, Xcel, Allegheny, Public Power Council, AEP, APPA, AF&PA, Minnesota Power, BPA, Strategic Energy, Coral Power and PJM Public Power Coalition.

Should Reassignment be Optional or Mandatory?

337. NYISO states that this proposal is reasonable provided that the rights may be reassigned, not that they automatically be reassigned, at least in the case of transmission organizations with grandfathered auction based systems under FPA section 217(b) (3). Similarly, Xcel states that reassignment itself must not be mandated; the reassignment should be at the option of the holder of the right and the entity to which the service obligation transfers. PJM Public Power Coalition states that because these long-term rights can become a liability under certain circumstances, entities should be able to trade, transfer, or decline to exercise the rights.

338. Suez Energy states that guideline (6) might be interpreted in a way that destroys retail competition because incumbents might argue that long-term firm transmission rights are merely re-assignable at the choice of the incumbent supplier, and that the incumbent should be allowed to retain valuable long-term firm transmission rights for existing network service. Conversely, Suez Energy is concerned that an incumbent supplier that invested badly could argue that the financial burden of a now burdensome investment in transmission infrastructure is reassignable to a new supplier.

339. ISO–NE believes that the Commission should examine proposals for mandatory re-assignment carefully where the load serving entity picking up the service obligation has a different set of long-term supply arrangements that may not correspond with the path for the existing long-term firm transmission right, or if the successor load serving entity may not wish to utilize a long-term supply strategy at all.

Rules Governing Reassignment

340. Several commenters offered proposals for rules that would govern the reassignment of long-term firm transmission rights in specific instances.[114] The CAISO asks the Commission to clarify guideline (6) to state that the transmission organization should adopt provisions to require that either allocated long-term firm transmission rights or their equivalent financial value be transferred from one load serving entity to another to reflect transfers of load serving obligation. The CAISO believes that by allowing load serving entities to transfer the financial value of long-term firm transmission rights when their load serving obligation migrates, instead of insisting on the transfer of the actual long-term firm transmission rights, the underlying principle that the allocated long-term firm transmission rights are the property of the end-use customers can be maintained without precluding the trading of allocated long-term firm transmission rights by load serving entities.

341. SoCal Edison recommends that the only circumstances in which long-term rights should be reassigned are if: (1) The original right was allocated (*i.e.* any rights purchased bilaterally or in an auction would not be transferred regardless of any load migration); and (2) the load-gaining entity has the ability to utilize the same source/sink pair that was used to allocate the long-term right to the load-losing entity; and (3) the load losing entity can no longer use the entire long-term transmission right for the output/load upon which the long-term right was initially awarded to the load-losing entity. PG&E agrees that no transfer should occur until such time as a load serving entity's remaining service obligation is less than the megawatt quantity of its long-term firm transmission rights. Also, PG&E believes that the statutory intent to link long-term transmission rights to long-term power supply arrangements would be realized if transmission rights or equivalent payments are made only to those load serving entities that gain long-term service obligations and that also obtain commensurate long-term power supply arrangements. However, APPA claims that SoCal Edison's condition (2) seems unnecessarily stringent and asserts that, if the transmission organization can reconfigure the long-term firm transmission rights at the time of transfer, then this should be permitted.

342. Redding contends that when the Commission raises the issue of assignability it implicitly raises the question of portfolio strategy. Redding argues that, if the load serving entity has long-term transmission rights and long-term supply arrangements that were not utilized to serve the customer with retail choice, then the customer's decision to change providers should not result in the reassignment of a long-term transmission right. Redding contends that there would be an argument for transfer of the transmission right only if the customer can demonstrate that it either directly or indirectly had a liability that transferred to the new provider or remained with the customer.

343. Midwest ISO states that the entity that acquires the service obligation may not want the particular long-term firm transmission right, but may prefer a different firm transmission right with a source that matches the supply portfolio of the new load serving entity. Moreover, the firm transmission right may have negative value and the new load serving entity may not want it at all. To the extent the Commission permits such re-assignment, Midwest ISO recommends that reasonable restrictions be imposed. For example, Midwest ISO states that the Final Rule should limit the impact of this issue by (1) limiting the amount of long-term firm transmission rights to a small proportion of load serving entity's load, and (2) limiting the term of the firm transmission right. In response, APPA states that it prefers its proposed suggestions of minimum hold times, minimum periods for any resale, or a requirement that the new holders have generation resources and loads for the points specified in the long-term firm transmission rights, or the Commission's suggestion that long-term firm transmission right holders only be able to return their long-term firm transmission rights to the transmission organization.

344. SDG&E states that any reassignment mechanism that links specific long-term firm transmission rights to individual loads will become administratively burdensome if the switching of load between load serving entities is active, with the transmission organization potentially forced to track thousands of long-term firm transmission rights that are reduced to fractions of megawatts.

345. Alcoa states that an end user that acts as its own load serving entity must be afforded the same opportunity as a load serving entity to reassign its long-term transmission rights to another entity that acquires a service obligation for its load.

Compensation Issues

346. Some commenters provided recommendations concerning what, if any, compensation should be paid when a long-term firm transmission right is reassigned to a successor load serving entity.[115] APPA states that compensation is a matter to be dealt with by the transferee and transferor load serving entities. BPA states that all of the costs and liabilities associated with the transferred rights should follow to the new load serving entity. However, BPA recommends that limitations on re-assignment, particularly issues relating

[114] *See, e.g.,* CAISO, SoCal Edison, PG&E, APPA, Redding, CMUA, Strategic Energy, Midwest ISO, SDG&E, BPA, TAPS and Alcoa.

[115] *See, e.g.,* APPA, Allegheny, BPA, CAISO, Ameren, AF&PA, Santa Clara, Cinergy and OMS.

to compensation pricing policy, be left to the regions to resolve.

347. The CAISO submits that the load serving entity that has lost a portion of its service obligation should not be compensated for any long-term firm transmission rights it transferred to another load serving entity for that load. AF&PA states that, if long-term firm transmission rights are paid for by the holder at fair market value, they should be property of the holder, and should be assignable by the holder for value or otherwise in its discretion. Ameren recommends that there be no compensation for firm transmission rights returned to the transmission organization by a load serving entity. Santa Clara states that if the holder is carrying the risk that the congestion cost could increase and create more value or decrease and make it less valuable, the holder should not be forced to return the rights at the cost at which they were allocated to them.

Trading

348. A number of comments focused on the question of whether or not long-term firm transmission rights should be tradable.[116] AEP supports the concept of trading long-term transmission rights as an appropriate way to facilitate risk management by load serving entities. TANC argues that, if after meeting its native load obligations an entity has surplus transmission rights, the market is enhanced by the availability of such surplus rights. Cinergy believes that long-term transmission rights acquired under FPA section 217(b)(4) should be fully tradable. Also, Cinergy encourages the Commission to allow market participants that acquire long-term transmission rights by investing in transmission upgrades to trade those rights for a profit, as that provides even greater incentive to build transmission improvements.

349. In SMUD's view, giving customers the right to assign their unused physical transmission rights temporarily will reduce the likelihood of hoarding and will serve as a congestion management tool. In NRECA's view, allowing long-term rights to be tradable would allow load serving entities a way to reconfigure their portfolios of long-term firm transmission rights as their situations change.

350. Ameren states that making long-term firm transmission rights fully tradable among market participants would enhance the efficiency of the congestion management program, as it would enable the firm transmission rights to go to those parties that value them most highly. It also would allow entities that are not load serving entities to obtain long-term firm transmission rights, assuming they value them highly enough to win them in the market.

351. PG&E states that, because shifts in service obligations may be temporary and may be reversed, reassignment of long-term firm transmission rights with shifts in service obligations and power supply arrangements should be conditioned on assurances that future shifts of such service obligations and power supply arrangements are accompanied by a return of the accompanying long-term firm transmission right. PG&E argues that, while it would be appropriate to allow trading or transfer of the long-term firm transmission right for interim periods, the long-term firm transmission right itself should remain attached to the service obligation and not be separately transferable.

352. IPL argues that there should not be a requirement that long-term rights are tradable, and recommends that the Commission allow the transmission organizations flexibility to specify the general terms of reassignments related to load shifts. Public Power Council claims that making the rights fully tradable raises fairness questions if the seller received a preference due to the use of the right to meet a service obligation and the buyer did not. If the rights were sold to another load serving entity for the purpose of meeting that other entity's service obligations, however, Public Power Council believes that the fairness issue would be avoided.

Gaming and Arbitrage

353. A number of commenters express concern that, if the long-term firm transmission rights are reassignable and tradable, a load serving entity might have an incentive to acquire excess long-term firm transmission rights for financial gain.[117] EPSA states that it would be inappropriate for the Commission to allow utilities to profit from the sale of any long-term firm transmission rights that are obtained via a preferential priority. EPSA claims that vertically-integrated utilities with long-term contracts could hoard long-term firm transmission rights, blocking smaller retail providers from gaining access or entry to markets and competing effectively.

354. Ameren claims that concerns about possible arbitrage are addressed by its proposal to place a limitation on firm transmission right nominations based on a load serving entity's load. APPA recommends that load serving entities holding long-term firm transmission rights must have in their generation portfolios actual resources (owned or contracted for) and loads corresponding to the receipt and delivery points that the long-term firm transmission rights cover. APPA also suggests restrictions on the resale of long-term firm transmission rights in the form of minimum hold periods and minimum periods for resale of any right. However, APPA states that any such restrictions would have to be balanced against the need to ''recycle'' long-term firm transmission rights to ensure the most efficient use of the transmission rights. APPA states that a reasonable approach would be the Commission's suggestion that holders of long-term firm transmission rights be permitted only to return their long-term firm transmission rights to the RTO, and not to earn any profit on their direct sale to another market participant. TAPS claims that its recommended dispatch-contingent firm transmission rights would have very limited appeal for market participants interested in firm transmission right speculation.

355. Minnesota Power urges the Commission not to allow creation of a large secondary market in which market participants are able to inflate the price of long-term transmission rights or to use the long-term transmission rights as an economic position in the market. Minnesota Power suggests that the long-term transmission rights should be directly linked to, and tradable only with, the underlying generation rights or long-term purchase rights.

Commission Conclusion

356. The Commission will adopt guideline (6) as proposed in the NOPR, but will provide transmission organizations and their stakeholders with flexibility to determine specific rules for reassignment of long-term firm transmission rights. We note that most, if not all, transmission organizations now have rules governing the reassignment of firm transmission rights when load migrates from one load serving entity to another. The introduction of long-term firm transmission rights should not in itself require a change in the basic structure of these rules. In at least some transmission organizations, reassignment is achieved through a

[116] *See, e.g.,* AEP, Midwest ISO, TANC, Cinergy, SMUD, NRECA, OMS, Ameren, PG&E, Allegheny, IPL and Public Power Council.

[117] *See, e.g.,* EPSA, Santa Clara, OMS, Ameren, APPA, CMUA, Minnesota Power, Cinergy and TAPS.

reallocation of auction revenue rights, with a provision to allow the auction revenue rights to be converted into firm transmission rights.

357. In general, the issue of reassignment should arise only in the context of firm transmission rights (short-term or long-term) that are allocated preferentially to a load serving entity in accordance with guideline (5). If a load serving entity acquires firm transmission rights through an auction or as a result of funding a transmission upgrade, it should not be required to reassign such rights because any entity is free to acquire firm transmission rights in this manner. Also, a load serving entity that acquires long-term firm transmission rights to support the financing of a new generating facility should not, in general, be required to give up those rights simply because some of its load migrates to another load serving entity. However, a possible exception may arise if the original load serving entity were to lose so much of its load that the total of its long-term firm transmission rights exceeds its remaining load. In this case, as noted by PG&E, some mandatory reassignment may be justified.

358. The Commission believes that all long-term firm transmission rights should be tradable. Allowing tradability provides the load serving entity with flexibility to manage its transmission rights portfolio and helps to ensure that long-term firm transmission rights go to the market participants that value them most highly. Reassignments may be temporary. However, long-term firm transmission rights that the load serving entity obtains preferentially through an allocation process should be tradable only with the proviso that any trades may be subject to recall if load migrates to another load serving entity. Making the long-term firm transmission rights subject to recall ensures that they can be reassigned if necessary to follow migrating load, consistent with section 217(b)(3)(A) of the FPA. We note, however, in a transmission organization where reassignment is accomplished through a reallocation of auction revenue rights, rather than the firm transmission rights themselves, there may be no need for such a proviso. In this case, reassignment would be accomplished through a financial transfer, allowing the actual long-term firm transmission rights to remain with the original load serving entity. This should satisfy the CAISO's request that the Commission permit either the allocated long-term firm transmission rights or their equivalent financial value to be transferred from one load serving entity to another to reflect a transfer of load serving obligation. In addition, allocating auction revenue rights would also eliminate any need to place restrictions on reassignments, such as requiring the successor load serving entity to hold a supply contract that uses the same source/sink pair used by the original load serving entity.

359. Also, when reassignment of auction revenue rights or firm transmission rights is mandated due to a shift in load serving responsibility, any cost responsibilities associated with the holding of such rights, such as payment of transmission access charges, should shift from the original load serving entity to the successor load serving entity. No other compensation should be required. Again, the specific rules for accomplishing this should be left to the transmission organization and its stakeholders. With regard to firm transmission rights or long-term firm transmission rights that are acquired by auction or as a result of funding a transmission upgrade, the Commission believes (as noted above) that in general there should be no restrictions on trading such rights. Transfers should be permitted to occur at prices negotiated by the buyer and seller.

360. In response to Alcoa, the Commission notes that an end user that is permitted under state law to participate in wholesale markets may acquire, trade and reassign long-term firm transmission rights in accordance with guideline (6) in the same manner as other load serving entities, as discussed above under guideline (5).

Guideline (7)—Auction Not Required

361. As proposed in the NOPR, guideline (7) stated that the initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction. The Commission noted that, currently, most transmission organizations either allocate transmission rights directly to eligible parties, or allocate auction revenue rights directly and then conduct a transmission rights auction in which parties with and without allocated rights can participate. If an auction model is adopted or continued by the transmission organization, the Commission proposed to require that any long-term rights allocated as auction revenue rights be capable of being directly converted to transmission rights without participation in the auction. This was to allow any party that feels uncertain about valuing its rights commercially to have them allocated directly. This guideline did not preclude interested parties with long-term rights from participating in the auction if they choose.

Comments

General Support for Guideline (7)

362. Many commenters express strong support for proposed guideline (7).[118] For example, APPA states that the long-term firm transmission right allocation called for under guideline (7) is appropriate because it comports with section 217(b)(4) of EPAct 2005. Also, APPA believes that it at least partially restores the transmission rights that APPA members in transmission organization regions lost when full LMP-based markets were implemented.

363. NRECA claims that, because load serving entities pay the largest share of the existing and future transmission system costs, they should not have to bid for the right to use a system that they paid for and that was planned and built to serve their needs. However, NRECA states that it is not opposed to the use of auctions for residual or secondary rights and for voluntary dispositions of primary rights, consistent with current practice. PG&E recommends that, if any additional long-term firm transmission rights remain after the initial allocation process, such firm transmission rights should be made available for auction. PG&E states that, as experience with long-term firm transmission rights in LMP environments shows them to be functioning in an efficient and predictable manner, auctions could increasingly be used for long-term firm transmission right issuance without detracting from the goals of EPAct 2005. Public Power Council states that it does not endorse the use of an auction, but if an auction is used to allocate scarce rights, the Commission should permit only entities with a preference to participate in the auction in order to ensure that the price is not artificially inflated.

364. Central Vermont states that guideline (7) must be modified to provide parties with certainty concerning the value of their directly-allocated long-term transmission rights. Specifically, parties will not have certainty about the value of their long-term transmission rights if the initial allocation of rights also includes exposure to negative congestion charges between points, which are unavoidable and very difficult to assess in value.

