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

FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2005–26]

$5,000 Exemption for Disbursements of Levin Funds by State, District, and Local Party Committees and Organizations

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission is eliminating from its regulations an exemption allowing State, district, and local committees and organizations of a political party to use only Levin funds to pay for certain types of Federal election activity aggregating $5,000 or less in a calendar year. In *Shays* v. *FEC*, the District Court invalidated the exemption and remanded the regulation to the Commission for further action consistent with the court's opinion. The Commission appealed this ruling, and the Court of Appeals for the D.C. Circuit affirmed the District Court's decision. The repeal of this rule means that State, district, and local political party committees and organizations must pay for these specific types of Federal election activity either entirely with Federal funds, or with a mix of Federal funds and Levin funds. Further information is provided in the supplementary information that follows.

DATES: The rules at 11 CFR 300.32(c)(4) are effective on December 19, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission issued a Notice of Proposed Rulemaking (''NPRM'') proposing to eliminate from its regulations at 11 CFR 300.32(c)(4) an exemption that had allowed State, district, and local committees of a political party [1] to pay for certain types of Federal election activity (''FEA'') [2] aggregating $5,000 or less in a calendar year entirely with Levin funds [3] (''$5,000 Exemption''). The NPRM also requested comments on the possibility of creating a new, restructured exemption. The NPRM was published in the **Federal Register** on February 2, 2005. 70 FR 5385 (February 2, 2005). The comment period closed on March 4, 2005. The Commission received five comments from ten commenters on the proposed rules.[4] Eight commenters favored elimination of the $5,000 Exemption and one commenter favored maintaining the $5,000 Exemption. Additionally, the Commission received a comment from the Internal Revenue Service, indicating ''the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder.'' The Commission is issuing final rules eliminating the $5,000 Exemption and is declining to adopt a restructured exemption.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rule that follows was transmitted to Congress on November 10, 2005.

[1] In addition to political party *committees*, these regulations are equally applicable to State, district, and local party *organizations* that do not qualify as political committees. *See* 11 CFR 300.33(a)(1) and (2).

[2] There are four types of FEA: Type 1—Voter registration activity during the period that begins on the date that is 120 days before a regularly scheduled Federal election is held and ends on the date of the election; Type 2—Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot; Type 3—A public communication that promotes or supports, or attacks or opposes a clearly identified candidate for Federal office; and Type 4—Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of his or her compensated time during that month on activities in connection with a Federal election. *See* 2 U.S.C. 431(20) and 11 CFR 100.24.

[3] Levin funds are funds that are raised by State, district, or local party committees and organizations pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

[4] All comments on the NPRM are available at *http://www.fec.gov/law/law_rulemakings.shtml#levin.*

Explanation and Justification

11 CFR 300.32(c)—Conditions and Restrictions on Spending Levin Funds

The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Pub. L. 107–155, 116 Stat. 81 (2002), amended the Federal Election Campaign Act of 1971 (the ''Act''), 2 U.S.C. 431 *et seq.*, in many respects. Section 441i(b)(1) of the Act, as added by BCRA, provides that State, district, and local political party committees generally must use Federal funds [5] to pay for FEA. However, the Levin Amendment (2 U.S.C. 441i(b)(2)) provides an exception for two types of FEA, for which State, district, and local political party committees may allocate disbursements between Federal funds and Levin funds in accordance with allocation ratios determined by the Commission. 2 U.S.C. 441i(b)(2); *see also* 11 CFR 300.2(i), 300.32, and 300.33. Types 1 and 2 FEA, which involve certain voter registration, get-out-the-vote, voter identification, and generic campaign activity, are allocable between Federal and Levin funds, so long as the activities do not refer to a clearly identified Federal candidate (''allocable Type 1&2 FEA''). *See* 2 U.S.C. 441i(b)(2)(B)(i) and 11 CFR 300.32(c).

In 2002, the Commission promulgated regulations at 11 CFR Part 300 implementing BCRA. *See Final Rules and Explanation and Justification for Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money,* 67 FR 49064 (July 29, 2002). Specifically, 11 CFR 300.32(c)(4) required any State, district, or local committee or organization of a political party that disburses more than $5,000 for allocable Type 1&2 FEA in a calendar year either to pay for such allocable FEA entirely with Federal funds or to allocate the disbursements between Federal funds and Levin funds. The same provision also created a ''*de minimis* exemption'' for any State, district, or local party committee or organization whose disbursements for allocable Type 1&2 FEA aggregate $5,000 or less in a

[5] ''Federal funds'' are funds that comply with the limits, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g).

calendar year, thereby permitting such party committees and organizations to pay for these expenses entirely with Levin funds.

The $5,000 Exemption was one of several regulations at issue in *Shays* v. *FEC*, 337 F.Supp.2d 28 (D.D.C. 2004) (''*Shays District*''), *aff'd,* 414 F.3d 76 (D.C. Cir. July 15, 2005) (''*Shays Appeal*''), *reh'g en banc denied* (October 21, 2005) (No. 04–5352). The District Court in *Shays District* held that the $5,000 Exemption in 11 CFR 300.32(c)(4) was inconsistent with Congress's intent, as expressed in BCRA, to require State, district, and local party committees to pay for allocable Type 1&2 FEA either solely with Federal funds or with an allocated mix of Federal funds and Levin funds. *Shays District* at 114–17.

The Commission appealed the District Court's ruling regarding several of its regulations, including 11 CFR 300.32(c)(4). On July 15, 2005, the Court of Appeals for the D.C. Circuit affirmed the District Court's invalidation of the $5,000 Exemption. *Shays Appeal* at 115. In affirming the District Court's invalidation of the $5,000 Exemption, the Court of Appeals concluded that the Commission had failed to establish that the $5,000 Exemption was ''in fact *de minimis*.'' *Shays Appeal* at 114. The Court of Appeals also concluded that because Congress had exercised its judgment in enacting the Levin Amendment, ''Congress's rationale for *including* activities in the Levin Amendment obviously affords no justification for *excluding* them from Levin allocation, the very form of regulation Congress chose.'' *Id.* (emphasis in original).

The NPRM proposed to eliminate entirely the $5,000 Exemption in 11 CFR 300.32(c)(4). In response to the NPRM, eight commenters urged the Commission to eliminate the $5,000 Exemption altogether. These commenters stated that BCRA was clear on its face and argued that the Levin Amendment itself reflected Congress's narrowly-drawn exception allowing State, district, and local party committees to use only Federal funds or to allocate between Federal and Levin funds for allocable Type 1&2 FEA. Four of the commenters noted that the Levin Amendment was, itself, a compromise reached during Congressional deliberation. These commenters asserted that Congress had contemplated that Levin funds always would be used in combination with Federal funds for allocable Type 1&2 FEA, recognizing that FEA activities influence Federal elections.

On the other hand, one commenter favored retaining the $5,000 Exemption, stating that the exemption did not undermine Congressional intent. Specifically, this commenter asserted that absent the $5,000 Exemption, a strict application of the Levin Amendment would lead to suppression of ''local grassroots activity in favor of non-party or large institutional party activity'' and that this was ''an unlikely objective'' for Congress.

1. Elimination of the Current $5,000 Exemption. In light of the conclusions reached by the Court of Appeals in *Shays Appeal*, which precluded retaining the current rule, the Commission has decided to eliminate the $5,000 Exemption from paragraph (c)(4) of section 300.32. Thus, revised paragraph (c)(4) requires State, district, and local committees and organizations of political parties to pay for *all* allocable Type 1&2 FEA either entirely with Federal funds or with an allocated mix of Federal funds and Levin funds, without regard to the total amount of their annual disbursements. The wording of revised 11 CFR 300.32(c)(4) also includes a conforming revision that replaces the word ''may'' with ''must'' to reflect unambiguously that State, district, and local party committees and organizations *must* choose between paying for such expenditures either entirely with Federal funds or with an allocated mix of Federal funds and Levin funds.

2. Rejection of a Restructured Exemption. As noted above, the NPRM also requested comments on a possible restructuring of the exemption in section 300.32(c)(4) to mirror the reporting exception contained in section 434(e)(2)(A) of the Act, which exempts State, district, and local party committees from reporting FEA if they have combined receipts *and* disbursements for FEA (whether allocable or not) that together aggregate to less than $5,000 in a calendar year. Seven commenters addressed the restructuring proposal, all of them asserting that *any* restructured exemption would be contrary to Congressional intent.

As discussed above, the Court of Appeals held that the careful balance already reflected in the Levin Amendment represents Congress's exercise of its judgment, and effectively precludes the Commission from promulgating a further exemption unless such an exemption were ''truly *de minimis*.'' *Shays Appeal* at 114. In light of the comments received in this rulemaking and the decision of the Court of Appeals, the Commission has decided not to adopt the restructuring proposal contained in the NPRM.

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

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

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter C of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 300—NON-FEDERAL FUNDS

■ 1. The authority citation for Part 300 continues to read as follows:

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

■ 2. Section 300.32 is amended by revising paragraph (c)(4) to read as follows:

§ 300.32 Expenditures and disbursements.

* * * * *

(c) *Conditions and restrictions on spending Levin funds.* * * *

(4) The disbursements for allocable Federal election activity must be paid for either entirely with Federal funds or by allocating between Federal funds and Levin funds according to 11 CFR 300.33.

* * * * *

Dated: November 10, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–22778 Filed 11–16–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4 and 19

[Docket No. 05–19]

RIN 1557–AC94

FEDERAL RESERVE SYSTEM

12 CFR Parts 263 and 264a

[Docket No. R–1230]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 336

RIN 3064–AC92

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 507 and 509

[No. 2005–48]

RIN 1550–AB99

One-Year Post-Employment Restrictions for Senior Examiners

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC and OTS (the Agencies) have jointly adopted final rules to implement section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act), which imposes post-employment restrictions on senior examiners of depository institutions and depository institution holding companies. Under section 6303(b), and the Agencies' final implementing rules, a senior examiner employed by an Agency or a Federal Reserve Bank (Reserve Bank) may not knowingly accept compensation as an employee, officer, director, or consultant from certain depository institutions or depository institution holding companies he or she examined, or from certain related entities, for one year after the examiner leaves the employment or service of the Agency or Reserve Bank. If an examiner violates the one-year restriction, the statute requires the appropriate Federal banking agency to seek an order of removal and prohibition, a civil money penalty of up to $250,000, or both. Section 10(k) will become effective on December 17, 2005.

DATES: Effective Date: December 17, 2005.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; or Barrett Aldemeyer, Senior Counsel, Administrative and Internal Law Division, (202) 874–4460, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cary K. Williams, Assistant General Counsel, (202) 452–3295, Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Andrea Tokheim, Attorney, (202) 452–2300, Legal Division; William Spaniel, Deputy Associate Director, (202) 452–3469, or Jinai Holmes, Senior Financial Analyst, (202) 452–2834, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Robert J. Fagan, Ethics Program Manager, Legal Division, (202) 898–6808; Stephen P. Gaddie, Special Assistant to the Deputy Director, Division of Supervision and Consumer Protection, (202) 898–6575; Richard Osterman, Senior Counsel, Legal Division, (202) 898–7028; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Elizabeth Moore, Special Counsel, Litigation Division, (202) 906–7039; or Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906–6639, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 6303(b) of the Intelligence Reform Act,[1] which added a new section 10(k) to the Federal Deposit Insurance Act (FDI Act), an officer or employee of an Agency or Reserve Bank who acts as a ''senior examiner'' for a particular depository institution may not, within one year after terminating employment with the relevant Agency or Reserve Bank, knowingly accept compensation as an officer, director, employee or consultant from that depository institution or any company (including a bank holding company or savings and loan holding company) that controls the depository institution.[2] Section 10(k) imposes a similar post-employment restriction on an officer or employee who acts as the ''senior examiner'' of a particular depository institution holding company, but in these circumstances, the post-employment restrictions apply to relationships with the depository institution holding company and any depository institution subsidiary of the holding company.[3] The restrictions in section 10(k) apply only to examiners who served as a senior examiner for a particular depository institution or holding company for two or more months during the final twelve months of their employment at the Agency or Reserve Bank.

If a senior examiner violates the one-year post-employment restrictions in section 10(k), the statute requires the appropriate Federal banking agency to initiate proceedings to impose an order of removal and prohibition or a civil money penalty, or both, on the former senior examiner. Congress directed each Agency to prescribe regulations to administer and carry out section 10(k), including rules, regulations or guidelines to define the scope of persons who are ''senior examiners.'' The post-employment restrictions in section 10(k) are in addition to any other conflict of interest and ethics rules and restrictions that may apply to

[1] Pub. L. 108–458, 118 Stat. 3638, 3751–53 (Dec. 17, 2004).

[2] For purposes of section 10(k), the term ''depository institution'' includes an uninsured branch or agency of a foreign bank, if the branch or agency is located in a state of the United States. *See* 12 U.S.C. 1820(k)(2)(A). The FDIC has made a minor technical change to the definition of ''depository institution'' in its regulation to recognize that the term may include uninsured branches or agencies of foreign banks for these purposes.