365. In reply comments, APPA and New England Public Systems disagree with the contention of some commenters that FPA section 217(b)(4)

[118] *See, e.g.,* Xcel, PJM, TAPS, SoCal Edison, SMUD, Alcoa, PJM–PPC Members, APPA, AEP, BPA, NRECA, PG&E, New England Public Systems, Public Power Council, Ameren, TANC, CMUA and Central Vermont.

permits the Commission to make a load serving entity's ability to obtain a long-term firm transmission right, or the financial equivalent thereof, turn on whether the load serving entity is willing to pay more than other bidders. New England Public Systems states that transmission customers were not required to outbid other potential customers for firm transmission rights under the Order No. 888 regime in place prior to the advent of LMP-based markets, and load serving entities with service obligations met through long-term power supply arrangements should not be required to do so now.

366. TAPS notes that Midwest ISO argues that it would be difficult for a transmission organization to value the congestion hedge provided by a long-term right. TAPS argues that, by advocating allocation through auction, a transmission organization essentially assigns this same task to load serving entities that have far less information or control over the planning and expansion process.

Support for the Use of an Auction

367. Many commenters express strong support for the use of an auction mechanism for allocating long-term firm transmission rights and object to what they view as guideline (7)'s prohibition on using an auction for that purpose.[119] For example, IPL states that the guidelines should not preclude rights allocated by auction because transmission organizations and stakeholders should be allowed to determine whether an auction mechanism is the most equitable and efficient way to allocate rights. IPL contends that EPAct 2005 does not preclude auctions, does not specify a particular allocation methodology, and does not require that load serving entities receive rights for free. IPL argues that EPAct 2005 merely requires that load serving entities be able to acquire and use such rights and therefore the guidelines should not eliminate this flexibility. Also, Cinergy states that it strongly opposes guideline (7), claiming that there is no support in FPA section 217 for the notion that auctions should be foreclosed. Cinergy argues that auctions are the best available means of determining the initial value of transmission rights and it makes no sense for the Commission to exempt load serving entities from participating in them when that is the mechanism other market participants use. In Cinergy's view, guideline (7) ensures that no market mechanism will be available to address the unduly discriminatory free-rider problem caused when only some load serving entities obtain long-term rights.

368. DC Energy believes that, to the maximum extent possible, market-based solutions should be used to allocate and to establish prices for firm transmission rights. DC Energy asserts that robust auctions will maximize the value of firm transmission rights and increase overall market efficiency by allowing the parties that value firm transmission rights the most to acquire them. It believes that transmission users that acquire firm transmission rights outside of an auction process may pay less for firm transmission rights than those who would bid on them, resulting in a decrease in auction revenues which translates into an increase in transmission costs. Furthermore, DC Energy argues that transmission customers that hold firm transmission rights without having to pay fair market value for them will not utilize generation resources in the most efficient manner and will cause a sub-optimal dispatch due to indifference over supply options.

369. In reply to APPA's argument that longer-term transactions should be favored because they will send the proper economic signals for transmission facilities construction based on long-term power supply commitments, Coral Power argues that appropriate economic signals cannot be established under a system that does not auction rights on a non-discriminatory basis. It claims that transmission paths that are valued highly in successive short-term auctions are candidates for upgrades or for other solutions that might be more economic, such as the siting of local generation. Coral Power argues that a system that combines preferential allocations in long-term firm transmission rights with short-term competitive auctions for available transmission rights will only distort the market.

370. Morgan Stanley states that the Final Rule must not allow for the allocation of long-term firm transmission rights without the use of an auction mechanism based on sound market principles and uniform credit eligibility standards. Morgan Stanley argues that allocation of long-term firm transmission rights through a non-discriminatory auction, for terms that can be liquidly traded, will generate needed price signals for market participants. Conversely, in Morgan Stanley's view, preferential allocation of long-term firm transmission rights likely would: (1) Reduce the amount of capacity available to the market; (2) result in a barrier to competitive entry; (3) cause price signals to be blunted; (4) facilitate hoarding, and (5) create an increased bias in favor of regulatory outcomes as opposed to a market-based solution.

371. DTE recommends that, once auction revenue rights or long-term firm transmission rights are allocated to market participants, the regional stakeholder process should determine under what future conditions, if any, long-term firm transmission rights may be auctioned or traded. It states that this is a long-term market development issue that will be unique to each region.

372. National Grid states that, to the extent that there are uncertainties as to a customer's ability to obtain such rights in an auction, the regions can address that concern through consideration of rights of first refusal or other auction rules. National Grid adds that nothing prevents the holder of auction revenue rights from bidding for the underlying transmission rights and/or trading the auction revenue rights for transmission rights. National Grid states that, in keeping with the Commission's general approach to allow regions the flexibility to achieve consensus, the Commission should strike guideline (7) or revise it to allow for the possibility of mandatory auctions and the assignment of auction revenue rights if the regions deem these features to be appropriate.

373. EPSA states that in markets with allocation of auction revenue rights or similar rights, regions may choose to continue to allocate such rights without the use of an auction. However, EPSA states that auction revenue rights are not the same as financial transmission rights and stakeholders may or may not include them in long-term firm transmission right programs. EPSA submits that the guidelines should be clear on what they assume will be included as baseline requirements or elements for the rules that will underpin all long-term firm transmission right programs in organized markets, and should not preclude a region from requiring an auction process to transparently value all firm transmission rights, including long-term firm transmission rights. AEP states that a load serving entity should always have the right to directly convert auction revenue rights into firm transmission rights through the auction process, and would be comfortable with such a conversion taking place outside of the auction process.

374. SDG&E states that load serving entities that have both long-term and short-term power supply agreements have ''reasonable needs,'' and the

[119] *See, e.g.,* Cinergy, DC Energy, Coral Power, Morgan Stanley, EEI, IPL, DTE, National Grid, SDG&E, Midwest ISO, AF&PA, EPSA and Reliant.

statute does not value the ''needs'' of one more than the other. SDG&E believes firm transmission right auctions are useful because they allow all load serving entities to seek whatever mix of firm transmission rights they believe would he most valuable in terms of hedging their power supply portfolios, thereby enhancing the load serving entity's attractiveness to potential loads. AF&PA recommends that, in the absence of permitting auctions, the Commission should clearly provide guidance as to the appropriate methodology for determining the value of such long-term hedges.

375. Reliant proposes that guideline (7) be modified to state: ''Guideline (7): The initial allocation of the long-term firm transmission rights shall provide for a non-discriminatory and transparent auction but not require recipients to sell their rights into that auction.'' APPA, however, states that it opposes this language because it is too vague.

ISO–NE's Auction Mechanism

376. ISO–NE strongly urges the Commission to provide transmission organizations and their stakeholders with the flexibility to consider allocating long-term firm transmission rights by auction, consistent with existing New England practices. ISO–NE argues that the economic benefits of auction-based allocation are well understood and have been accepted by the Commission in its orders on New England's current market design and in other proceedings. According to ISO–NE, entities such as PJM that initially allocated firm transmission rights directly to load have shifted to an auction-based allocation for compelling reasons. ISO–NE adds that, if the Commission were to preclude an allocation by auction, it is unclear how the long-term firm transmission right acquired by a load serving entity auction revenue right holder would be valued.

377. NEPOOL states that a requirement that long-term firm transmission rights be directly allocated to load serving entities has the potential to be especially disruptive to an organized market such as in New England, where there is a mature auction mechanism in place that allocates one hundred percent of the firm transmission rights. According to NEPOOL, that same auction mechanism could be used to allocate long-term firm transmission rights, along with all other firm transmission rights, while still ensuring that load serving entities are able to acquire the long-term firm transmission rights they need. This protection of load serving entities could be assured, for example, through a tie-breaker mechanism, under which, if a load serving entity with a long-term commitment and another market participant are bidding the same price for a long-term firm transmission right, the load serving entity would have priority and would get the long-term firm transmission right. NEPOOL states that, in New England, load serving entities receive a direct allocation of auction revenue rights and would be able to use their auction revenue right revenues to bid into the auction for long-term firm transmission rights, thus providing them the ability, combined with a tie-breaker mechanism, to acquire the long-term firm transmission rights they need. Also, Morgan Stanley states that it supports this direct allocation of auction revenue rights so long as such direct allocation remains independent from the allocation of long-term firm transmission rights.

378. New England Public Systems counters that the auction revenue right/firm transmission right structure in New England is inadequate to hedge congestion risk and is not equivalent to firm transmission even on a short-term basis; thus, simply extending the term of such products cannot satisfy the statute's requirements. According to New England Public Systems, most auction revenue rights in New England are allocated among congestion-paying load serving entities on a zonal load ratio share basis. In effect, each such load serving entity is paid the auction clearing price of an average firm transmission right in the zone times the ratio of its peak load to the zonal peak load. New England Public Systems argues that there is no assurance that revenues thus received will be sufficient to enable the load serving entity to acquire a specific firm transmission right across a particularly congested path. New England Public Systems asserts that auction revenue rights that (a) do not necessarily cover the cost of transmission congestion at a specific location, and (b) cannot be converted directly to long-term firm transmission rights that do hedge the risk of transmission congestion at a specific location are not the ''equivalent'' of the firm transmission rights that section 217(b)(4) requires.

379. Also, New England Public Systems states that an auction revenue right in itself is not the financial equivalent of a firm transmission right, because auction revenue right revenues generally are socialized and distributed on the basis of zonal load ratio share. According to New England Public Systems, if a load serving entity is outbid for a valuable firm transmission right, it receives only a fraction of the auction revenue generated by the winning bid yet remains exposed to congestion along the associated path. New England Public Systems states that, aside from the socialization issue, even path-specific long-term auction revenue rights could leave their holders exposed to significant congestion costs unless there is a right to convert long-term auction revenue rights to long-term firm transmission rights.

380. Finally, in reply comments, New England Public Systems notes that ISO New England argues that entities such as PJM that initially allocated firm transmission rights directly to load have shifted to an auction-based allocation for compelling reasons. However, New England Public Systems contends that PJM's auction is not the exclusive means of acquiring firm transmission rights in that region. It notes that PJM permits self-scheduling of firm transmission rights (in essence, allowing an auction revenue right holder to convert its auction revenue right into an firm transmission right) under some circumstances, but requires that the self-scheduled firm transmission right have exactly the same source and sink points as the auction revenue right. According to New England Public Systems, these aspects of PJM's existing system for allocation of short-term transmission rights fatally undercut ISO New England's attempt to rely on the PJM precedent as support for extending the New England approach (which lacks direct conversion rights) to long-term firm transmission rights.

NYISO's Auction Mechanism

381. NYISO argues that the guideline (7) proposal does not apply to it because it has already engaged in an allocation process that assigned the rights to transmission congestion contract auction revenues to the New York transmission owners. NYISO claims that the same allocation would apply to any longer-term transmission congestion contracts that are issued as a result of this proceeding. NYISO states that its transmission congestion contract auction and allocation rules have already been approved by the Commission and are grandfathered under section 217(c) of the FPA. Therefore, according to NYISO, it does not appear that Proposed guideline (7) is at odds with existing NYISO rules. NYISO states that, in any event, the Commission should clarify that Proposed guideline (7) is not intended to discourage auctions for long-term

firm transmission rights beyond the initial allocation of revenue rights.

382. In response to NYISO, NYAPP states that section 217(c) of EPAct 2005 does not serve to ''grandfather'' any RTO allocation mechanisms under section 217(b)(4), only subsections (b)(1), (b)(2), and (b)(3). The Commission's authority to modify a transmission organization's current methods for allocation of transmission rights is specifically preserved for the implementation of section 217(b)(4). In NYAPP's view, NYISO should still have to comply with guideline (7).

PJM's Auction Mechanism

383. Reliant states that any allocation of long-term rights should include a transparent auction process that allows participants to evaluate the value of such rights, and that the existing PJM auction revenue rights process is a good market example that meets the varied needs of all market participants.

384. Strategic Energy argues that any allocation of transmission hedges should be provided via auction revenue right, with the option, but not the obligation, to convert the auction revenue right to a firm transmission right on a concurrent source/sink path, as is the current PJM practice. Strategic Energy claims that the auction revenue right facilitates load migrations and the equitable migration of the value of transmission hedges with the load. However, Strategic Energy states that its support of the auction revenue right/ firm transmission right allocation and auction model is mitigated by concern that initial allocation of auction revenue rights should not be provided to long-term uses to the detriment of short-term uses, such as annual or shorter-term hedging frequently employed by competitive retail suppliers.

Commission Conclusion

385. We will adopt guideline (7) as proposed in the NOPR. However, as we explain below, we clarify that guideline (7) does not preclude a transmission organization from using an auction to allocate long-term firm transmission rights; it only precludes requiring a load serving entity to submit a winning bid in an auction in order to acquire long-term firm transmission rights.

386. The Commission agrees with commenters such as APPA, NRECA and CMUA that argue that load serving entities that are obligated to pay the embedded costs of the transmission system should be able to receive an equitable share of long-term firm transmission rights without having to submit a competitive bid for those rights. As APPA points out, guideline (7) provides the load serving entity with transmission rights that are more akin to long-term network and point-to-point service rights of Order No. 888 than to the short-term rights offered in today's organized electricity markets. Also, the Commission does not interpret EPAct 2005 as requiring the use of an auction to allocate long-term firm transmission rights, or as preventing the Commission from modifying the allocation method currently used by any transmission organization. As we have noted elsewhere in this preamble, section 217(b)(4) of the FPA is not included in the list of subsections that section 217(c) states shall not affect existing or future transmission organization allocation methodologies.

387. Nevertheless, the Commission agrees with those commenters that point out the many benefits that auctions can bring to the allocation process. As DC Energy notes, auctions can maximize the value of transmission rights and increase overall market efficiency by allowing the parties that value firm transmission rights the most to acquire them. Also, as Coral Power notes, transmission paths that are valued highly in successive short-term auctions are candidates for upgrades or for other solutions that might be more economic, such as the siting of local generation. We note, however, that some of these commenters interpret guideline (7) as precluding the use of an auction to allocate long-term firm transmission rights. For example, Cinergy asserts that guideline (7) ensures that no market mechanism will be available. Further, Cinergy states that there is no support in FPA section 217 for the notion that auctions should be foreclosed and that it makes no sense for the Commission to exempt load serving entities from participating in them when that is the mechanism other market participants use.

388. The Commission clarifies that we do not intend for guideline (7) to foreclose all transmission right auctions. Indeed, the Commission believes that an auction can be an integral part of a process for the fair and efficient allocation of long-term firm transmission rights that also satisfies the fundamental requirement of guideline (7). For example, one such allocation process is the method now used by PJM to allocate annual firm transmission rights. As noted by New England Public Systems, PJM uses a process that first allocates auction revenue rights to load serving entities and then allows each load serving entity the option to convert its auction revenue rights directly into annual firm transmission rights with identical sources and sinks. In effect, each load serving entity in PJM may, at its option, bid the value of its auction revenue rights into the auction as a ''price-taker'' knowing that it will win the bid for the firm transmission rights that correspond to the sources and sinks of its respective auction revenue rights. As a price-taker, the load serving entity will not know in advance the price it must pay for the firm transmission rights that it acquires, but it is secure in the knowledge that the value of its auction revenue rights will cover exactly the cost of the firm transmission rights. Such a process could be readily adapted to the allocation of long-term firm transmission rights.