[3] For purposes of the post-employment restriction of section 10(k), the term ''depository institution holding company'' means a bank holding company or a savings and loan holding company, and also includes, among other things, a foreign bank that has a branch, agency, or commercial lending company subsidiary in the United States.

examiners under applicable Federal law or the internal codes of conduct established by an Agency or a Reserve Bank.

II. Proposed Rule and Comments Received

On August 5, 2005, the Agencies jointly published proposed rules that would implement the post-employment restrictions in section 10(k).[4] The proposed rules defined the term ''senior examiner,'' discussed the types of Agency and Federal Reserve examiners that would be considered a ''senior examiner'' in light of the examination programs of each Agency, addressed the nature and scope of the one-year post-employment restriction, and described the procedures for seeking penalties on senior examiners who violate section 10(k).

The Agencies received comments on the proposal from a trade association for banking institutions and an individual. The banking trade association endorsed the proposed rule without suggestions for change and, in particular, noted that the proposed definition of ''senior examiner'' clearly and appropriately defined those individuals who would be subject to the statutory restriction in accordance with Congress' intent. The individual commenter also generally supported the proposed rules, but asked that the Agencies clarify the rules' application in certain respects. For example, the commenter asked that the Agencies clarify whether an examiner who performs periodic, short-term examinations of a depository institution or depository institution holding company would be considered a ''senior examiner.''

III. Final Rule

The Agencies have adopted final rules that are substantively identical to the proposed rules. The Agencies, however, have made minor, technical changes to the rules as discussed below. As required, the Agencies have consulted with each other to assure that the final rules are, to the extent possible, consistent, comparable and practicable, taking into account the differences in the supervisory programs utilized by the Agencies for the supervision of depository institutions and depository institution holding companies.[5]

A. Definition of ''Senior Examiner''

The post-employment restrictions in section 10(k) apply only to an officer or employee of an Agency or Reserve Bank who serves as the ''senior examiner'' (or in a functionally equivalent position) of a particular depository institution or depository institution holding company and who, in this capacity, has ''continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company'' on behalf of the relevant Agency or Reserve Bank.[6] The final rules, like the proposed rules, provide that an officer or employee of an Agency or a Reserve Bank will be considered the ''senior examiner'' for a particular depository institution or depository institution holding company if:

- The individual has been authorized by the relevant Agency to conduct examinations or inspections on behalf of the Agency;[7]
- The relevant Agency or Reserve Bank has assigned the individual continuing, broad, and lead responsibility for examining or inspecting the depository institution or holding company; and
- The individual's responsibilities for the depository institution or holding company represent a substantial portion of the individual's assigned responsibilities and require the individual to routinely interact with officers or employees of the institution, holding company, or its affiliates.

To be considered a ''senior examiner,'' an officer or employee must meet each of the criteria listed above. Thus, if a substantial portion of an examiner's responsibilities involve conducting or leading a targeted examination (such as a review of an institution's credit risk management, information systems or internal audit functions), but the examiner does not have broad and lead responsibility for the Agency's or Reserve Bank's overall examination program with respect to the institution, the examiner would not be considered a ''senior examiner'' with respect to the institution. Such an examiner is not likely to develop the type and degree of relationship with any one institution that the post-employment restriction was designed to address. In addition, the final rules would not cover an examiner who performs only periodic, short-term examinations of a depository institution or depository institution holding company and who does not have ongoing, continuing responsibility for the institution or holding company. Similarly, an examiner who divides his or her time across a portfolio of depository institutions or holding companies, each of which does not represent a substantial portion of the examiner's responsibilities, also would not be considered a ''senior examiner.''

To be a ''senior examiner,'' the examiner also must have ''continuing'' responsibility for the relevant Agency's or Reserve Bank's supervisory program with respect to the particular depository institution or depository institution holding company. The Agencies believe that an examiner would have ''continuing'' responsibility for an institution or holding company only when the examiner's responsibilities for the institution or company were expected to continue for a sufficient period of time, for example, for at least two months, that would enable the examiner to develop the type and degree of ''meaningful,'' ''dedicated'' and ''sustained'' relationship with the institution or company that the statute was designed to address.[8]

The Agencies believe that the definition of ''senior examiner'' properly applies the post-employment restrictions in section 10(k) to those examiners who, by reason of their position and assigned responsibilities, have broad responsibility for a depository institution or depository institution holding company and are expected to devote a substantial amount of their time to that institution or holding company on a continuing basis.

Because the titles and roles of examiners vary among the Agencies, the preamble to the proposed rules described the types of examiners that each Agency expected would be considered a ''senior examiner'' in light of the structure and nature of the Agency's supervisory program.[9] The trade association commenter found that these descriptions were very helpful, and the Agencies believe these descriptions accurately describe the types of examiners that may be considered ''senior examiners'' under the Agencies' current supervisory programs. To further help examiners comply with the one-year post-employment restrictions, the Agencies intend to establish and maintain appropriate procedures to notify an examiner in writing if the relevant Agency believes the examiner's assigned responsibilities would cause the

[4] 70 FR 45323 (Aug. 5, 2005).

[5] 12 U.S.C. 1820(k)(4)(B).

[6] *Id.* § 1820(k)(1)(B).

[7] The Agencies have modified the proposed rules to refer to individuals who have been ''authorized'' to conduct examinations, rather than ''commissioned'' or ''designated'' to conduct examinations, to reflect the fact that some individuals authorized to conduct examinations of depository institutions or holding companies may be credentialed to conduct such examinations, but not yet formally be ''commissioned'' to do so.

[8] 150 Cong. Rec. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

[9] *See* 70 FR 45326–45327 (August 5, 2005).

examiner to be considered a ''senior examiner'' with respect to any depository institution or depository institution holding company. Nonetheless, the post-employment restrictions in section 10(k) and the final rules apply directly to senior examiners, and examiners are responsible for becoming familiar with and ensuring their own compliance with the statute. Accordingly, examiners who have questions concerning whether they may be considered a ''senior examiner'' for an institution or holding company are encouraged to contact the appropriate persons at their respective Agency or Reserve Bank.

B. One-Year Post-Employment Restrictions

If an officer or employee of an Agency or a Reserve Bank serves as the senior examiner for a depository institution during two or more months of the individual's final twelve months of employment with the Agency or Reserve Bank, section 10(k) prohibits the individual from knowingly accepting compensation as an employee, officer, director, or consultant from the depository institution *or* any company that controls the depository institution (including a bank holding company or savings and loan holding company) for one year after leaving the employment of the Agency or Reserve Bank. Because the prohibition extends to companies that control the relevant depository institution, it would not prohibit the senior examiner from accepting employment with a subsidiary or affiliate of a bank holding company, savings and loan holding company, or other company that controls the depository institution (other than the depository institution for which the individual served as a senior examiner).[10]

If an officer or employee serves as the senior examiner for a depository institution holding company for two or more months during the last twelve months of his or her employment with an Agency or a Reserve Bank, the statute and final rule prohibit the individual from becoming employed by, or otherwise accepting compensation in the manner described above, from that holding company *or* any depository institution subsidiary of the holding company for one year after leaving the employment of the Agency or Reserve Bank.

Under section 10(k), a person is deemed to be a consultant for purposes of the one-year post-employment restrictions only if such person ''directly works on matters for, or on behalf of,'' the relevant depository institution, depository institution holding company or other company.[11] The Agencies have incorporated this rule of construction into the final rules. We interpret this provision to mean that a former senior examiner who joins a consulting or other firm may not, during the twelve-month post-employment ''cooling-off'' period, participate in any work that the firm is conducting for a depository institution or company that the former senior examiner would be prohibited from doing directly.[12] The former senior examiner would not, however, violate the post-employment restrictions in section 10(k) by joining a firm that performs work for such an institution or company as long as the former senior examiner does not personally participate in any such work.

As provided by section 10(k), the head of each Agency may waive application of the statute's post-employment restrictions to a senior examiner on a case-by-case basis if the head of the Agency determines that ''granting the waiver would not affect the integrity of the supervisory program of [such Agency].'' [13] The Agencies expect to grant waivers only in special circumstances. If an Agency grants a waiver to a senior examiner, the post-employment restrictions in section 10(k), and the associated penalties, would not apply to the senior examiner.

C. Penalties

If a senior examiner violates the post-employment restrictions in section 10(k), the statute requires the appropriate Agency to seek one of the following penalties:

- An order (1) removing the individual from his or her position at, or prohibiting the individual from further participation in the affairs of, the relevant depository institution, depository institution holding company, or other company for a period of up to five years, and (2) prohibiting the individual from participating in the conduct of the affairs of *any* insured depository institution for a period of up to five years; or
- A civil monetary penalty of not more than $250,000.[14]

An Agency also has the discretion to seek both of these penalties. A former senior examiner who is subject to a removal and prohibition order under section 10(k) is also subject to paragraphs (6) and (7) of section 8(e) of the FDI Act, which pertain to the scope of orders prohibiting a person from participating in certain banking activities.[15] These provisions, for example, would prohibit a former senior examiner, for the duration of a prohibition order issued under section 10(k), from participating in the affairs of *any* bank holding company or subsidiary of a bank holding company, savings and loan holding company or subsidiary of a savings and loan holding company, foreign bank that operates a branch, agency or commercial lending company subsidiary in the United States or any subsidiary of such a foreign bank, or certain other entities, such as credit unions.[16] In addition, these provisions would prohibit the individual, during the term of the prohibition order, from accepting employment with any appropriate Federal financial institutions regulatory agency (as defined in 12 U.S.C. 1818(e)(7)(D)), and certain other Federal agencies. The penalties that may apply to a senior examiner under section 10(k) are in addition to any other administrative, civil, or criminal penalty that may apply.

Under section 10(k), to obtain an order of removal or prohibition, an Agency must follow the rules and procedures that apply in similar types of proceedings against depository institutions and institution-affiliated parties. Specifically, section 10(k) states that removal and prohibition proceedings must be conducted in accordance with section 8(e)(4) of the FDI Act, which provides the individual the right to an administrative hearing prior to final Agency action. Section 10(k) further provides that an Agency seeking to impose a civil monetary penalty on a former senior examiner must do so either in accordance with

[10] The Agencies note, however, that a former senior examiner may not evade the post-employment restrictions in section 10(k) by nominally accepting employment with a company not directly covered by the post-employment restrictions, but then functionally serve as an officer, employee, director, or consultant for a depository institution or company that the former senior examiner would have been prohibited from working for directly.

[11] 12 U.S.C. 1820(k)(3).

[12] Of course, a former senior examiner who is self-employed similarly may not accept compensation for work performed as a consultant in his or her individual capacity for the relevant depository institution, depository institution holding company, or other company.

[13] *Id.* § 1820(k)(5).

[14] *Id.* § 1820(k)(6)(A). If the appropriate Federal banking agency does not assess a civil monetary penalty against a senior examiner who violates the post-employment restrictions in section 10(k), the Attorney General of the United States may bring a civil action to impose such a penalty against the senior examiner. *Id.*

[15] *Id.* § 1820(k)(6)(B).

[16] The appropriate Agency may consent to a change in the application of this restriction as it applies to a particular institution or other company, as provided in section 8(e)(7)(B) of the FDI Act (12 U.S.C. 1818(e)(7)(B)).

section 8(i) of the FDI Act, which also provides the individual the right to an administrative hearing prior to final Agency action, or through a civil action brought in an appropriate United States District Court.[17]

As stated in the preamble to the proposal, the Agencies do not believe it is necessary to codify these procedures, which are adequately set forth in the statute. Accordingly, the final rules cross-reference the required statutory procedures. Proceedings against examiners for violations of the post-employment restrictions would take place in accordance with the Agencies' rules of practice and procedure, and the Agencies have amended the scope sections of their respective Rules of Practice and Procedure to reflect this fact.

D. Effective Date

The Intelligence Reform Act provides that the post-employment restrictions imposed by section 10(k) shall become effective on December 17, 2005.[18] Accordingly, section 10(k) and the final rules apply only to officers or employees of an Agency or Reserve Bank who terminate their employment with the Agency or Reserve Bank on or after December 17, 2005. As explained in the proposal, however, because of the statute's twelve-month ''look-back'' provision, an officer or employee who leaves an Agency or a Reserve Bank within one year of December 17, 2005, may be subject to the post-employment restrictions in section 10(k) based on his or her examination responsibilities as far back as December 17, 2004.

For example, if an Agency examiner terminates his or her employment with the relevant Agency on January 1, 2006, and the individual, while employed by the Agency, served as the ''senior examiner'' for a particular depository institution from May 1, 2005 to October 1, 2005, the individual is subject to the post-employment restrictions. Although the service that caused the individual to be considered a ''senior examiner'' occurred prior to December 17, 2005, such service occurred during the last twelve months of the individual's employment with the Agency and, accordingly, the examiner may not become employed by the relevant depository institution, or any company that controls the depository institution, until January 2, 2007. However, if in the foregoing example the examiner terminated his or her employment with the Agency prior to December 17, 2005 (the effective date of the statute), the employee would not be subject to the post-employment restrictions in section 10(k).