389. The principal advantage of this approach is that, consistent with guideline (7), it allows the load serving entity to obtain its long-term firm transmission rights without having to submit an explicit price bid in an auction, yet at the same time it exposes the load serving entity to a competitive auction price signal that will promote efficient-decision making. Of course, as long as the load serving entity desires long-term firm transmission rights with the same source and sink points as its allocated auction revenue rights, it may simply bid the value of those auction revenue rights into the auction and receive those rights. However, because it is exposed to the auction price signal, the load serving entity acquires information that may cause it to adopt a different bidding strategy in subsequent auctions. For example, if the auction clearing price for the long-term firm transmission rights that correspond to a load serving entity's auction revenue rights is very high, while the clearing price for other long-term firm transmission rights is low, the load serving entity may determine that it would prefer to submit an explicit price bid for the lower-priced rights and forego the opportunity to convert its auction revenue rights into the corresponding long-term firm transmission rights. In this way, the load serving entity obtains valuable, albeit lower-priced, rights and also receives auction revenues equal to the difference between the value of its auction revenue rights and the total amount it must pay for the lower-priced rights. In addition, the higher-priced rights that correspond to the load serving entity's auction revenue rights are now made available to other auction participants that value them more highly, thus achieving the goal identified by DC Energy.

390. In this regard, we note that DC Energy is concerned that transmission customers that obtain firm transmission rights without having to pay fair market

value for them will not utilize generation resources in the most efficient manner, and Coral Power argues that this could result in a highly inefficient generation siting decision. Similarly, Morgan Stanley is concerned that guideline (7) will lead to competitive entry barriers, hoarding and blunted price signals. We disagree. Even when a load serving entity holds auction revenue rights with a direct conversion right, it can be expected to behave in an economically rational manner because it always has an incentive to forego its conversion right if it stands to gain financially from submitting a price bid for alternative rights in the long-term firm transmission rights auction.

391. EPSA notes that in markets with allocation of auction revenue rights, regions may choose to continue to allocate such rights without the use of an auction. However, EPSA states that auction revenue rights are not the same as firm transmission rights and wants the guidelines to be clear on what elements must be included in all long-term firm transmission rights programs. Also, Strategic Energy states that initial allocation of auction revenue rights should not be provided to long-term uses to the detriment of short-term uses. Although the Commission believes that allocation methods that combine a direct allocation of auction revenue rights with a transmission rights auction offer many advantages, we will not prescribe here the process by which a transmission organization must allocate auction revenue rights, or ultimately long-term firm transmission rights, to a load serving entity or other market participant. We recognize that, today, transmission organizations use a variety of allocation methods, but no one method has emerged as being clearly superior to all others. We, therefore, will provide each transmission organization and its stakeholders with the flexibility to propose an approach that meets regional needs and satisfies each of the guidelines in this Final Rule, subject to Commission approval.

392. A number of comments were directed specifically at the auction mechanisms currently used by ISO-NE and NYISO. Based on the comments of New England Public Systems, it appears that the allocation process now used by ISO-NE does not permit a direct conversion of auction revenue rights into corresponding firm transmission rights. If so, the process does not meet the requirements of guideline (7) for allocating long-term firm transmission rights and must be modified. Also, with respect to NYISO's auction mechanism, NYAPP is correct in noting that section 217(c) of EPAct 2005 does not prevent the Commission from modifying the allocation processes of any transmission organization under section 217(b)(4). Therefore, contrary to the view of NYISO, guideline (7) applies to its allocation process in the same way that it applies to the allocation processes of all other transmission organizations.

393. Finally, Central Vermont states that guideline (7) must be modified to provide market participants with certainty concerning the value of their long-term transmission rights if the initial allocation of rights includes exposure to negative congestion charges. We will not modify guideline (7) to address this concern. However, we will provide the transmission organization and its stakeholders with flexibility to include, within the proposed allocation process, specific rules to address such matters should they arise.

Guideline (8)—Balance Adverse Economic Impacts

394. As proposed in the NOPR, guideline (8) stated that the allocation of long-term firm transmission rights should balance any adverse economic impact between participants receiving and not receiving the right. The NOPR noted that, to the extent that the capacity of the transmission system is encumbered by entities holding long-term firm transmission rights, entities that prefer short-term transmission rights, such as load serving entities operating in retail states, will have fewer rights available to them than they have under current annual allocation schemes. In addition, to the extent awarded long-term rights become infeasible due to unforeseen changes in the physical properties of the transmission system, the payment obligations to holders of long-term firm transmission rights would have to be funded by others.

395. The NOPR stated that, in general, it should be possible for the transmission organization to introduce long-term firm transmission rights in a way that balances economic impacts, for example, by placing a limit on the amount of system capacity that is available to support long-term rights. Also, the NOPR stated that if the long-term right is an ''option'' right that encumbers more system capacity than an ''obligation'' right, the holder of such a right could be required to assume greater cost responsibility.

396. The NOPR noted that the transmission organization might provide for a secondary market or auction that would provide an opportunity for transmission customers to obtain long-term rights on either a long-term or short-term basis from those holding long-term rights. The NOPR proposed to allow the transmission organization flexibility to propose methods for pricing transmission rights and related services that are appropriate for its region and are the product of a stakeholder process.

397. The NOPR asked for comments on any measures that should be adopted to protect against the impacts of a decision by a holder of an ''obligation'' right to leave the transmission organization when the feasibility of other transmission rights depend on that holder's counterflows.

Comments

General Comments on the Need for Guideline (8)

398. Several commenters argue that the principles embodied in guideline (8) are important, and some believe that they should be the primary focus in the allocation of long-term firm transmission rights.[120] AF&PA states that principles embodied in guideline (8) should be seen as controlling the application of all the other guidelines. AF&PA states that the Commission must not return to a pre-OATT world where certain entities claim the exclusive right to use the transmission system for their benefit, and all competing usage is viewed as incremental or marginal.

399. Midwest ISO states that the nature and scope of financial hedging instruments for users of long-term transmission ultimately should be defined in well-functioning markets. Midwest ISO argues that any mandate that transmission organizations provide such instruments must carefully balance the potential benefits to some market participants against the potential costs to other market participants. IPL states that, as proposed, the guidelines are not balanced and do not meet this standard.

400. NYISO believes that it is possible that long-term firm transmission rights can be introduced without inequities, particularly if transmission organizations are permitted to retain existing systems without major changes. CMUA also believes the equity concerns raised in guideline (8) may in practice not prove difficult to reconcile. Nevertheless, CMUA is concerned that transmission organizations and certain stakeholders might attempt to use guideline (8) to effectively eviscerate long-term firm transmission rights, in violation of FPA section 217(b)(4).

[120] *See, e.g.*, AF&PA, EPSA, Midwest ISO, IPL, NYISO, CMUA and National Grid.

Comments Suggesting That Guideline (8) Is Not Needed

401. Some commenters argue that guideline (8) is not needed or requires clarification.[121] For example, BPA suggests that this guideline be deleted from the Final Rule, as the issues it raises can be addressed under other guidelines. Furthermore, BPA states that it is not appropriate to require transmission organizations to balance the adverse economic impacts between those receiving the right and those that do not.

402. TAPS states that guideline (8) should be removed. However, if some ''reasonableness'' guideline is retained, it should be reworded as ''avoidance of undue impacts,'' to recognize that some impacts are ''due'' and reasonable. In addition, TAPS is concerned that guideline (8) establishes criteria that are not called for by section 217(b)(4) and could be used to undermine Congress's clear directive. In response, Midwest ISO agrees with TAPS that section 217(b)(4) does not expressly require that a balance be struck between those that receive long-term firm transmission rights and those that do not. However, Midwest ISO claims that section 217(b)(4) also does not expressly require the Commission to provide load serving entities unlimited and fully-funded long-term firm transmission rights to hedge congestion costs associated with long-term power supply arrangements.

403. In addition, TAPS notes that the NOPR describes as an adverse impact the potential that the long-term rights will result in the availability of fewer rights for entities that prefer short-term rights. TAPS states that this has always been the case under the Order 888 OATT. TAPS claims that a transmission provider is not entitled to turn down a long-term firm request to keep capacity available for those who wish to make short-term or non-firm use of the system.

404. Industrial Consumers argues that, if the total available rights (short- and long-term) are insufficient to meet the needs of end-use customers (an indication that the owners of the transmission system are mismanaging the maintenance and planning of their assets) it may be necessary to ration the rights, but still preserve the preference to holders of long-term rights. In Industrial Consumers' view, the real issue here is not that economic interests are not appropriately balanced, but that transmission owners have abrogated their responsibilities.

405. Alcoa states that it is not clear whether the Commission intends that there will be a redistribution of costs and benefits between those entities holding firm transmission rights and those that do not.

Conflicts Between Guideline (8) and Other Guidelines

406. Cinergy states that it completely agrees with guideline (8), but claims that this guideline is not achievable in light of the other guidelines proposed by the Commission. Midwest ISO maintains that, while the implementation of this guideline is essential, the implementation would be difficult because it is in direct conflict with the requirement for full funding of long-term firm transmission rights (guideline (2)) and the priority extended to long-term firm transmission right holders (guideline (5)). NYISO states that the same problem applies to proposed guideline (4) to the extent that the Commission interprets it to require non-market based renewal rights for long-term transmission rights. National Grid recommends that the Commission treat these conflicting guidelines more as goals rather than minimum requirements.

Need for Regional Flexibility in the Application of Guideline (8)

407. SoCal Edison states that, because issues of balance are intricate and require both judgment and familiarity with the local market and system issues, the Commission should leave the specifics of such a balance to the transmission organizations. Similarly, IPL urges the Commission to allow the transmission organization the flexibility to develop certain long-term transmission rights parameters such as pricing and availability.

Importance of Protecting the Status Quo

408. Some commenters recommend that guideline (8) be implemented in a way that protects existing short-term rights holders and market rules.[122] For example, Constellation states that the Commission should not adopt policies that harm the existing competitive wholesale and retail markets. Constellation asserts that a policy that articulates a preference for long-term supply arrangements is such a policy. Constellation states that, if the Commission decides to unwind the current, competitive market structure by setting aside existing transmission capability for long-term uses, then guideline (8) must be a critical factor in the Commission's approval of any long-term firm transmission right proposal so that the Commission can ensure that there are no adverse impacts on other market participants. In Constellation's view, any long-term firm transmission right proposal must identify harm that will be caused by its implementation, such as the reduction of hedging opportunities for shorter-term uses, and propose mitigation for such adverse consequences.

409. EEI argues that since load serving entities and other transmission customers in PJM, Midwest ISO, NYISO and ISO–NE have made supply and investment decisions in reliance on Commission-approved allocations, the Commission should not reverse its prior decisions by changing these allocations and market structures. EEI argues that it would be disruptive and unfair to require any changes to the underlying agreements and understandings that formed the design of these four transmission organizations. In response, APPA argues that the equities cut both ways. APPA claims that during the transition to ''Day Two'' transmission organization markets, many public power load serving entities lost valuable Order No. 888 OATT and grandfathered transmission rights, leaving their power supply arrangements subject to unanticipated transmission congestion charges. According to APPA, these entities have since been attempting to conduct business under a construct of locational marginal pricing and firm transmission rights that is essentially hostile to their business model. In addition, APPA argues that Congress contemplated that making long-term firm transmission rights available to load serving entities under section 217(b)(4) might indeed require revisiting the prior allocation of firm transmission rights in RTO regions. Further, NRECA claims that Congress has already issued the mandate and determined the appropriate balance of costs and benefits; it has not authorized the Commission or transmission organizations to undertake a cost/benefit analysis of whether the statutory mandate is justified or the balance struck by statute appropriate.

Issues Regarding Cost Shifting

410. Several commenters express concern that requiring transmission organizations to make available long-term firm transmission rights could harm market performance and shift costs unnecessarily or unfairly among

[121] *See, e.g.,* BPA, TAPS, Industrial Consumers and Alcoa.

[122] *See, e.g.,* Coral Power, Constellation, Strategic Energy, and EEI.

market participants.[123] For example, Strategic Energy submits that introduction of multi-year rights will cause cost shifts if holders of such rights are allocated congestion risk coverage greater than that accorded to other parties.

411. BP Energy states that to ensure the balancing of any adverse economic impacts, guideline (8) should be modified to state explicitly that the allocation of incremental long-term firm transmission rights to one party can not result in subsidization of those rights by other parties, *i.e.*, there can be no significant shifting of generation redispatch costs or fixed transmission costs as the result of new supply arrangements entered into by load serving entities receiving long-term rights to parties not subject to those agreements.

412. BP Energy also argues that, if parties seeking long-term rights are able to shift congestion costs to others, they will have no disincentive to enter into supply arrangements that reduce (because of their relative location on the grid) the absolute amount of transmission rights that an organized market can allocate while maintaining revenue sufficiency. Similarly, in ISO–NE's view, allocation of free long-term firm transmission rights to load serving entities versus an auction of long-term firm transmission rights to generators, traders and other entities creates equity and distortion issues.

413. Some commenters address the problem of balancing adverse impacts in light of the NOPR's proposed requirement for full funding of long-term firm transmission rights.[124] For example, IPL argues that the adverse economic impact of a long-term financial transmission rights allocation stems in large part from the shortfall funding obligation. IPL urges the Commission not to require entities to share this obligation to the extent those entities do not receive benefits from the allocation and do not bear direct responsibility for congestion costs. According to Midwest ISO, the Commission's proposal to guarantee load serving entities priority of existing transmission capacity with fully-funded long-term firm transmission rights for the entire capacity of their supply contracts may result in significant costs on other market participants, increase the costs of transmission organization membership, and significantly reduce the availability of firm transmission rights to meet short-term firm transmission right holders' requests.

Pricing and Cost Responsibility for Long-Term Firm Transmission Rights

414. Some commenters state that they agree with the NOPR's statement that ''to the extent that the long-term right relieves the holder of the obligation to pay congestion costs, the value of that congestion hedge should be reflected in the price of the long-term right, insofar as possible.'' [125] In this regard, BP Energy argues that two scenarios are apparent. First, where the same or electrically similar (mutually exclusive) rights are sought by multiple parties, the party willing to pay the most might acquire them through a competitive process, such as an auction. Alternatively, the party seeking such long-term rights can, consistent with guideline (3), pay for the necessary ''transmission upgrades and expansions'' to receive the ''rights made feasible'' by that expenditure. In the case where existing capacity is sought by multiple parties, and auctions are not available, BP Energy argues that the only equitable and reasonable method of capacity allocation, consistent with the Commission's holding that ''the value of that congestion hedge should be reflected in the price of the long-term right'' is to honor existing rights allocations, while expediting capacity upgrades and expansions to meet needs exceeding available transmission capacity.

415. Midwest ISO states that the notion that the price of the long-term right should reflect the value of the congestion hedge is problematic because it is unclear how transmission organizations would reflect the value of the congestion hedge in the price of the long-term firm transmission right. Midwest ISO argues that the best way to determine the value of such a congestion hedge would be through a market mechanism such as an auction, which would be inconsistent with guideline (7).

416. Some commenters argue that long-term firm transmission rights holders should not, in general, be allocated a cost differential.[126] Ameren states that load serving entities that are allocated long-term firm transmission rights are providing the steady, long-term revenue stream to transmission owners that allows them to invest in upgrades and expansions to the system, and thus, should not be assessed a premium charge. TAPS states that if long-term rights are limited to base load and renewable resources for which the grid should be planned in any event, it is unreasonable to impose an additional cost burden on long-term right holders. TAPS states that the Commission should make clear that it will not accept proposals that would defeat the purpose of long-term rights by pricing them out of the reach of load serving entities. Also, TAPS supports the Commission's proposal to leave the pricing associated with long-term rights to RTO compliance filings. However, TAPS believes that the transmission organization compliance process will go more smoothly if the Final Rule includes a new guideline providing that the pricing of long-term rights should support and not frustrate section 217(b)(4)'s directive to enable load serving entities to secure such rights.

417. With respect to firm transmission right options, Strategic Energy states that to the extent that firm transmission right options can be accommodated, they should be offered, subject to the recognition that such products encumber substantially more system capacity than obligations, and therefore should be valued accordingly. Also, TAPS and OMS agree that those wanting long-term firm transmission right options should be willing to pay for the additional cost of providing such an instrument. OMS submits that one possible way of doing this is to first allocate long-term firm transmission right obligations, and then allow those receiving long-term firm transmission right obligations the option of converting the firm transmission right obligation to a firm transmission right option.