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), each Agency certifies that the final rules will not have a significant economic impact on a substantial number of small entities. Section 10(k) and the final rules impose post-employment restrictions on certain senior examiners employed by an Agency or a Reserve Bank and do not impose any obligations or restrictions on banking organizations, including small banking organizations.

Executive Order 12866

The OCC and OTS have determined that this final rulemaking is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), the OCC and OTS must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC and OTS to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC and OTS have determined that their respective final rules will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, neither the OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Agencies reviewed the final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. As noted above, commenters generally found the proposed rules were clear and the final rules are substantively similar to the proposed rules.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Availability and release of information, Confidential business information, Contracting outreach program, Freedom of information, National banks, Organization and functions (government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigation, National banks, Penalties, Securities.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

12 CFR Part 264a

Conflicts of interest.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

12 CFR Part 336

Conflict of interests.

12 CFR Part 507

Ethics, Governmental employees, OTS employees.

12 CFR Part 509

Administrative practice and procedure, Penalties.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 4 and 19 of title 12 of the Code of Federal Regulations as follows:

■ 1. The title of part 4 is revised to read as follows:

[17] *Id.* § 1820(k)(6).

[18] *See* section 6303(d) of the Intelligence Reform Act.

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 2. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

■ 3. A new subpart E is added to part 4 to read as follows:

Subpart E—One-Year Restrictions on Post-Employment Activities of Senior Examiners

Sec.
4.72 Scope and purpose.
4.73 Definitions.
4.74 One-year post-employment restrictions.
4.75 Effective date; waivers.
4.76 Penalties.

§ 4.72 Scope and purpose.

This subpart describes those OCC examiners who are subject to the post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1820(k)) and implements those restrictions for officers and employees of the OCC.

§ 4.73 Definitions.

For purposes of this subpart:

Bank holding company means any company that controls a bank (as provided in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)).

Consultant. For purposes of this subpart, a consultant for a national bank, bank holding company, or other company shall include only an individual who works directly on matters for, or on behalf of, such bank, bank holding company, or other company.

Control has the meaning given in section 2 of the Bank Holding Company Act (12 U.S.C. 1841(a)). For purposes of this subpart, a foreign bank shall be deemed to control any branch or agency of the foreign bank.

Depository institution has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(c)). For purposes of this subpart, a depository institution includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State.

Federal Reserve means the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

Foreign bank means any foreign bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

Insured depository institution has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)).

National bank means a national banking association or a Federal branch or agency of a foreign bank.

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the ''senior examiner'' for a particular national bank if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank; and

(3) The officer's or employee's responsibilities for examining the national bank—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or its affiliates.

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves as the senior examiner of a national bank for two or more months during the last twelve months of such individual's employment with the OCC may not, within one year after leaving the employment of the OCC, knowingly accept compensation as an employee, officer, director or consultant from the national bank, or any company (including a bank holding company) that controls the national bank.

§ 4.75 Effective date; waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC, if—

(a) The individual ceased to be an officer or employee of the OCC before December 17, 2005; or

(b) The Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act.* If a senior examiner of a national bank, after leaving the employment of the OCC, accepts compensation as an employee, officer, director, or consultant from that bank, or any company (including a bank holding company) that controls that bank, then the examiner shall, in accordance with section 10(k)(6) of the FDI Act, be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, bank holding company, or other company that controls such institution for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000.

(b) *Enforcement by appropriate Federal banking agency.* Violations of § 4.74 shall be administered or enforced by the appropriate Federal banking agency for the depository institution or depository institution holding company that provided compensation to the former senior examiner. For purposes of this paragraph, the appropriate Federal banking agency for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency that formerly employed the senior examiner.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a) of this section shall, as required by 12 U.S.C. 1820(k)(6)(B), be subject to paragraphs (6) and (7) of section 8(e) of the FDI Act (12 U.S.C. 1818(e)(6)–(7)) in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Procedures.* The procedures applicable to actions under paragraph (a) of this section are provided in section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)) and in 12 CFR part 19.

(e) *Remedies not exclusive.* The OCC may seek both of the penalties described in paragraph (a) of this section. In addition, a senior examiner who accepts compensation as described in § 4.74 may be subject to other administrative,

civil or criminal remedies or penalties as provided in law.

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 4. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 5. Section 19.1 is amended by redesignating paragraph (g) as paragraph (h), removing the word ''and'' at the end of the paragraph (f), and adding a new paragraph (g) to read as follows:

§ 19.1 Scope.

* * * * *

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDI Act (12 U.S.C. 1820(k)) for violations of the post-employment restrictions imposed by that section; and

* * * * *

Dated: November 14, 2005.

John C. Dugan,

Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending part 263 and adding a new part 264a to Title 12, Chapter II, of the Code of Federal Regulations as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2; and 28 U.S.C. 2461 note.

■ 2. Section 263.1 is amended by redesignating paragraph (g) as paragraph (h), removing the word ''and'' at the end of the paragraph (f), and adding new paragraph (g) to read as follows:

§ 263.1 Scope.

* * * * *

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDI Act (12 U.S.C. 1820(k)) for violations of the special post-employment restrictions imposed by that section; and

* * * * *

■ 3. New part 264a is added to read as follows:

PART 264a—POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

Sec.

264a.1 What is the purpose and scope of this part?
264a.2 Who is considered a senior examiner of the Federal Reserve?
264a.3 What special post-employment restrictions apply to senior examiners?
264a.4 When do these special restrictions become effective and may they be waived?
264a.5 What are the penalties for violating these special post-employment restrictions?
264a.6 What other definitions and rules of construction apply for purposes of this part?

Authority: 12 U.S.C. 1820(k).

§ 264a.1 What is the purpose and scope of this part?

This part identifies those officers and employees of the Federal Reserve that are subject to the special post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act (FDI Act) and implements those restrictions as they apply to officers and employees of the Federal Reserve.

§ 264a.2 Who is considered a senior examiner of the Federal Reserve?

For purposes of this part, an officer or employee of the Federal Reserve is considered to be the ''senior examiner'' for a particular state member bank, bank holding company or foreign bank if—

(a) The officer or employee has been authorized by the Board to conduct examinations or inspections on behalf of the Board;

(b) The officer or employee has been assigned continuing, broad and lead responsibility for examining or inspecting the state member bank, bank holding company or foreign bank; and

(c) The officer's or employee's responsibilities for examining, inspecting and supervising the state member bank, bank holding company or foreign bank—

(1) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(2) Require the officer or employee to interact routinely with officers or employees of the state member bank, bank holding company or foreign bank or its affiliates.