Proposals to Limit the Adverse Impact of Long-Term Firm Transmission Rights

418. NSTAR and CAISO argue that some of the concerns the Commission raises under guideline (8) can be addressed by making long-term firm transmmission rights identical to short-term rights in every way but duration. In NSTAR's view, section 217(b)(4) does not require differences between long-term firm transmission right characteristics and firm transmission right/auction revenue right characteristics except for duration. NSTAR argues that failure to harmonize any future long-term firm transmission rights with the current market and transmission tariff would be disruptive of existing arrangements and destabilize power supply planning.

419. Some commenters argue that the balance that the Commission seeks under guideline (8) can be achieved with the aid of secondary auctions and

[123] *See, e.g.*, EEI, Strategic Energy, Suez Energy, BP Energy, ISO–NE and Midwest ISO.

[124] *See, e.g.*, IPL, PJM, PJM Public Power Coalition and BP Energy.

[125] *See, e.g.*, Midwest TOs and BP Energy.

[126] *See, e.g.*, TANC, NRECA, TAPS, Ameren, CMUA, NCPA and APPA.

other market mechanisms.[127] For example, NRECA recommends using a voluntary secondary auction in order to allow reconfiguration of long-term firm transmission rights. NRECA states that this would allow shorter term rights that are unused to be auctioned to load serving entities without longer term service obligations, which could mitigate any potential adverse effect experienced by those that do not receive long-term firm transmission rights.

420. Several commenters suggest that adverse impacts associated with the introduction of long-term firm transmission rights can be reduced by limiting the amount of transmission capacity that is made available for those rights.[128] For example, Reliant supports placing a limit on the amount of system capacity available to support long-term rights as this would reduce the likelihood that the rights may become infeasible, which in turn would reduce the possibility that the burden of funding the allocated rights would eventually fall onto other market participants.

421. APPA states that it is amenable to discussion of mechanisms that transmission organizations could use to minimize to the extent possible the adverse impacts of long-term firm transmission right allocations on the firm transmission rights available to other transmission customers. APPA proposes therefore that the Commission reformulate guideline (8) to reflect this approach: ''Long-term firm transmission rights should be allocated in a manner that minimizes, to the extent possible, adverse impacts on participants not receiving such rights.'' APPA states that any such mechanisms would have to be specific to each transmission organization and could include some combination of: (1) Restrictions on the overall portion of the existing transmission system that could be allocated to support long-term firm transmission rights and (2) limits on each load serving entity's own long-term firm transmission right holdings, based on some percentage of the load serving entity's own loads.

422. In response, PJM states that the APPA rewrite of guideline (8) may go too far and potentially eliminate the ability of transmission organizations to preserve their existing priorities for short-term firm transmission rights with the new long-term firm transmission rights. As a result, PJM asks that guideline (8) not be amended. Rather, PJM urges the Commission to examine whether the appropriate balance called for in guideline (8) has been addressed in individual transmission organization filings.

Rules for Withdrawing From Membership in an RTO

423. With regard to whether measures are needed to address events such as the departure of long-term firm transmission right holders from the transmission organization, APPA states that the transmission organization will likely have to handle such events on a case-by-case basis. Ameren states that covering the impact of exit on long-term firm transmission rights may require additional language in transmission organization tariffs and/or members' agreements.

424. TAPS argues that transmission dependent utilities have no control over whether their host transmission owner seeks to withdraw from an RTO or switch RTOs. In TAPS's view, transmission dependent utilities therefore should be held harmless from such decisions. If, upon withdrawal, the host transmission owner reverts to a physical rights regime, TAPS states that the transmission dependent utility's long-term right should be adapted to that regimen. If the host transmission owner switches transmission organizations, TAPS states that the new transmission organization should be required to honor the transmission dependent utilities' long-term rights.

Commission Conclusion

425. The Commission will delete guideline (8) in the Final Rule. Commenters make a strong case that guideline (8) is not needed. Our principal purpose in including guideline (8) was to ensure that the requirements of section 217(b)(4) of the FPA are implemented in a manner that is just and reasonable and not unduly discriminatory, which is our legal duty under the FPA. Neither we nor, in our view, Congress intended to require long-term firm transmission right proposals to meet a different or higher standard. Indeed, as noted by APPA, TAPS, CMUA and others, opponents of long-term firm transmission rights could attempt to interpret guideline (8) in a way that would effectively eviscerate long-term firm transmission right proposals. Also, we agree with BPA's statement that the issues raised by guideline (8) can be effectively addressed through the application of other guidelines. Nevertheless, while we are deleting guideline (8), we believe that meeting our obligation under the FPA to ensure that rates are just and reasonable and not unduly discriminatory will still require that we assess the impact of long-term rights proposals on those not receiving the rights.

426. We note that several commenters overstate the adverse effects of introducing long-term firm transmission rights, particularly in light of the revised guidelines that we are adopting herein. For example, Midwest ISO states that providing load serving entities with priority to receive, from existing transmission capacity, fully-funded long-term firm transmission rights to support the full amount of their supply contracts may place significant costs on other market participants, increase the costs of transmission organization membership, and significantly reduce the availability of firm transmission rights to meet short-term firm transmission right holders' requests. However, by (1) expanding the priority of guideline (5) to all load serving entities and (2) allowing limits to be placed on the amount of existing transmission system capacity that is made available for long-term firm transmission rights, the Commission is taking important steps in this Final Rule to reduce, if not eliminate, problems associated with cost shifting and the reduced availability of short-term transmission rights to load serving entities that prefer them. As we explained in the discussion of guideline (5) above, as a result of these changes, the transmission organization should be able to design a comprehensive allocation process for short-term and long-term transmission rights that largely replicates the equitable distribution of short-term rights that occurred in the past for those entities that still want them. Indeed, to the extent that long-term rights and short-term rights have the same properties except for duration, as suggested by NSTAR and CAISO, even the full-funding requirement should not lead to significant cost shifting among classes of rights holders if all rights holders are given similar full-funding protections.[129] In any event, as noted by Reliant, placing a limit on the amount of system capacity available to support long-term rights will reduce the likelihood that the rights may become infeasible, which in turn will reduce the possibility that the funding burden will eventually fall onto other market participants.

427. Also, BP Energy states that if long-term rights holders are able to shift

[127] *See, e.g.*, NRECA, SMUD, Midwest ISO, Reliant, AF&PA, Strategic Energy and BPA.

[128] *See, e.g.*, Reliant, Kentucky PSC, PJM, Santa Clara, SoCal Edison, AEP, CAISO, ISO–NE, Midwest ISO, OMS, NU, PG&E, APPA, TAPS and Wisconsin Electric.

[129] *See* the discussion of these issues under guideline (2), above.

generation redispatch and other congestion costs to others, they will have no incentive to enter into supply arrangements that maximize the number of transmission rights that can be allocated while maintaining revenue sufficiency. Similarly, ISO–NE argues that allocation of free long-term firm transmission rights to load serving entities versus an auction of such rights to all entities creates equity and distortion issues. We disagree. Well designed long-term firm transmission rights should result in no significant equity issues or economic distortions. As noted, cost shifting and equity issues are largely addressed by our revisions to guideline (5). As to economic distortions, these largely can be avoided by making firm transmission rights available through a process that combines a direct allocation of auction revenue rights with an auction of firm transmission rights, as explained in our discussion of guideline (7). Also, as NRECA notes, the availability of a voluntary secondary auction would allow reconfiguration of long-term firm transmission rights and make available shorter-term rights to entities that were not able to obtain long-term firm transmission rights.

428. Finally, with regard to whether measures need to be adopted to address events such as the departure of long-term firm transmission right holders from the transmission organization, the Commission agrees with APPA and Ameren that issues related to the withdrawal of an entity from a transmission organization are best addressed in the transmission organization's members' agreement's terms for exit and should be reviewed on a case-by-case basis. As Ameren notes, the addition of long-term firm transmission rights may require additional language in transmission organization tariffs or members' agreements. The Commission encourages transmission organizations and their stakeholders to consider the need for such language and to include any proposed revisions in their compliance filings.

F. Transmission Planning and Expansion

429. In the NOPR, the Commission noted that section 217(b)(4) of the FPA requires the Commission to 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.'' Accordingly, the Commission proposed to require that transmission organizations ensure that the long-term firm transmission rights they offer remain viable and are not modified or curtailed over their entire term. The Commission noted that, because the proposed guidelines would require that transmission organizations guarantee the financial coverage of the long-term firm transmission rights, transmission organizations would need to have an effective planning regime in place, and might need to expand the system to ensure that the long-term firm transmission rights can be accommodated over their entire term.

430. The Commission stated that it would not propose specific planning and expansion procedures in the NOPR, but rather each transmission organization and its stakeholders should develop appropriate methods for ensuring that long-term firm transmission rights are supported by adequate planning and expansion procedures. The Commission encouraged transmission organizations to propose such procedures as part of their filings in compliance with the Final Rule, and stated that it will consider them in light of the direction in section 217(b)(4) of the FPA that the Commission exercise its FPA authority to facilitate the planning and expansion of transmission facilities. The Commission asked for comments on whether it should require that transmission organizations file their transmission planning and expansion procedures and specific plans. It also sought comment on whether, alternatively, the Commission should require that transmission organizations file the plans and procedures for informational purposes to allow the Commission to monitor their adequacy for ensuring the viability of the long-term firm transmission rights.

431. The Commission noted that the *pro forma* OATT adopted by the Commission in Order No. 888 requires transmission providers to expand capacity, if necessary, to satisfy the needs of network and point-to-point transmission service customers. The Commission also noted that its Notice of Inquiry concerning the *pro forma* OATT sought responses from interested parties on specific questions relating to this requirement, including: (1) whether this provision has met transmission customers' needs, and (2) whether public utility transmission providers have fulfilled these obligations.[130] In the NOPR, the Commission asked for comments addressing these questions in the specific context of the transmission organizations with organized electricity markets that are the subject of this rulemaking.

432. Finally, in the NOPR, the Commission asked for comments on whether the definition of native load service obligation in section 1233 of EPAct 2005 is the same as the approach the Commission took in Order No. 888, with particular emphasis on how the native load preference has been applied in the organized electricity markets that are the subject of this rulemaking.

Comments

Need for Transmission Planning—General

433. A number of commenters assert that the need for long-term transmission planning and expansion goes well beyond the need to provide for long-term firm transmission rights.[131] AEP states that proper planning of a robust transmission system is imperative to meeting long-term economic and reliability needs, which is a much bigger issue than hedging long-term transmission risks.

434. NCPA recommends that all transmission planning processes include the following: (1) Needs defined on a comparable basis, based on analysis of all projected load serving entity loads and resources, and published, consistently-applied standards; (2) opportunities for all TDUs to participate in the joint planning process, and to validate and gain confidence in transmission planning models; (3) colorblind selection of plans to be implemented; (4) a dispute resolution process; and (5) plans and inputs that are transparent.

Transmission Organization's Responsibility for Transmission Planning

435. A number of comments address the role of the transmission organization in the transmission planning process.[132] AEP believes that the transmission organization should conduct regional transmission planning and be the primary driver of providing long-term connections between economic power sources and load centers. AEP argues that the transmission organization should provide for a mechanism that links the granting of any long-term transmission rights and the construction of transmission to make those rights feasible. Constellation asserts that this will provide a mechanism to ensure that

[130] Since the issuance of the NOPR in this proceeding, the Commission has issued a NOPR concerning revisions of the Order No. 888 OATT in Docket Nos. RM05–25–000 and RM05–17–000.

[131] *See, e.g.,* AEP, Constellation, Redding and MSATs.

[132] *See, e.g.,* AEP, Constellation, TAPS, Midwest, TDUs and NCPA.

the system is not overbuilt to ensure long-term firm transmission rights.

436. TAPS believes that transmission organizations must be held accountable for planning and expanding the grid to ensure load-specific deliverability sufficient to support the continued simultaneous feasibility of all long-term rights issued, taking into account other rights that require preservation. TAPS states that RTOs (and transmission owners, if RTOs aggregate the transmission plans of their member transmission owners) should be required to have an inclusive joint planning process that meets the needs of TDUs on the same basis that TOs' similar needs are met. In TAPS's view, to meet the needs of new organized electricity markets, RTOs must be able to deliver crucial transmission upgrades, not just assemble consolidated lists of projects.

Transmission Planning To Accommodate Long-Term Firm Transmission Rights

437. A number of commenters stress that the transmission organization's planning and expansion protocols must take into consideration the long-term firm transmission rights that are issued.[133] For example, Ameren submits that the parameters of long-term firm transmission right elections must be embedded in the RTO's planning process. Ameren states that this will require the RTO to identify for its transmission owners the term of each long-term power supply arrangement associated with each firm transmission right on each transmission owner's system, so that the expansion plans the transmission owners submit to the RTO incorporate any expansions necessitated by the long-term supply arrangements. Ameren asserts that ensuring load serving entities' priority access to long-term firm transmission rights will give load serving entities the same rights and ability to ''lock in'' long-term firm transmission to support their long-term power supply arrangements that they enjoyed under Order No. 888 before RTOs and RTOs' organized electricity markets. MSATs states that it agrees with such observations but also believes that long-term firm transmission rights should not become the principal driver of the transmission planning and expansion process.

438. MSATs argues that distinguishing between reliability and economic projects in the context of transmission planning is inconsistent with the concept of long-term firm transmission rights. MSATs asserts that firm transmission rights are economic rights that are intended to insulate holders from the economic consequences of congestion, and building and maintaining the transmission capacity needed to honor multi-year firm transmission rights may or may not be necessary to meet applicable reliability criteria. MSATs adds that, conversely, planning and constructing transmission facilities based solely on reliability criteria may not ensure the transmission capacity needed to honor long-term firm transmission rights. Thus, MSATs states that the distinction between economic and reliability projects is directly at odds with the type of transmission planning that is needed to honor long-term firm transmission rights.

439. Similarly, IPL states that the Commission should separately address physical delivery risk and financial risks stemming from congestion charges because the two risks are substantially different and efforts to address these risks that do not distinguish between them are likely to be counterproductive. IPL states that the Commission should not attempt to use financial transmission rights to provide an incentive toward investment by transmission owners because the Commission's goal of ensuring that necessary upgrades are performed is better addressed separately from congestion charge hedging. In IPL's view, congestion charge hedging is the singular legitimate purpose of a financial transmission rights mechanism.

440. IPL states that the Commission and the transmission organizations are undertaking a number of efforts to ensure that delivery risk is mitigated through proper transmission planning and expansion. IPL states that these efforts, which have no direct connection with allocations of long-term financial transmission rights, are the appropriate fora in which to address mitigating delivery risk by making sure adequate transmission infrastructure is available to meet the reasonable delivery needs of load serving entities and others.

441. Midwest ISO states that transmission upgrades and expansion should be dictated by the transmission planning studies that ensure deliverability of generation to serve load, not participants' firm transmission right nominations. However, in response, APPA states that long-term firm transmission rights are intended to ensure exactly that: deliverability of generation to serve load on a specific resource-to-load basis, and at a reasonably ascertainable transmission cost that is not subject to volatile transmission congestion. According to APPA, since transmission planning and long-term firm transmission rights are both intended to ensure deliverability of generation to load, it is absolutely appropriate to take account of long-term firm transmission rights in an RTO's transmission planning process. In addition, NRECA states that it is impossible to square Midwest ISO's comment with the terms of FPA section 217(b)(4). According to NRECA, if that section means anything, it is that public utility transmission providers must plan and expand the transmission grid so as to enable load serving entities to obtain long-term firm transmission rights.