§ 264a.3 What special post-employment restrictions apply to senior examiners?

(a) *Senior Examiners of State Member Banks.* An officer or employee of the Federal Reserve who serves as the senior examiner of a state member bank for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year after leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The state member bank; or

(2) Any company (including a bank holding company) that controls the state member bank.

(b) *Senior Examiners of Bank Holding Companies.* An officer or employee of the Federal Reserve who serves as the senior examiner of a bank holding company for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The bank holding company; or

(2) Any depository institution that is controlled by the bank holding company.

(c) *Senior Examiners of Foreign Banks.* An officer or employee of the Federal Reserve who serves as the senior examiner of a foreign bank for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The foreign bank; or

(2) Any branch or agency of the foreign bank located in the United States; or

(3) Any other depository institution controlled by the foreign bank.

§ 264a.4 When do these special restrictions become effective and may they be waived?

The post-employment restrictions set forth in section 10(k) of the FDI Act and § 264a.3 do not apply to any officer or employee of the Federal Reserve, or any former officer or employee of the Federal Reserve, if—

(a) The individual ceased to be an officer or employee of the Federal Reserve before December 17, 2005; or

(b) The Chairman of the Board of Governors certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions

would not affect the integrity of the Federal Reserve's supervisory program.

§ 264a.5 What are the penalties for violating these special post-employment restrictions?

(a) *Penalties under section 10(k) of FDI Act.*—A senior examiner of the Federal Reserve who, after leaving the employment of the Federal Reserve, violates the restrictions set forth in § 264a.3 shall, in accordance with section 10(k)(6) of the FDI Act, be subject to one or both of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant state member bank, bank holding company, foreign bank or other depository institution or company for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; and/or

(2) A civil monetary penalty of not more than $250,000.

(b) *Imposition of penalties.* The penalties described in paragraph (a) of this section shall be imposed by the appropriate Federal banking agency as determined under section 10(k)(6) of the FDI Act, which may be an agency other than the Federal Reserve.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a) of this section shall, as required by section 10(k)(6)(B) of the FDI Act, be subject to paragraphs (6) and (7) of section 8(e) of the FDI Act in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Procedures.* The procedures applicable to actions under paragraph (a) of this section are provided in section 10(k)(6) of the FDI Act.

(e) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 264a.3 also may be subject to other administrative, civil or criminal remedies or penalties as provided in law.

§ 264a.6 What other definitions and rules of construction apply for purposes of this part?

For purposes of this part—

(a) *Bank holding company* means any company that controls a bank (as provided in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)).

(b) A person shall be deemed to act as a *consultant* for a bank or other company only if such person works directly on matters for, or on behalf of, such bank or other company.

(c) *Control* has the meaning given in section 2 of the Bank Holding Company Act.

(d) *Depository institution* has the meaning given in section 3 of the FDI Act and includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State.

(e) *Federal Reserve* means the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

(f) *Foreign bank* means any foreign bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(g) *Insured depository institution* has the meaning given in section 3 of the FDI Act.

Dated: November 10, 2005.

By order of the Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the preamble, the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURES

■ 1. The authority for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s) Pub. L. 104–134, 110 Stat. 1321–358.

■ 2. In § 308.1, redesignate paragraph (g) as paragraph (h), remove the word ''and'' at the end of the paragraph (f), and add a new paragraph (g) to read as follows:

§ 308.1 Scope.

* * * * *

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties for violations of the post-employment restrictions under that subsection; and

* * * * *

PART 336—FDIC EMPLOYEES

■ 3. Subpart C is added to Part 336 to read as follows:

Subpart C—One-Year Restriction on Post-Employment Activities of Senior Examiners

Sec.

336.10 Purpose and scope.
336.11 Definitions.
336.12 One-year post-employment restriction.
336.13 Penalties.

Authority: 12 U.S.C. 1819 and 1820(k).

§ 336.10 Purpose and scope.

This subpart applies to officers or employees of the FDIC who are subject to the post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1820(k), and implements those restrictions as they apply to officers and employees of the FDIC.

§ 336.11 Definitions.

For purposes of this subpart:

(a) *Bank holding company* has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)).

(b) A *consultant* for an insured depository institution or other company shall include only individuals who work directly on matters for, or on behalf of, such institution or other company.

(c) *Control* has the meaning given to such term in section 336.3(b), and a foreign bank shall be deemed to control any insured branch of the foreign bank.

(d) *Depository institution* means any bank or savings association, including a branch of a foreign bank, if such branch is located in the United States.

(e) *Foreign bank* means any bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(f) *Savings and loan holding company* has the meaning given to such term in section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

(g) A *senior examiner* for an insured depository institution means an officer or employee of the FDIC—

(1) who has been authorized by the FDIC to conduct examinations or inspections of insured depository institutions on behalf of the FDIC;

(2) who has been assigned continuing, broad, and lead responsibility for the examination or inspection of the institution;

(3) who routinely interacts with officers or employees of the institution or its affiliates; and

(4) whose responsibilities with respect to the institution represent a substantial portion of the FDIC officer or employee's overall responsibilities.

§ 336.12 One-year post-employment restriction.

(a) *Prohibition.* An officer or employee of the FDIC who serves as a senior examiner of an insured depository institution for at least 2 months during the last 12 months of that individual's employment with the FDIC may not, within 1 year after the termination date of his or her employment with the FDIC, knowingly accept compensation as an employee, officer, director, or consultant from—

(1) The insured depository institution; or

(2) Any company (including a bank holding company or savings and loan holding company) that controls such institution.

(b) *Waivers.* The post-employment restrictions in paragraph (a) of this section will not apply to a senior examiner if the FDIC Chairperson certifies in writing and on a case-by case basis that a waiver of the restrictions will not affect the integrity of the FDIC's supervisory program.

(c) *Effective Date.* The post-employment restrictions in paragraph (a) of this section will not apply to any officer or employee of the FDIC, or any former officer or employee of the FDIC, who ceased to be an officer or employee of the FDIC before December 17, 2005.

§ 336.13 Penalties.

(a) *Penalties under section 10(k) of the FDI Act.* A senior examiner of the FDIC who violates the post-employment restrictions set forth in § 336.12 shall be subject to the following penalties—

(1) An order—

(i) Removing such person from office or prohibiting such person from further participation in the affairs of the relevant insured depository institution or company (including a bank holding company or savings and loan holding company) that controls such institution for a period of up to five years, and

(ii) Prohibiting any further participation by such person, in any manner, in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000; or

(3) Both.