EPAct 2005 Requirements for Transmission Planning and Expansion

442. Some commenters argue that EPAct 2005 requires the Commission to adopt specific transmission planning procedures as part of this rulemaking or another proceeding.[134] For example, National Grid claims that EPAct 2005 section 1233(b) requires the Commission to address how it intends to implement section FPA 217(b)(4) and not just the portions of FPA section 217 (b)(4) that speak to long-term transmission rights. To fulfill its statutory obligation, National Grid submits that the Commission should adopt a set of clear guidelines for transmission planning and expansion along with its proposed guidelines for long-term transmission rights. If the Commission does not adopt planning guidelines in its Final Rule in this proceeding, National Grid recommends that the Commission state how it intends to discharge its obligations under the first sentence of FPA section 217(b)(4) and EPAct 2005 section 1233(b) to assure adequate planning. According to NRECA, FPA section 217(b)(4) does not merely require the provision of long-term firm transmission rights; it requires the Commission to facilitate the planning and expansion of transmission facilities. In this regard, NRECA states that public utility transmission providers should be required to conduct open joint transmission planning processes that allow all load serving entities to participate on a comparable basis to public utility transmission providers. NRECA adds that these planning processes should accommodate both reliability and economic needs.

443. In its reply comments, MSATs states that the Commission should identify key attributes that should be

[133] *See, e.g.*, OMS, Ameren, SMUD, EPSA, IPL, PJM, MSATs, Midwest ISO, NRECA and TAPS.

[134] *See, e.g.*, National Grid, NRECA, MSATs, TANC and Reliant.

incorporated into the RTO's planning process.

444. Reliant recommends that the Commission undertake a parallel rulemaking to address the long-term needs of customers outside of organized markets. If the Commission chooses not to proceed with such a separate rulemaking, Reliant urges the Commission to utilize Docket No. RM05–25–000, Preventing Undue Discrimination and Preference in Transmission Services.

445. Taking a contrary view, NYISO states that section 217(b)(4) should not be interpreted as mandating the overhaul of existing ISO/RTO transmission planning and expansion processes. NYISO notes that, with respect to New York, the Commission has approved a robust and transparent planning process that calls for stakeholder participation and input, and the NYISO's Comprehensive Reliability Planning Process is undertaking its first comprehensive review of the reliability needs of the New York bulk power system. NYISO asserts that making wholesale changes to this process would be premature and unnecessary.

Requirement for Filing Transmission Plans

446. Some commenters state that the Commission should require transmission organizations to file their transmission planning protocols and their most recent transmission plans as part of their compliance filings in this proceeding.[135] APPA states that they should be required to explain in their long-term firm transmission right filings how those protocols and plans will take into account the need to accommodate the allocated long-term firm transmission rights for their full terms and will ensure the construction of any transmission facilities required to support them. APPA argues that if the Commission believes that this showing is not persuasive, then the transmission organization should be required to take action to revise its transmission planning protocol. However, APPA recommends that such action be undertaken in a separate proceeding so as not to delay initial implementation of long-term firm transmission rights. Also, TAPS and NCPA submit that for those transmission organizations that use transmission owner transmission plans as inputs for the transmission organization's plan, the transmission owners should be required to make a similar filing. However, in response to APPA, MSATs states that the type of review contemplated by the APPA would be administratively burdensome and unlikely to prove beneficial. Also, Midwest ISO notes that such plans are already available as public documents.

447. BPA expresses support for the principle that transmission organizations should file their planning and expansion procedures and specific plans for informational purposes with the Commission. BPA believes that doing so helps assure that information on planning is widely available to interested persons. However, BPA states that Commission approval of such informational filings should not be required.

448. Many commenters argue strongly that the Commission should not impose additional filing requirements on the transmission organizations.[136] For example, SDG&E argues that unless Commission-jurisdictional entities have an opportunity to review the similar plans and procedures of non-jurisdictional transmission entities, the latter entities could obtain an unfair competitive advantage over the former entities. Moreover, SDG&E states that transmission planning is resource-intensive, and the effort required to plan, site, design and build new transmission is enormous. SDG&E asserts that the resources allocated to those efforts should not be diverted to further regulatory review that is not proven to be needed to ensure the viability of long-term firm transmission rights associated with the planned transmission lines.

449. ISO–NE views a requirement to file its system expansion plans as a significant departure from past Commission practice. ISO–NE argues that similar types of highly technical studies generally have not been subject to a filing requirement. For example, ISO–NE points out that although interconnection studies represent a type of study akin to the core of system expansion plans, they have never been filed with the Commission.

450. PJM states that it currently is required to file the proposed cost allocations resulting from its regional transmission expansion plan with the Commission, and the proposed allocations are subject to Commission approval. PJM recommends that the Commission not require filing of the entire plan absent being presented with a legitimate issue. In reply comments, NRECA urges the Commission to require that such plans be filed, even if only for informational purposes, to monitor compliance with the Final Rule in this proceeding and section 217(b)(4).

Meeting Native Load Requirements

451. In response to the request for comments in the NOPR on whether the definition of native load service obligation in section 1233 of EPAct 2005 is the same as the approach the Commission took in Order No. 888, some commenters addressed the subject of how that preference has been applied in organized electricity markets.[137] APPA states that application of the native load preference set out in new FPA sections 217(b)(1) and (2) to the various RTO regions is governed by new FPA sections 217(c) and (f). APPA asserts that these sections were hard-fought and carefully negotiated as to each RTO region, and states that the Commission should honor the legislative compromises embodied in those sections.

452. PJM states that, within PJM, native load receives a preference to system capacity by virtue of being allocated auction revenue rights, which can be converted to firm transmission rights at the discretion of the holder of transmission rights, Midwest TOs believes the NOPR may result in reduced firm transmission rights for native load customers who receive firm transmission rights in the annual assignment process currently used by the Midwest ISO. Midwest TOs recommends that the Commission clarify that it intends for all load serving entities, including vertically integrated utilities that are just using existing generation to serve their loads, to be eligible to seek long-term firm transmission rights. According to Midwest TOs, to do otherwise would be to discriminate against the native load of vertically integrated companies.

Commission Conclusion

453. The Commission will require that each transmission organization with an organized electricity market implement a transmission system planning process that will accommodate the long-term transmission rights that are awarded by ensuring that they remain feasible over their entire term. FPA section 217(b)(4) requires the Commission to exercise its authority under the FPA in a manner that facilitates the planning and expansion of transmission facilities, and to enable load serving entities to obtain long-term firm transmission rights. To implement that section in a transmission organization with an organized

[135] See, *e.g.*, APPA, TAPS, NCPA, BPA and SMUD.

[136] See, *e.g.*, SDG&E, MSATs, Midwest ISO, IPL, NYISO, CAISO, SoCal Edison, PG&E, ISO–NE and PJM.

[137] See, *e.g.*, APPA, PJM, AEP, Midwest TOs and Santa Clara.

electricity market, as required by section 1233(b) of EPAct 2005, we believe that the transmission organization must plan its system to ensure that allocated or awarded long-term firm transmission rights are feasible.[138] FPA section 217(b)(4) itself, by including both the requirement to facilitate planning and expansion and the requirement to provide long-term transmission rights, supports the Commission's authority to impose this requirement. Moreover, given the full funding requirement of guideline 2, appropriate planning for long-term firm transmission rights is essential to ensure that any charges to other market participants to cover revenue shortfalls do not become unjust, unreasonable or unduly discriminatory.

454. To implement this requirement, we will require each transmission organization to include in its compliance filing an explicit statement of how its planning and expansion practices will take into account the need to accommodate allocated or awarded long-term firm transmission rights for their full terms, including the construction of transmission facilities (as well as a basis for allocating cost responsibility) that may be needed to support them. We will also require that each transmission organization make its planning and expansion practices and procedures publicly available, including both the actual plans and any underlying information used to develop the plans. Also, any holder of long-term firm transmission rights that believes that the transmission organization is not fulfilling its obligation to ensure the adequacy of the long-term firm transmission rights over their full term can seek relief through the transmission organization's internal complaint procedures or by filing a complaint with the Commission. The Commission will address problems on a case-by-case basis, and if necessary, require the transmission organization to revise its planning and expansion practices to better accommodate long-term firm transmission rights.

455. The Commission notes that, to meet the requirements that we are imposing here, as well as the full-funding requirements of guideline (2), a transmission organization must plan its system such that a long-term firm transmission right, once awarded, remains viable throughout its full term without requiring the long-term firm transmission right holder to pay directly for any additional transmission upgrades that may be required to maintain the feasibility of the right over its term. Accordingly, the transmission organization must include, along with upgrades needed for system reliability, any upgrades needed to support the long-term firm transmission right over its full term in its base plan for system expansion. While this may require changes in the transmission organization's planning protocols, we disagree with MSATs that it requires the transmission organization to draw a distinction between economic and reliability projects that is incompatible with transmission planning. Indeed, the transmission organization may choose to make no distinction between reliability upgrades and those needed to maintain the feasibility of long-term firm transmission rights.

456. In addition, we note that when a transmission customer enters into a long-term power supply arrangement and is willing to pay for any transmission expansion or upgrades which may be necessary in order to make long-term firm transmission rights feasible over the entire term of the contract, that expansion or upgrade must be incorporated into the transmission organization's planning process. This will require that the expansion plans that transmission owners submit to the transmission organization incorporate any expansions necessitated by such long-term supply arrangements. We believe that it is important for the regional planning process to take account of any upgrades or expansions of the transmission system that may be required to ensure FTRs needed to support long-term power supply arrangements are available.

457. The Commission agrees with commenters such as NRECA that observe that FPA section 217(b)(4) does not merely require the provision of long-term firm transmission rights; it requires the Commission to facilitate the planning and expansion of transmission facilities. However, the Commission is considering issues concerning its broader mandate to exercise its FPA authority to facilitate planning and expansion (which applies to all regions) to Docket No. RM05–25–000, the Order No. 888 OATT reform rulemaking.

G. Alternative Designs for Long-Term Firm Transmission Rights

458. We noted in the NOPR that FPA Section 217(b)(4) recognizes that there may be alternative designs for long-term firm transmission rights. The NOPR noted that for most transmission organizations, the most straightforward design for long-term transmission rights is likely to be an extension of their existing design for allocation of auction revenue rights or FTRs, perhaps with some modifications of certain rules and procedures (such as creditworthiness standards and transmission planning). The NOPR discussed, and we did not preclude, alternative designs for such rights, including departures from the existing market designs.

Comments

Clarification of Terms

459. Several commenters argue that the Commission is unclear about its use of the terms ''firm transmission rights'' and ''financial transmission rights.'' IPL states that section 217(b)(4) uses the term ''firm'' to mean physical rights, and financial to refer to purely financial rights. In contrast, the NOPR appears to use the terms interchangeably. IPL states that ''resolution of this confusion is critical because the NOPR dually implies that it is (a) proposing certain modifications to an existing financial transmission rights paradigm, and (b) that it is imposing a physical rights structure in organized electricity markets where that concept is anathema to [LMP].'' [139] National Grid also states that the NOPR is unclear as to the status of whether firm means solely physical rights and asks for clarification that the Commission is not implying a preference for physical rights. Reliant asks that the Commission clarify that by firm transmission rights, it does not mean physical rights, but rather that financial rights in LMP markets are equivalent to firm rights.

460. In contrast, TANC argues that the firm transmission rights cited in section 217(b)(4) were intended to be physical rights and that even though the statute recognizes financial transmission rights, Congress sought to determine that it favors another methodology, namely physical transmission rights.

Physical versus Financial Rights

461. In addition, a number of commenters also had views on whether long-term firm transmission rights should be physical or financial rights. Most commenters assumed that the rights under consideration in most organized markets are financial rights without having to make the requirement explicit, as reflected in their comments on auction revenue rights and FTRs. However, a number of parties, including CAISO, EEI, IPL, National Grid, NEPOOL, NU, NSTAR, NYISO, Reliant, SDG&E and SoCal Edison asked that the Commission be more explicit that the rights under consideration should be financial rights only, in particular in

[138] This is not to suggest that we are requiring any ''obligation to build'' or other obligation that does not already exist under Order No. 888.

[139] Reply Comments of IPL at 5.

markets that currently have financial rights.

462. These commenters argue that physical rights would have deleterious effects on the LMP markets. For example, ISO–NE argues that introducing physical scheduling rights would create an economic loss for the region because of less efficient dispatch of resources, significant administrative burdens for system users and the ISO, and new seams with the ISO's region. National Grid observes that holders of physical rights would be insulated from redispatch costs, which would be inequitably shifted to holders of financial rights or to transmission owners.

463. PG&E argues that while it supported a financial rights model for CAISO, the approach of the Final Rule should allow, but not require, alternative designs to recognize that stakeholders in different markets may prefer different cost-benefit balances. PJM similarly urges that the Final Rule clarify that respective regions should determine the nature of the transmission right, whether physical or financial.

464. Several commenters supporting financial rights are also concerned that the Final Rule does not establish a mix of physical and financial rights.[140] NU argues that a ''carve-out'' for physical long-term rights would reduce available capacity for shorter-term FTRs and distort the auction market for them. NYISO argues that ''financial rights models can bring as much certainty as physical rights while allowing for a fuller and more efficient utilitization of transmission capacity.'' [141] PJM, while supporting regional flexibility to design physical or financial rights, urges that, with the exception of approved grandfathered agreements, there should not be a mix of physical and financial rights as a bifurcated system would be unworkable. EEI cautions that a move toward long-term physical rights for some market participants would undermine the competitive markets.

465. NYTOs suggested that the Commission establish a regulatory definition of long-term transmission right that clarifies that such a right encompasses both physical and financial rights to the use of the transmission system. Such a definition should state that in organized electricity markets, market participants have the physical right to schedule but then receive financial rights to hedge congestion charges.

466. Several parties, including LADWP, Modesto, NRECA, Redding, SMUD, Santa Clara, and TANC, argue that long-term rights should be physical rights or rights with some characteristics of physical rights. For example, LADWP states that the rights should have certain characteristics, including the following: the right to schedule power up to the holder's share of the transmission facility rating; the ability to market non-scheduled transmission capacity to others; a fixed charge responsibility not otherwise dependent on operating conditions; losses provided for as in the project agreement; and not subject to rules set by non-participants. LADWP argues that these assurances along with proper planning and investment are necessary to provide the certainty necessary for transmission investment.

467. Santa Clara states that no financial instrument can achieve a truly effective hedge against congestion costs, and that only explicit physical rights (denominated solely in terms of MW of capacity) can secure a load serving entity against transmission costs. Santa Clara thus proposes that long-term firm transmission rights are physical rights. SMUD argues that physical rights coupled with resale and assignment rights (akin to the gas pipeline open access model) could capture most of the efficiencies of the financial rights/LMP model. In the west, Redding and SMUD argue that CAISO's pending implementation of a financial rights market make it the only entity in the region to use that model and will create seams that diminish trade with the rest of the region.

468. Santa Clara and TANC argue that physical transmission rights that mirror OATT rights have more stable pricing and allow holders to hedge the risk of fluctuating congestion charges. Hence, they will facilitate planning and construction of new generation facilities and other long-term supply arrangements.

469. In contrast to some comments noted above, several supporters of physical rights argued that systems that mix physical and financial rights are necessary. LADWP supports the co-existence of financial and physical rights, such as the CAISO's MRTU proposal to reserve capacity on its interties for Existing Transmission Contracts and Transmission Ownership Rights. LADWP also proposes that holders of such rights would be insulated from congestion costs when prices reverse direction. TANC argues that physical transmission rights of various types are already accommodated in several transmission organization markets that have financial rights, for example, as grandfathered rights.

470. Some commenters noted that in some organized markets, some degree of long-term physical rights have already been grandfathered. Coral Power is concerned that the scope of grandfathered rights could be ''needlessly'' expanded. DC Energy argues that in New York ISO, such rights have already accommodated those with the greatest contractual rights to long-term transmission service.

Alternative Types of Financial Rights

471. Several commenters, including Allegheny, Constellation, EEI, Kentucky PSC, and PG&E, stress that FTR option rights should not be available in the allocation of long-term firm transmission rights. This is because such option rights encumber too much transmission capacity, resulting in a reduction in the quantity of rights available. Instead, the long-term transmission rights should be specified as FTR obligation rights. Some of these commenters would be willing to accommodate options at a later date. NEPOOL states that the Commission should neither require nor preclude options.

472. APPA agrees that FTR option rights would likely be unworkable, but proposes instead its concept of a ''hybrid long-term transmission right'' that would only provide congestion revenues in the hours that the holder of the right schedules transmission and up to the quantity scheduled. Such a right would also not require obligation payments in the event that the prices at the locations specified in the right change direction (that is, a higher price at the injection point than at the withdrawal point). TAPS proposes that long-term rights are ''dispatch-contingent'' FTRs, which would only pay revenues when the generation resource is dispatched. In all other hours, the FTR would not pay revenues, nor require obligation payments.

Commission Conclusion

Clarification of Definitions and Choice Between Financial and Physical Rights

473. As noted elsewhere in the Final Rule, we interpret Section 217(b)(4) to require that load serving entities be able to obtain long-term firm rights, whether as physical rights or as equivalent financial rights. In the discussion of guideline (2), we interpreted the firmness requirement in the financial rights context to include a fixed (MW) quantity over the life of the right and stability in the revenue stream from the right through full funding. This roughly

[140] These include BP Energy, ISO–NE, NU, NYISO, and PJM.

[141] Reply Comments of NYISO at 7.

parallels the quantity and financial stability of long-term physical transmission contracts. Because we believe that under our guidelines financial rights are as firm as physical rights outside organized electricity markets, we have used the terms firm and financial interchangeably at times. We have not used the term firm to imply a preference for physical rights.

474. We will not require that long-term firm transmission rights in organized electricity markets be physical or financial rights. However, we also will not require that transmission organizations with existing or approved designs for financial transmission rights create a new long-term physical right, such as an Order No. 888 network service right, upon request of a load serving entity. Instead, as discussed in our guidelines, we have sought to provide guarantees of financial ''firmness'' alongside the existing physical firmness of transmission scheduling in the organized electricity markets (that is, decreased frequency of TLRs).

Alternative Types of Financial Rights

475. While many commenters have warned against allowing allocation of long-term option financial rights, no commenter has requested such rights. We agree with commenters that allocation of long-term financial transmission option rights would present severe equity problems in most organized electricity markets. At best, if all eligible parties requested option rights, the set of allocated rights would be greatly reduced compared to an allocation of obligation rights. An alternative approach to obtaining options would be to allocate long-term auction revenue rights as obligations and let entities purchase option rights through an auction.

476. Schedule-contingent or dispatch-contingent financial transmission rights could present similar equity problems to options in allocation and, unlike option FTRs, possibly create poor scheduling or dispatch incentives.[142] These types of contingent rights could present revenue adequacy problems because while they are not paid when they do not schedule or dispatch, if they are base-load plants this will likely only take place when the prices at the injection and withdrawal locations are reversed. That is, the unit will not be scheduled when it is needed to make counterflow payments to support the revenue adequacy of other transmission rights. As a result, the transmission organization would either have to model the rights as options in the allocation of transmission rights or make arbitrary decisions to limit the quantity of rights it allocates. Further, dispatch-contingent rights could have incentives for inefficient dispatch, since the right is only paid when a source generator produces output. In that case, the holder of the right will have less flexibility to purchase cheaper power from the spot market in the presence of congestion because it will lose the revenues from its rights.

H. Miscellaneous Comments

477. SMUD states that the uncertainty associated with marginal loss charges is at least as big a hedging problem as that posed by congestion charges. SMUD argues that marginal loss pricing is not required under the locational marginal pricing model. CMUA, Santa Clara and SMUD urge the Commission to direct that transmission organizations either eliminate marginal loss charges or offer transmission customers with long-term rights the same full hedge against loss charges as against congestion charges.

Commission Conclusion

478. We do not interpret section 217(b)(4) as addressing marginal loss charges. Each transmission organization operating an organized electricity market has established methods for refunds of marginal loss surplus based on stakeholder discussion. We will not overturn those decisions here.

I. Implementation of the Final Rule and Compliance Issues

479. In the NOPR, the Commission proposed to direct each public utility that is a transmission organization with an organized electricity market, within 180 days of the publication of a Final Rule in the **Federal Register**, to either: (1) File with the Commission tariff sheets and rate schedules that make available long-term firm transmission rights that are consistent with the guidelines set forth in section (d) of the Final Rule; or (2) file with the Commission an explanation of how its current tariff and rate schedules already provide for long-term firm transmission rights that are consistent with the guidelines set forth in paragraph (d) of the Final Rule. We stated our intent that during this 180-day period, transmission organizations subject to the rule will work with their stakeholders (through their usual stakeholder process) to develop a long-term firm transmission right that will harmonize prevailing market design with the guidelines set forth in the Final Rule. For any transmission organization that is approved by the Commission after the 180-day time period, the Commission proposed that the transmission organization be required to satisfy the requirements of the Final Rule prior to commencing operation.

Comments

480. APPA, New England Public Systems, and Vermont DPS all support the Commission's proposed implementation procedures. New England Public Systems states that if any transmission organization determines that it will not be able to meet the 180-day timetable, the Commission should require that it submit a detailed explanation of the cause of the delay and a detailed schedule for completing and submitting its compliance filing. PG&E supports the compliance filing timeline, and suggests that those deadlines be expanded to address due dates that would follow the future adoption of market-based congestion management programs by a transmission organization. PG&E also recommends that a parallel rule be adopted for long-term firm transmission rights in markets that do not use market-based congestion management systems.

481. SMUD argues that the Commission's proposed compliance procedures contain an insufficient directive to ensure timely compliance, particularly because it would allow transmission organizations to submit proposed tariffs with no proposed effective dates. Accordingly, SMUD states that the Commission should issue a Final Rule by August 8, 2006, and clarify that compliance tariffs and rate schedules must be effective 60 days after their filing, to ensure that long-term firm transmission rights are available within about a year.

482. Several commenters, including AF&PA, IPL, ISO–NE, NEPOOL and OMS, argue that the 180-day deadline proposed in the NOPR for transmission organizations to make filings in compliance with the Final Rule is ''unrealistic'' given the complexity of the issues involved and the transmission organizations' other ongoing projects. IPL suggests that the Commission lengthen the time for stakeholder procedures and compliance filings to 365 days, followed by an additional 365-day period during which

[142] A ''contingent'' financial transmission right for the purposes of this Final Rule is a right that only collects revenues or owes payments (corresponding to the source and sink points and quantities specified in the right) under certain conditions. These rights differ from obligation FTRs in the following ways. A schedule-contingent right would only be eligible to collect revenues or obliged to make payments if it was scheduled in the day-ahead market of the transmission organization. A dispatch-contingent right would only be eligible to collect revenues or obliged to make payments if it produced energy in real-time (*i.e.*, was dispatched). For further discussion *see, e.g.*, Comments of TAPS.

the transmission organizations will implement their long-term rights mechanism. IPL also suggests that the Commission allow transmission organizations to phase in long-term rights over time. OMS requests that the Commission permit transmission organizations to report on the status of their stakeholder procedures in 180 days, and then set a specific filing date for tariff changes based on that status report.

483. ISO–NE also requests that the Commission lengthen the 180-day time period for developing and filing a proposal to comply with the Final Rule, stating that a strict requirement to formulate a long-term firm transmission right design within that time frame could present insurmountable challenges since it is also in the process of developing other important market reforms as part of its Wholesale Market Plan.

484. NYISO states that it will likely be able to meet the proposed 180-day deadline, provided the Commission's Final Rule clarifies that only limited changes to the current market design need to be considered. It explains that it may need additional time, however, if the Final Rule requires more modifications of existing systems. New York Transmission Owners suggest that if changes to the NYISO market are required, the Commission should allow it to develop a procedure to phase in such changes to avoid market disruptions that could affect the availability of short-term and intermediate transmission rights.

485. CAISO notes in its initial comments that it faces unique challenges in implementing long-term firm transmission rights because it is in the process of implementing a complete market redesign, which includes a transition to LMP.[143] To implement this redesign by November 2007, CAISO states that it will be difficult, if not impossible, to expand the scope of the initial market design. According to CAISO, to adopt long-term transmission rights before the start of the new market it would be necessary to develop a ''hybrid'' instrument that could be used in both the current market and new market. Developing this instrument, it states, would divert resources from its effort to implement the new market. Accordingly, CAISO asks that it not be required to implement, prior to the start of its redesigned market, any ''hybrid'' long-term transmission rights product.

486. Furthermore, given its current process and timeline for implementing the market redesign, CAISO states that it most likely would not be able to fulfill the requirements of the Final Rule under the proposed compliance schedule. Accordingly, it states that the Commission should not require it to have long-term FTRs in place until at least one year after the start of its new markets. CAISO notes that its market participants lack experience with short-term financial rights. As a result, it contends that it could not have a meaningful stakeholder debate on the design and implementation of long-term rights, and urges the Commission to allow it the same opportunity to gain experience with LMP that other transmission organizations have had. Furthermore, it argues that it is important that market participants have a sufficient demonstration of the financial rights they will be able to receive under the market redesign before long-term rights are implemented.[144] As a result, CAISO seeks sufficient time for stakeholder discussions on alternate designs, and asks that it not be required to implement long-term financial rights before having at least one year of experience with LMP markets.

487. SoCal Edison, noting the same concerns regarding the timing of CAISO's market redesign, argues that the Commission should revise its proposed compliance procedures to require a transmission organization that has filed a complete redesign of its organized electricity market to make a proposal for implementing long-term firm transmission rights after the revised market becomes effective, instead of within 180 days of the final rule. CPUC and SDG&E also express concerns with regard to the timing of CAISO's implementation of long-term firm transmission rights. CPUC agrees with CAISO that it should be given a period of time to gain experience with LMP before implementing long-term rights, while SDG&E states that the Commission should, in the Final Rule, require CAISO to include long-term rights in its planned second release of the market redesign.

488. Conversely, CMUA, APPA and NCPA all suggest that accommodating long-term rights should be more easily accomplished in CAISO because it is not an established LMP market, and that it would be easier and less expensive to incorporate long-term rights into the market design rather than retrofit the market later. Nevertheless, CMUA opposes blanket application of the 180-day timeline to CAISO, and (along with TANC) urges the Commission to address CAISO's implementation schedule for long-term firm transmission rights as part of its consideration of CAISO's market redesign filing in Docket No. ER06–615–000.[145]

489. Several commenters, including PG&E, SMUD, and Transmission Agency of Northern California, oppose CAISO's request for deferral and argue that the Final Rule should apply to California upon its implementation of LMP as part of its market redesign. PG&E argues that CAISO's reasoning that delaying deferral because it has not relied on short-term rights for as long as other transmission organizations ''stands * * * EPAct on its head'' and perpetuates the problem driving Congress to enact section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005.[146] SMUD (and others) note that CAISO was directed by the Commission to develop a long-term firm transmission service more than eight years ago, and has not yet proposed such an option (including in its recent market redesign filing).[147] To avoid further delay, SMUD states that if a transmission organization cannot provide a long-term financial transmission right product within 180 days, it should be required to offer physical path arrangements until it can develop a financial product that meets the requirements of section 217(b)(4) and the Commission's guidelines.[148] SMUD also asserts that CAISO wrongly assumes both that implementing long-term rights will cause a delay in the start of its redesigned markets, and that there is urgency in implementing the market redesign.

Commission Conclusion

490. The Commission will adopt the implementation timetable proposed in the NOPR. We clarify what we expect transmission organizations subject to this Final Rule to file compliance proposals within 180 days of its effective date. Specifically, they must file proposed tariff sheets and rate schedules that would make available long-term firm transmission rights that satisfy each of the guidelines in the

[143] This proposed market redesign was filed on February 9, 2006 in Docket No. ER06–615–000.

[144] CAISO notes that it has conducted studies of the financial rights allocation, but that a dry run with market participants under the allocation rules filed with the Commission would be more accurate. It does not expect to complete such a dry run before the first quarter of 2007.

[145] APPA states that it defers to this proposal.

[146] Reply Comments of PG&E at 17.

[147] *See, e.g.*, Comments of SMUD at 40–41; Reply Comments of CMUA at 3, *citing Pacific Gas and Electric Company, et al.*, 80 FERC ¶ 61,128 at 61,427 (1997).

[148] According to SMUD, CAISO can implement physical long-term rights immediately, and in fact has done so for the Western Area Power Administration.

Final Rule. We recognize that the implementation of long-term firm transmission rights presents difficult issues, and that significant effort will be required to file compliance proposals within 180 days. Congress directed the Commission to act quickly, however, requiring in section 1233(b) of EPAct 2005 that we issue this Final Rule within one year of the legislation's passage. We believe that this directive shows Congress's intent that long-term firm transmission rights be made available as soon as possible.

491. Commenters (particularly ISO–NE) express concern that implementing long-term firm transmission rights on the proposed compliance timetable could negatively impact the ability of transmission organizations to complete work on other initiatives. We encourage transmission organizations to explore ways to reorder their priorities to ensure that this important Congressional directive is fulfilled. We will not rule out at this time the possibility that transmission organizations may seek permission from the Commission to reorder its schedule for market design changes, tariff changes or other projects that were directed by the Commission.

492. Some commenters suggest that the Commission permit transmission organizations to phase in tariff and market rule changes to introduce long-term firm transmission rights. We cannot decide here whether any particular proposal to phase-in long-term firm transmission would be just and reasonable. We remind transmission organizations again, however, that Congress intended the implementation of long-term firm transmission rights to occur as soon as possible. Any proposal to phase-in long-term firm transmission rights will be considered in light of this statutory directive.

493. We note that the final regulations require transmission organizations to file tariff sheets and rate schedules that make available long-term firm transmission rights that satisfy each of the guidelines within the 180-day timeframe. While SMUD asks us to specify that such tariff sheets and rate schedules be effective 60 days after filing, we do not believe it would be appropriate to prescribe effective dates now. Transmission organizations may need to synchronize the availability of long-term firm transmission rights with their existing allocation schedules. They may also need to take additional steps, such as making necessary software or procedural changes, to implement the rights after the Commission acts on their compliance proposals. As a result, we will consider effective dates on a case-by-case basis, again in light of Congress's intent that long-term firm transmission be implemented as soon as possible.

494. Additionally, we clarify that for transmission organizations with organized electricity markets that are formed after the effective date of this Final Rule, we intend that such organizations will provide long-term firm transmission rights satisfying the guidelines in the regulations. We have made revisions to the proposed regulatory text to clarify that transmission organizations approved by the Commission in the future will be required to satisfy this Final Rule.

495. The Commission will require that all existing transmission organizations, including CAISO, make proposals to comply with the Final Rule on the same timetable. While we understand CAISO's concerns regarding its pending market redesign efforts, we cannot address in this rulemaking of general applicability any possible plans for the phase-in or delayed implementation of long-term firm transmission rights. Even if we could, CAISO has not provided any timetable in its comments for implementing long-term firm transmission rights as required by section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. Therefore, CAISO must work with its stakeholders to develop and submit a compliance filing within the timetable prescribed in this Final Rule, and the Commission will consider any issues specific to CAISO or any proposals offered in its compliance filing for implementing long-term firm transmission rights in CAISO. Once again, we remind transmission organizations and their stakeholders, including CAISO, that Congress intends that the introduction of such rights occur as soon as possible.