(b) *Enforcement by appropriate Federal banking agency of hiring entity.* Violations of § 336.12 shall be enforced by the appropriate Federal banking agency of the depository institution, depository institution holding company, or other company at which the violation occurred, as determined under section 10(k)(6), which may be an agency other than the FDIC.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a)(1) of this section shall, as required by 12 U.S.C. 1820(k)(6)(B), be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 336.12 may also be subject to other administrative, civil, or criminal remedies or penalties as provided by law.

Dated at Washington, DC, this 8th day of November, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set forth in the preamble, OTS is amending chapter V of title 12 of the Code of Federal Regulations as follows:

■ 1. Add a new part 507 to read as follows:

PART 507—RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES OF SENIOR EXAMINERS

Sec.

507.1 What does this part do?
507.2 Who is a senior examiner?
507.3 What post-employment restrictions apply to senior examiners?
507.4 When will OTS waive the post-employment restrictions?
507.5 What are the penalties for violating the post-employment restrictions?

Authority: 12 U.S.C. 1462a, 1463 and 1820(k).

§ 507.1 What does this part do?

This part implements section 10(k) of the Federal Deposit Insurance Act (FDIA), which prohibits senior examiners from accepting compensation from certain companies following the termination of their employment. See 12 U.S.C. 1820(k). Except where otherwise provided, the terms used in this part have the meanings given in section 3 of the FDIA (12 U.S.C. 1813).

§ 507.2 Who is a senior examiner?

An individual is a senior examiner for a particular savings association or savings and loan holding company if—

(a) The individual is an officer or employee of OTS (including a special government employee) who has been authorized by OTS to conduct examinations or inspections of savings associations or savings and loan holding companies;

(b) The individual has been assigned continuing, broad and lead responsibility for the examination or inspection of that savings association or savings and loan holding company; and

(c) The individual's responsibilities for examining, inspecting, or supervising that savings association or savings and loan holding company:

(1) Represent a substantial portion of the individual's assigned responsibilities at OTS; and

(2) Require the individual to interact on a routine basis with officers and employees of the savings association, savings and loan holding company, or its affiliates.

§ 507.3 What post-employment restrictions apply to senior examiners?

(a) *Prohibition.* (1) Senior examiner of savings association. An individual who serves as a senior examiner of a savings association for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from—

(i) The savings association; or

(ii) A savings and loan holding company, bank holding company, or any other company that controls the savings association.

(2) *Senior examiner of a savings and loan holding company.* An individual who serves as a senior examiner of a savings and loan holding company for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from—

(i) The savings and loan holding company; or

(ii) Any depository institution that is controlled by the savings and loan holding company.

(b) *Effective date.* The post-employment restrictions in paragraph (a) of this section do not apply to any senior examiner who terminated his employment at OTS before December 17, 2005.

(c) *Definitions.* For the purposes of this section—

(1) *Consultant.* An individual acts as a consultant for a savings association or other company only if he or she directly works on matters for, or on behalf of, the savings association or company.

(2) *Control.* Control has the same meaning given in part 574 of this chapter.

§ 507.4 When will OTS waive the post-employment restrictions?

The post-employment restriction in § 507.3 of this part will not apply to a senior examiner if the Director certifies in writing and on a case-by-case basis that a waiver of the restriction will not affect the integrity of OTS's supervisory program.

§ 507.5 What are the penalties for violating the post-employment restrictions?

(a) *Penalties.* A senior examiner who violates § 507.3 shall, in accordance with 12 U.S.C. 1820(k)(6), be subject to one or both of the following penalties:

(1) An order—

(i) Removing the person from office or prohibiting the person from further participating in the conduct of the affairs of the relevant depository institution, savings and loan holding company, bank holding company or other company for up to five years, and

(ii) Prohibiting the person from participating in the affairs of any insured depository institution for up to five years.

(2) A civil money penalty not to exceed $250,000.

(b) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a)(1) of this section shall be subject to 12 U.S. C. 1818(e)(6) and (7) in the same manner and to the same extent as a person subject to an order issued under 12 U.S.C. 1818(e).

(c) *Procedures.* 12 U.S.C. 1820(k) describes the procedures that are applicable to actions under paragraph (a) of this section and the appropriate Federal banking agency authorized to take the action, which may be an agency other than OTS. Where OTS is the appropriate Federal banking agency, it will conduct administrative proceedings under 12 CFR part 509.

(d) *Other penalties.* The penalties under this section are not exclusive. A senior examiner who violates the restriction in § 507.3 may also be subject to other administrative, civil, or criminal remedy or penalty as provided by law.

PART 509—RULES OF PRACTICE AND PROCEDURES IN ADJUDICATORY PROCEEDINGS

■ 2. The authority citation for part 509 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 3349. 4717; 15 U.S.C. 78(l); 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 3. In § 509.1, redesignate paragraph (g) as paragraph (h); remove the word ''and'' at the end of paragraph (f); and add a new paragraph (g) to read as follows:

§ 509.1 Scope.

* * * * *

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties on senior examiners for violation of post-employment prohibitions; and

* * * * *

Dated: November 7, 2005.

Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 05–22814 Filed 11–16–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 05–20]

RIN 1557–AC96

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this interim final rule, with a request for comment, to amend its regulation at 12 CFR Part 8 concerning the timing of payments of OCC assessments. The interim final rule replaces the current process of assessment collection, which requires national banks to make the initial calculation of the amount due to the OCC. Under the revised assessment of fees process established by this interim rule, the OCC, rather than each national bank, will calculate the semiannual assessment fee based on the most recent Consolidated Reports of Condition and Income (Call Report). The fee will be due by March 31 and September 30 of each year, two months later than under the current process. Thus, payments that would have been due on January 31, 2006, will instead be due on March 31, 2006. The OCC will notify each national bank of the amount of its semiannual assessment and will automatically deduct that amount from each bank's designated bank account on the payment due date. The interim rule changes the assessment collection process only; it does not make any changes to the method for calculating assessments due from national banks.

DATES: Effective Date: This rule is effective December 19, 2005.

Comment Date: Comments must be received by December 19, 2005.

ADDRESSES: Comments should be directed to:

You should include OCC and Docket Number—in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- E-mail address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this interim final rule. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*
- Docket: You may also request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, or Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or Bruce W. Halper, Team Leader—Revenue, Financial Management, (202) 874–2199, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The National Bank Act authorizes the OCC to collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the Office. 12 U.S.C. 482. Under this authority, the OCC collects semiannual assessments from national banks, as described in 12 CFR part 8 and in the Notice of Comptroller of the Currency Fees, which is published no later than the first business day of December each year.[1] Part 8 currently requires each national bank to compute the amount of its semiannual assessment fee and pay that amount to the OCC by January 31 and July 31 of each year. Banks base their assessments on the data each bank submits in the most recent Call Report.