III. Information Collection Statement

496. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. This Final Rule amends the Commission's regulations to implement some of the statutory provisions of section 1233 of EPAct 2005. Particularly, section 1233 of EPAct 2005 enacts a new section 217 of the FPA. New section 217(b)(4) requires the Commission to 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 their service obligations, and enables load serving entities to secure long-term firm transmission rights to meet their service obligations. Section 1233(b) of EPAct 2005 directs that Commission to, by rule or order, implement this new provision in the FPA. This Final Rule requires transmission organizations with organized electricity markets to either file tariff sheets making long-term firm transmission rights available that are consistent with guidelines established by the Commission, or to make a filing explaining how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines. Such filings will be made under Part 35 of the Commission's regulations. The information provided for under Part 35 is identified as FERC–516.

497. The Commission [149] submitted these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[150] In the NOPR, comments were solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. No comments were received on these issues. Therefore, the Commission is retaining the estimates provided in the NOPR.

Burden Estimate: The Public Reporting burden for the requirements contained in the Final Rule is as follows:

[149] CFR 1320.13 (2005).

[150] 44 U.S.C. 3507(d) (2000).

Data collection FERC–516	Number of respondents	Number of responses	Hours per response	Total annual hours
Transmission Organizations with Organized Electricity Markets	6	1	1180	7,080

Total Annual hours for Collection: (Reporting + recordkeeping, (if appropriate) = 7,080 hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost to be the total annual hours of 7,080 times $150 = $1,062,000.

Title: FERC–516 ''Electric Rate Schedule Filings.''

Action: Proposed Collections.

OMB Control No: 1902–0096.

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One time to initially comply with the rule, and then on occasion as needed to revise or modify.

Necessity of the Information: This Final Rule implements the Congressional mandate of the Energy Policy Act of 2005 to make long-term transmission rights available in transmission organizations with organized electricity markets. This mandate addresses an identified need for transmission organizations with organized electricity markets to provide longer-term transmission rights that can aid load serving entities in financing long-term power supply arrangements to meet their service obligations. Making long-term firm transmission rights available will also provide increased certainty regarding the long-term costs of transmission service in organized electricity markets. As a result, long-term firm transmission rights will allow load serving entities to more effectively plan their power supply portfolios, and encourage load serving entities and other participants in organized electricity markets to make long-term investments in power supply arrangements.

Internal review: The Commission has reviewed the requirements pertaining to transmission organizations with organized electricity markets and determined the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005.

498. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

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

IV. Environmental Analysis

500. 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.[151] As we stated in the NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that do not substantially change the effect of legislation.[152] This Final Rule falls within this categorical exemption because it implements the requirements of EPAct 2005 relating to long-term firm transmission rights in organized electricity markets. Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act Certification

501. The Regulatory Flexibility Act of 1980[153] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Most, if not all, of the transmission organizations to which the requirements of this Final Rule apply do not fall within the definition of small entities.[154] Therefore, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

502. 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.

503. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

504. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (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*).

VII. Effective Date and Congressional Notification

505. This Final Rule will be effective August 31, 2006. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[155] The Commission will submit the Final Rule to both houses of Congress and the Government Accountability Office.

List of Subjects in 18 CFR Part 42

Electric power rates; Electric utilities.

[151] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[152] 18 CFR 380.4(2)(ii) (2005).

[153] 5 U.S.C. 601–12 (2000).

[154] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2000).

[155] *See* 5 U.S.C. 804(2) (2000).

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends Subchapter B, Chapter I, Title 18, *Code of Federal Regulations*, by adding a new part 42 as follows:

* * * * *

SUBCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

* * * * *

PART 42—LONG-TERM FIRM TRANSMISSION RIGHTS IN ORGANIZED ELECTRICITY MARKETS

Sec.

42.1—Requirement that Transmission Organizations with Organized Electricity Markets Offer Long-Term Firm Transmission Rights.

Authority: 16 U.S.C. 791a–825r and section 217 of the Federal Power Act, 16 U.S.C. 824q.

§ 42.1 Requirement that Transmission Organizations with Organized Electricity Markets Offer Long-Term Firm Transmission Rights.

(a) *Purpose.* This section requires a transmission organization with one or more organized electricity markets (administered either by it or by another entity) to make available long-term firm transmission rights, pursuant to section 217(b)(4) of the Federal Power Act, that satisfy each of the guidelines set forth in paragraph (d) of this section. This section does not require that a specific type of long-term firm transmission right be made available, and is intended to permit transmission organizations flexibility in satisfying the guidelines set forth in paragraph (d) of this section.

(b) *Definitions.* As used in this section:

(1) *Transmission Organization* means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other independent transmission organization finally approved by the Commission for the operation of transmission facilities.

(2) *Load serving entity* means a distribution utility or an electric utility that has a service obligation.

(3) *Service obligation* means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

(4) *Organized Electricity Market* means an auction-based day ahead and real time wholesale market where a single entity receives offers to sell and bids to buy electric energy and/or ancillary services from multiple sellers and buyers and determines which sales and purchases are completed and at what prices, based on formal rules contained in Commission-approved tariffs, and where the prices are used by a transmission organization for establishing transmission usage charges.

(c) *General rule.*

(1) Every public utility that is a transmission organization and that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce and has one or more organized electricity markets (administered either by it or by another entity) must file with the Commission, no later than January 29, 2007, one of the following:

(i) Tariff sheets and rate schedules that make available long-term firm transmission rights that satisfy each of the guidelines set forth in paragraph (d) of this section; or

(ii) An explanation of how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines set forth in paragraph (d) of this section.

(2) Any transmission organization approved by the Commission for operation after January 29, 2007 that has one or more organized electricity markets (administered either by it or by another entity) will be required to satisfy this general rule.

(3) Filings made in compliance with this paragraph (c) must explain how the transmission organization's transmission planning and expansion procedures will accommodate long-term firm transmission rights, including but not limited to how the transmission organization will ensure that allocated long-term firm transmission rights remain feasible over their entire term.

(4) Each transmission organization subject to this general rule must also make its transmission planning and expansion procedures and plans publicly available, including (but not limited to) both the actual plans and any underlying information used to develop the plans.

(d) *Guidelines for Design and Administration of Long-term Firm Transmission Rights.* Transmission organizations subject to paragraph (c) of this section must make available long-term firm transmission rights that satisfy the following guidelines:

(1) The long-term firm transmission right should specify a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).

(2) The long-term firm transmission right must provide a hedge against day-ahead locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term right should not be modified during its term (the ''full funding'' requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

(3) Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

(4) Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10 year period.

(5) Load serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity. The transmission organization may propose reasonable limits on the amount of existing capacity used to support long-term firm transmission rights.

(6) A long-term transmission right held by a load serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation.

(7) The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.

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

Appendix A—List of Commenters and Acronyms

Alcoa Inc.—Alcoa
Allegheny Energy Companies—Allegheny
Allete, Inc. (dba Minnesota Power)—Minnesota Power
Ameren Energy Companies—Ameren
American Electric Power Service Corporation—AEP
American Forest and Paper Association—AF&PA
American Public Power Association—APPA
Arizona Consumer-Owned Electric Systems—Arizona Systems
Arkansas Municipal Power Association—AMPA

Bonneville Power Administration—BPA
Borough of Chambersburg, Pennsylvania—Chambersburg
BP Energy Company—BP Energy
California Department of Water Resources, State Water Project—DWR
California Municipal Utilities Association—CMUA
California Independent System Operator Corporation—CAISO
Public Utilities Commission of the State of California—CPUC
Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation—New York Transmission Owners
Central Vermont Public Service Corporation—Central Vermont
Cinergy Services, Inc.—Cinergy
City of Redding, California—Redding
City of Santa Clara, California, Silicon Valley Power—Santa Clara
Constellation Energy Group, Inc.—Constellation
Coral Power, L.L.C.—Coral Power
DC Energy, L.L.C.—DC Energy
Dominion Resources, Inc.—Dominion
DTE Energy Company—DTE
Duquesne Light Company—Duquesne
Edison Electric Institute—EEI
E.ON U.S.—E.ON
Electricity Consumers Resource Council, American Iron and Steel Institute, Association of Businesses Advocating Tariff Equity, and Coalition of Midwest Transmission Customers—Industrial Consumers
Electric Power Supply Association—EPSA
Energy Producers and Users Coalition and Cogeneration Association of California—Energy Producers and Users/Cogeneration Association
Exelon Corporation—Exelon
FirstEnergy Service Company—FirstEnergy
Illinois Municipal Electric Agency—IMEA
Indianapolis Power & Light Company—IPL
ISO New England, Inc.—ISO–NE
Kentucky Public Service Commission—Kentucky PSC
Long Island Power Authority and LIPA—LIPA
Los Angeles Department of Water and Power—LADWP
Manitoba Hydro—Manitoba
Metropolitan Water District of Southern California—MWD
MidAmerican Energy Company—MidAmerican
Midwest Stand-Alone Transmission Companies—MSATs
Midwest Independent Transmission System Operator, Inc.—Midwest ISO
Midwest Transmission Owners—Midwest TOs
Modesto Irrigation District—Modesto
Morgan Stanley Capital Group Inc.—Morgan Stanley
National Association of Regulatory Utility Commissioners—NARUC
National Grid USA—National Grid
National Rural Electric Cooperative Association—NRECA
New England Power Pool Participants Committee—NEPOOL
New England Public Systems—New England Public Systems
New York Association of Public Power—NYAPP
New York Independent System Operator, Inc.—NYISO
New York Power Authority—NYPA
Public Service Commission of New York—New York PSC
Northeast Utilities—NU
Northern California Power Agency—NCPA
NSTAR Electric & Gas Corporation—NSTAR
Organization of MISO States—OMS
Pacific Gas and Electric Company—PG&E
PJM Interconnection, L.L.C.—PJM
Old Dominion Electric Cooperative, North Carolina Electric Membership Corporation, Delaware Municipal Electric Corporation, Southern Maryland Electric Cooperative, and Allegheny Electric Cooperative—PJM Public Power Coalition
PPM Energy, Inc.—PPM Energy
Public Power Council—Public Power Council
Reliant Energy, Inc.—Reliant
Sacramento Municipal Utility District—SMUD
San Diego Gas & Electric Company—SDG&E
City of Santa Clara, California, Silicon Valley Power—Santa Clara
Southern California Edison Company—SoCal Edison
Strategic Energy, L.L.C.—Strategic Energy
Suez Energy North America, Inc.—Suez Energy
Transmission Access Policy Study Group—TAPS
Transmission Agency of Northern California—TANC
Vermont Public Service Board and Vermont Department of Public Service—Vermont Agencies
Wisconsin Electric Power Company—Wisconsin Electric
Xcel Energy Services Inc.—Xcel

[FR Doc. 06–6494 Filed 7–31–06; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Tuesday,
August 1, 2006

Part III

Department of Housing and Urban Development

Waivers Granted to and Alternative Requirements for the State of Texas' CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–05]

Waivers Granted to and Alternative Requirements for the State of Texas' CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Texas for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Rita in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Texas also notes statutory provisions affecting program design and implementation.

DATES: Effective Date: August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Fax inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriates $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Texas received an allocation of $74,523,000 from this appropriation. The 2006 Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The law further provides that the Secretary may waive the requirement that activities benefit persons of low and moderate income, except that at least 50 percent of the funds granted must benefit primarily person of low and moderate income unless the Secretary otherwise makes a finding of compelling need. The following waivers and alternative requirements are in response to written requests from the State of Texas.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, (the 1974 Act); or of 42 U.S.C. 12704 *et seq*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Texas grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This Descriptions section also highlights some of the statutory items and alternative requirements described in the sections that follow.

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Texas. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility

Eligibility—housing related. The waiver that allows new housing construction and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the Texas disaster eligible under this notice.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. The State of Texas will rely on several regional councils of government to develop overall recovery plans for the disaster-impacted counties. Therefore the Department is removing the eligibility requirement that CDBG disaster-recovery-assisted planning only grants

or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. Because Hurricane Rita struck hardest in communities near the state line between Texas and Louisiana, this waiver is necessary to allow the impacted communities to rebuild their employment bases.

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act, as amended, specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

HUD is providing a limited waiver of the relocation requirements. HUD will work with the state to provide additional waivers if the grantee moves forward to fund a flood buyouts program with both HUD and FEMA funds and requires the waivers to develop a workable program design.

HUD is waiving the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes the effects of Hurricane Rita had on the local housing stock, population, and local economies. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage communities from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe.

HUD is also waiving the relocation benefits requirements contained in Section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by Federal projects.

Timely Distribution of Funds

The state CDBG program regulations regarding timely expenditure of funds are at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Texas to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they specify that a state must allow a local government to retain program income in certain circumstances. The following alternative requirement applies instead.

(a) Program income. (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a tribe or a subrecipient of a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe or a unit of general local government or

subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act.

(3) The state may permit the unit of general local government or tribe that receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

2. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the downpayment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. *Planning requirements.* For CDBG disaster recovery assisted planning activities that meet the eligibility requirements of the entitlement rule at 24 CFR 570.205 and that will guide recovery in accordance with the appropriations act, the state CDBG program rules at 24 CFR 570483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

4. *Waiver and modification of the anti-pirating clause.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Rita and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

5. *Waiver of one-for-one replacement of units damaged by disaster.* 42 U.S.C. 5304(d)(2) and (d)(3) are waived to remove the one-for-one replacement requirements for occupied and vacant occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing, and 24 CFR 42.350 is waived to the extent that it differs from the regulations contained in 49 CFR part 24. These requirements are waived provided the grantee assures HUD it will use all resources at its disposal to ensure no displaced person will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

6. *Waiver of state CDBG requirement for timely expenditure of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

Notes on Applicable Statutory Requirements

7. *Notes on flood buyouts:*

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which

requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future Federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d. below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide Notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,

The transferor must reimburse the Federal government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

e. The term ''Federal disaster relief assistance'' applies to HUD or other federal assistance for disaster relief in ''flood disaster areas.'' The prohibition in subparagraph (1) above applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (i.e., earthquakes, fire, wind, etc.). The term ''flood disaster area''' is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

8. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: July 24, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–6589 Filed 7–26–06; 3:27 pm]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
August 1, 2006

Part IV

National Institute for Literacy

Overview Information; Literacy Information and Communication (LINCS) Regional Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006; Notice

NATIONAL INSTITUTE FOR LITERACY

Overview Information; Literacy Information and Communication (LINCS) Regional Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.257T.

DATES: Applications Available: August 1, 2006.

Deadline for Transmittal of Applications: September 5, 2006.

Deadline for Intergovernmental Review: September 5, 2006.

Eligible Applicants: Public and private agencies or institutions, or non-profit organizations, with knowledge and expertise in adult basic education and adult literacy; or consortia of such agencies, institutions, or organizations. Additional information concerning eligibility requirements is in Section III.1. in this notice.

Estimated Available Funds: $750,000.

Estimated Range of Awards: $175,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 3.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period: Up to 36 months. Each grantee will be required to enter into a cooperative agreement with the National Institute for Literacy (Institute) for the duration of the project period.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program

The purpose of the Literacy Information and Communication (LINCS) Regional Resource Centers (Centers) is to provide for the dissemination of highest-quality resources using various approaches (such as highlighting online materials, face-to-face technical assistance, distance learning, and discussion lists) through partnerships with adult education and related organizations to help practitioners use evidence-based instructional practices that improve outcomes in adult learners' literacy skills. The Centers will organize training and workshops based on Institute-developed materials, as well as provide assistance in using online instructional resources provided through LINCS. The Centers are intended to play a vital role in helping the Institute fulfill its authorized responsibilities to establish a national electronic database of information that disseminates information to the broadest possible audience within the literacy and basic skills field and a communication network for literacy programs, providers, social service agencies, and students. These grants will be awarded as cooperative agreements, as the Institute will be substantially involved with the grantees in the implementation of the funded activities. The Institute has grouped states into the following regions, for purposes of awarding these grants:

Region I: Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin.

Region II: Alabama, Arkansas, District of Columbia, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

Region III: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Oregon, Utah, Washington, and Wyoming.

Applicants should specify which Region they are submitting an application for in their proposals. For background information on the Institute and LINCS, please visit: *http://www.nifl.gov/nifl/grants_contracts/info.html*.

Program Authority: 20 U.S.C. 9252.

Applicable Regulations: For purposes of this grant competition, the following regulations from the Education Department General Administrative Regulations (EDGAR) are applicable: 34 CFR parts 74, 75, 79, 80, 82, 84, 85, and 97.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $750,000.

Estimated Range of Awards: $175,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 3.

Note: The Institute is not bound by any estimates in this notice.

Project Period: Up to 36 months. Continuation awards are contingent on a grantee's progress and future Congressional appropriations.

III. Eligibility Information

1. *Eligible Applicants:* Public and private agencies or institutions, or non-profit organizations, with knowledge and expertise in adult basic education and adult literacy; or consortia of such agencies, institutions, or organizations. It is expected that applicants shall have significant knowledge and experience with the adult education and literacy system; understand current issues in adult education and literacy, especially content areas and professional development; be familiar with researchers and experts in the adult education and literacy field, reading, learning disabilities, and research methods; and be able to facilitate and organize a network of partners within their region.

2. *Cost Sharing or Matching:* Although this program does not require cost sharing or matching for eligibility, the Institute encourages applicants to provide some institutional financial commitment to the project.

IV. Application and Submission Information

1. *Address To Request Application Package:* Jo Maralit; National Institute for Literacy; 1775 I Street, NW., Suite 730; Washington, DC 20006; Telephone: 202–233–2028; fax: 202–233–2050; e-mail: *mmaralit@nifl.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Director strongly encourages applicants to limit Part IV to the equivalent of no more than 20 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part V, the budget section, including the

narrative budget justification; Part VII the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part IV.

3. *Submission Dates and Times: Applications Available:* August 1, 2006.

Deadline for Transmittal of Applications: September 5, 2006.

Applications for grants under this application notice may be submitted electronically using the Grants.gov Apply site (*http://www.grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: September 5, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

Electronic submissions of applications have been submitted electronically through the U.S. Department of Education's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, the Institute is participating as a partner in the new governmentwide Grants.gov Apply site in FY 2006. The Institute's LINCS Regional Resource Center application notice (CFDA Number 84.257T) is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for LINCS Regional Resource Centers at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Notes:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the U.S. Department of Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this application notice to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the U.S. Department of Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (see *.Grants.gov/GetStarted* and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Institute will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an Institute-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). The Institute will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Institute will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), your package should include one original plus two copies of the

application. Three additional copies (for a total of six applications) are requested, but not required. Each application should be clipped or stapled, not bound or enclosed in a folder and submitted on or before the application deadline date, to the Institute at the applicable following address:

By mail through the U.S. Postal Service:
National Institute for Literacy,
Attention: (CFDA Number 84.257T),
1775 I Street, NW., Suite 730,
Washington, DC 20006–2417; or

By mail through a commercial carrier:
National Institute for Literacy,
Attention: (CFDA Number 84.257T),
1775 I Street, NW., Suite 730,
Washington, DC 20006–2417, Phone: 202–233–2025.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Director of the Institute.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Institute at the following address: National Institute for Literacy, Attention: (CFDA Number 84.257T), 1775 I Street, NW., Suite 730, Washington, DC 20006–2417.

The National Institute for Literacy accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Institute:

(1) You must indicate on the envelope and Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter—of the competition under which you are submitting your application. For the LINCS Regional Resource Center competition: CFDA Number 84.257T.

(2) The Institute will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the National Institute for Literacy at 202–233–2025.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from section 75.210 of EDGAR, 34 CFR 75.210, and are as follows. The maximum possible score for all of these criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses following the criterion.

1. Quality of the project design (20 points)

(1) The Director considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Director considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iv) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

2. Quality of project services (20 points)

(1) The Director considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Director considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Director considers the following factors:

(i) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(iv) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(v) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

3. Quality of project personnel (25 points)

(1) The Director considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Director considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Director considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

4. Adequacy of resources (25 points)

(1) The Director considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Director considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

5. Quality of the management plan (10 points)

(1) The Director considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Director considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is the extent to which an applicant's response to the selection criteria addresses its ability to meet, and its commitment to, the following expectations of the Centers, which will be included in the cooperative agreements between the grantees and the Institute:

a. Map the professional development systems and opportunities in the states within its region, within the first four months of the grant period.

b. Conduct an assessment of the needs of practitioners and professional development offices and organizations in its region with particular emphasis on gathering information on awareness and use of scientifically-based and other high quality research and materials, within the first six months of the grant period.

c. Based on the results of the professional development maps and needs assessment, develop a plan to establish and maintain partnerships with organizations and groups of administrators, state staff, project directors, and professional developers to assist with information dissemination in the region. For more information on partnerships: *http://www.nifl.gov/nifl/grants_contracts/info.html.*

d. Create and implement a comprehensive regional dissemination plan for the three-year grant period based on the results of the needs assessment as well as available Institute resources, such as publications, online materials, discussion lists, and training packages on topics such as adult reading instruction, serving adults with learning disabilities (using Bridges to Practice), and basing instruction on evidence-based practices.

e. Organize and manage training using recognized national experts for partners and partners' constituents, as approved by the Institute. Establish a Regional Training Team made up of liaisons from each state partner to coordinate and enhance states' training capacity.

f. Provide technical assistance to partners, as needed, to increase their technology capacity and facilitate collaboration, dissemination and training opportunities through the use of online tools and systems.

g. Gather data for measures established by the Institute concerning training, information dissemination, and partnerships.

h. Collaborate with other Regional Resource Centers and carry out joint activities when appropriate to maximize impact. Regional Resource Center project directors and staff shall meet two times a year with Institute staff, participate in monthly conference calls, and other telephone meetings, as necessary.

i. Develop a sustainability plan that describes how the Center plans to sustain the proposed activities after the grant period.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally. If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice. We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Institute. If you receive a multi-year award, you must submit semi-annual performance reports, as well as an annual performance report that provides the most current performance and financial expenditure information as specified in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure has been developed for evaluating the overall effectiveness of the Institute's technical assistance and training: The percentage of individuals who receive NIFL technical assistance who can demonstrate that they implemented instructional practices grounded in scientifically based research within six months of receiving the technical assistance. The Institute will expect all grantees to document information that addresses this measure in the performance reports referenced in section VI.3. of this notice.

VII. Agency Contact

For Further Information Contact: Jo Maralit, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, Telephone: 202–233–2028, fax: 202–233–2050, e-mail: *mmaralit@nifl.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of the Institute published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.nifl.gov/nifl/grants_contracts/grants.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 28, 2006.

Sandra L. Baxter,

Director.

[FR Doc. 06–6629 Filed 7–31–06; 8:45 am]

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Federal Register

Tuesday,
August 1, 2006

Part V

The President

Proclamation 8039—To Implement the United States-Bahrain Free Trade Agreement, and for Other Purposes

Federal Register
Vol. 71, No. 147
Tuesday, August 1, 2006

Presidential Documents

Title 3—

The President

Proclamation 8039 of July 27, 2006

To Implement the United States-Bahrain Free Trade Agreement, and for Other Purposes

By the President of the United States of America

A Proclamation

1. On September 14, 2004, the United States entered into the United States-Bahrain Free Trade Agreement (USBFTA). The USBFTA was approved by the Congress in section 101(a) of the United States-Bahrain Free Trade Agreement Implementation Act (the ''USBFTA Implementation Act'') (Public Law 109–169, 119 Stat. 3581) (19 U.S.C. 3805 note).

2. Section 105(a) of the USBFTA Implementation Act authorizes the President to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under Chapter 19 of the USBFTA.

3. Section 201 of the USBFTA Implementation Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and the schedule of reductions with respect to Bahrain set forth in Annex 2–B of the USBFTA.

4. Consistent with section 201(a)(2) of the USBFTA Implementation Act, Bahrain is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP). Further, consistent with section 604 of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2483), as amended, I have determined that other technical and conforming changes to the Harmonized Tariff Schedule of the United States (HTS) are necessary to reflect that Bahrain is no longer eligible to receive benefits of the GSP.

5. Section 202 of the USBFTA Implementation Act provides certain rules for determining whether a good is an originating good for the purpose of implementing preferential tariff treatment under the USBFTA. I have decided that it is necessary to include these rules of origin, together with particular rules applicable to certain other goods, in the HTS.

6. Section 204 of the USBFTA Implementation Act authorizes the President to take certain enforcement actions relating to trade with Bahrain in textile and apparel goods.

7. Sections 321–328 of the USBFTA Implementation Act authorize the President to take certain actions in response to a request by an interested party for relief from serious damage or actual threat thereof to a domestic industry producing certain textile or apparel articles.

8. Executive Order 11651 of March 3, 1972, as amended, establishes the Committee for the Implementation of Textile Agreements (CITA) to supervise the implementation of textile trade agreements.

9. Presidential Proclamation 7747 of December 30, 2003, implemented the United States-Singapore Free Trade Agreement (the ''USSFTA'') with respect to the United States and, pursuant to the United States-Singapore Free Trade Agreement Implementation Act (the ''USSFTA Implementation Act'') (Public Law 108–78, 117 Stat. 948) (19 U.S.C. 3805 note), incorporated

in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the USSFTA.

10. Section 202 of the USSFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a USSFTA party and thus are eligible for the tariff and other treatment contemplated under the USSFTA. Section 202(o) of the USSFTA Implementation Act authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the USSFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the USSFTA Implementation Act.

11. The United States and Singapore have agreed to modifications to certain USSFTA rules of origin. Modifications to the USSFTA rules of origin set out in Proclamation 7747 are therefore necessary.

12. Section 604 of the 1974 Act, as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other Acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 604 of the 1974 Act; sections 105(a), 201, 202, 204, and 321–328 of the USBFTA Implementation Act; section 202 of the USSFTA Implementation Act; and section 301 of title 3, United States Code, do hereby proclaim:

(1) In order to provide generally for the preferential tariff treatment being accorded under the USBFTA, to set forth rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the USBFTA, to provide certain other treatment to originating goods for the purposes of the USBFTA, to provide tariff-rate quotas with respect to certain originating goods, to reflect Bahrain's removal from the enumeration of designated beneficiary developing countries for purposes of the GSP, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annex I of Publication 3830 of the United States International Trade Commission, entitled, *Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Bahrain Free Trade Agreement* (Publication 3830), which is incorporated by reference into this proclamation.

(2) In order to implement the initial stage of duty elimination provided for in the USBFTA and to provide for future staged reductions in duties for products of Bahrain for purposes of the USBFTA, the HTS is modified as provided in Annex II of Publication 3830, effective on the dates specified in the relevant sections of such publication and on any subsequent dates set forth for such duty reductions in that publication.

(3) The Secretary of Commerce is authorized to exercise my authority under section 105(a) of the USBFTA Implementation Act to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section.

(4) The amendments to the HTS made by paragraphs (1) and (2) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex II to Publication 3830.

(5) The CITA is authorized to exercise my authority under section 204 of the USBFTA Implementation Act to exclude textile and apparel goods from the customs territory of the United States; to determine whether an enterprise's production of, and capability to produce, goods are consistent with statements by the enterprise; to find that an enterprise has knowingly

or willfully engaged in circumvention; and to deny preferential tariff treatment to textile and apparel goods.

(6) The CITA is authorized to exercise my authority under subtitle B of title III of the USBFTA Implementation Act to review requests, and to determine whether to commence consideration of such requests; to cause to be published in the **Federal Register** a notice of commencement of consideration of a request and notice seeking public comment; to determine whether imports of a Bahraini textile or apparel article are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article; and to provide relief from imports of an article that is the subject of such a determination.

(7) In order to modify the rules of origin under the USSFTA, general note 25 to the HTS is modified as provided in Annex I to this proclamation.

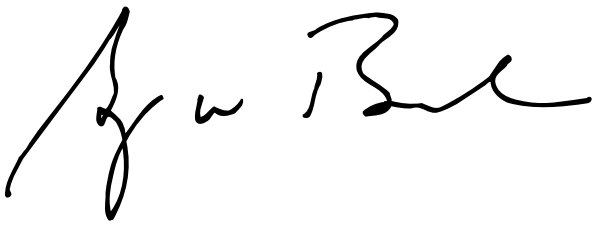
(8) The modifications made by Annex I to this proclamation shall be effective with respect to goods of Singapore that are entered, or withdrawn from warehouse for consumption, on or after August 1, 2006.

(9) In order to make technical corrections to the HTS, the HTS is modified as provided in Annex II to this proclamation.

(10) The modifications made by Annex II to this proclamation shall be effective with respect to articles entered, or withdrawn for consumption, on or after the dates provided in that Annex.

(11) All provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of July, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty- first.



Billing code 3195–01–P

ANNEX I

UNITED STATES-SINGAPORE FREE TRADE AGREEMENT
Textile and Apparel Goods
Amendments

Rule Applicable to Certain Apparel Made From Certain Ring Spun Yarns

A change to women's and girls' knit blouses, shirts, lingerie, and underwear from ring spun single yarn of nm 51 and 85, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton, classified in subheading 5510.30.0000 of the HTS

Rule Applicable to Apparel Other than Gloves Made From Certain Cotton Flannel

A change to apparel, other than gloves, from 100 percent cotton woven flannel fabrics, of yarns of different colors, containing ring-spun yarns of nm 21 through nm 36, of 2 X 2 twill weave construction, classified in subheading 5208.43.0000 of the HTS

Rule Applicable to Women's and Girls' Blouses Made From Certain Cotton/MMF Fabrics

A change to women's and girls' blouses of heading 6206 from fabrics classified in subheadings 5210.21 and 5210.31 of the HTS, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 nm

Rule Applicable to Apparel Made From Certain Viscose Yarns

A change to apparel from micro-denier 30 singles and 36 singles solution dyed, open-end spun, staple spun viscose yarn, classified in subheading 5510.11.0000

ANNEX II

TECHNICAL CORRECTIONS

Section A. Effective with respect to goods entered or withdrawn from warehouse for consumption on or after January 10, 2002, tariff classification rules 77, 79, 79A, 80(c), 82, 83, 84, 92B and 94 to chapter 85 as set forth in general note 12(t) to the HTS are each modified by striking "8529.90.23" and by inserting in lieu thereof "8529.90.22".

Section B. Effective with respect to goods entered or withdrawn from warehouse for consumption on or after April 1, 2006, heading 9902.85.43 is modified by deleting "8543.89.96" and by inserting in lieu thereof "8543.89.97".

Section C. Effective with respect to goods of Singapore, under the terms of general note 25 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, the HTS is modified for headings 8510.20.10, 8510.20.90, 8510.90.30, 8510.90.40, in the Rates of Duty 1 Special subcolumn, by inserting in the parentheses following the "Free" rate in such subcolumn the symbol "SG" in alphabetical order.

Section D. Effective with respect to goods of Chile, under the terms of general note 26 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, the HTS is modified for headings 8510.20.10, 8510.20.90, 8510.90.30, 8510.90.40, in the Rates of Duty 1 Special subcolumn, by inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CL" in alphabetical order.

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Filed 7–31–06; 8:49 am]
Billing code 3190–01–C

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Federal Register

Vol. 71, No. 147

Tuesday, August 1, 2006

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CFR PARTS AFFECTED DURING AUGUST

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Telephone Consumer Protection Act; implementation—

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Unsolicited facsimile advertisements; published 7-26-06

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To exempt persons with disabilities from the prohibition against providing section 8 rental assistance to college students. (July 27, 2006; 120 Stat. 651)

H.R. 5865/P.L. 109–250
To amend section 1113 of the Social Security Act to temporarily increase funding for the program of temporary assistance for United States citizens returned from foreign countries, and for other purposes. (July 27, 2006; 120 Stat. 652)

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