The OCC currently reviews each assessment computation after receiving Call Report data from the Federal Deposit Insurance Corporation (FDIC) in March and September of each year. The OCC finds on average approximately 150 errors per assessment cycle through those reviews. When the OCC finds an overpayment or underpayment of a semiannual assessment, the OCC contacts the national bank, explains the error, and refunds (or collects, as the case may be) the funds electronically.

This assessment collection process is cumbersome and has become outdated, and the procedure for reviewing and correcting miscalculations is inefficient. For these reasons the interim rule will revise the assessment process as described below.

II. Description of the Interim Rule

Calculation of the Semiannual Assessment Fee

The interim rule provides that the OCC will calculate the semiannual assessment fee due from each bank based on the most recent Call Report data. Under the new assessment process, the OCC will send each national bank an assessment collection notification no later than 7 business days prior to March 31 and September 30 of each year. The assessment will cover the six month period beginning on January 1 and July 1 before each payment date. The OCC will automatically deduct the assessed amount from the bank's designated bank account on March 31 and September 30. By delaying the assessment calculation date by two months, the OCC can collect assessments based on final Call Report data, and thus eliminate the cumbersome correction process currently required. This streamlining of our assessment collection process has the effect of reducing regulatory burden for national banks and is thus consistent with the objectives of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996,[2] which calls for the periodic review of the OCC's regulation and the elimination of unnecessary burden.

Under the interim rule, a national bank will be able to notify the OCC of any errors in the calculation of semiannual assessments or errors in the electronic transfer process. The Comptroller will be obligated to respond to such notices within 30 days of receipt.

Technical and Conforming Amendments

The interim rule eliminates an erroneous sentence in section 8.7(a) regarding delinquent semiannual assessment payments. The sentence duplicates in part the two sentences that follow it, and our research indicates that it is likely the result of a clerical or typographical error.

The rule also makes conforming changes to section 8.7(b) to describe the new streamlined procedure to correct errors in the assessment process. The interim rule makes non-substantive changes to conform part 8 to the new assessment collection process and other minor technical changes. Finally, in § 8.6(a)(1), (2), and (4), and § 8.7(a), the interim rule eliminates references to ''District of Columbia,'' ''District of Columbia banks'' and ''each district bank'' to reflect the provisions of the 2004 District of Columbia Omnibus Authorization Act, section 8, Public Law 108–386, 118 Stat. 2228 (2004), which shifted regulatory responsibility of District of Columbia banks from the OCC to the FDIC and Board of Governors of the Federal Reserve System.

Statement of Good Cause for Issuing an Interim Rule; Solicitation of Comments

Under 5 U.S.C. 553(b)(B), notice and comment rulemaking is not required if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [3] This interim final rule makes only minor changes to the assessment collection process. It does not change the method for calculating assessments due from national banks or affect the amount of assessment due from each national bank. Completion of notice and comment rulemaking procedures prior to the effective date of this rule are unnecessary because the changes made by the rule are non-substantive and do not affect the amount of a national bank's assessment or accelerate the assessment date. Making this interim final rule effective prior to the completion of notice and comment procedures is consistent with the public interest because the rule reduces regulatory burden for all national banks. Although notice and comment are not required prior to the effective date of the rule, we invite comments on all aspects of the rule. We will revise the rule if necessary or appropriate in light of the comments.

Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and interim rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each Federal agency to use plain language in all proposed and interim rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Effective Date

This interim final rule takes effect 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). Under 12 U.S.C. 4802(b)(1), Federal banking agency regulations or amendments to regulations ''which impose additional reporting, disclosure, or other requirements on insured depository institutions'' must be effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. As described above, this interim rule operates to reduce burden on national banks. Accordingly, the requirement to be effective on the first day of a calendar

[1] Under part 8, the OCC also collects assessments from Federal branches and Federal agencies. The changes provided for in this interim rule will also apply to payment of assessments by Federal branches and Federal agencies.

[2] Pub. L. 104–208, section 2222, 110 Stat. 3009–414 to 3009–415 (Sept. 30, 1996).

[3] 5 U.S.C. 553(b)(B).

quarter does not apply to this interim rule.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[4] Because the OCC has determined for good cause that the Administrative Procedure Act does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this interim final rule.

Executive Order 12866

The OCC has determined that this interim final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995[5] (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this interim rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320 Appendix A.1), we have reviewed the interim rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim rule.

List of Subjects in 12 CFR Part 8

Assessment of fees.

[4] 5 U.S.C. 601(2).

[5] 2 U.S.C. 1532.

Authority and Issuance

■ For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES

■ 1. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78*l*.

■ 2. Section 8.1 is revised to read as follows:

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78*l*.

■ 3. Section 8.2 is revised by:
■ a. Revising paragraph (a) introductory text and paragraphs (a)(2) and (a)(5); and
■ b. Revising paragraphs (b)(1) and (b)(3).

The revisions read as follows:

§ 8.2 Semiannual assessment.

(a) Each national bank shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank no later than 7 business days prior to March 31 and September 30 of each year. The semiannual assessment will be calculated as follows:

* * * * *

(2) The second part is the calculation of assessments due on the remaining assets of the bank in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

* * * * *

(5) The specific marginal rates and complete assessment schedule will be published in the ''Notice of Comptroller of the Currency Fees,'' provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the national bank's most recent ''Consolidated Reports of Condition and Income'' (Call Report) preceding the payment date. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 U.S.C. 161 is subject to the full assessment for the next six month period.

* * * * *

(b)(1) Each Federal branch and each Federal agency shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank no later than 7 business days prior to March 31 and September 30 of each year.

* * * * *

(3) Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Federal branch's Call Report most recently preceding the payment date. Each Federal branch or Federal agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is subject to the full assessment for the next six-month period.

* * * * *

§ 8.6 [Amended]

■ 4. Revise § 8.6 by:
■ a. Removing in paragraph (a)(1), the phrase ''and District of Columbia'';
■ b. Removing in paragraph (a)(2), the phrase '', District of Columbia banks,'';
■ c. Removing in paragraph (a)(4), the phrase '', District of Columbia banks,''; and
■ d. Removing in paragraph (c)(1)(i), the word ''currency'' and adding in lieu thereof the word ''Currency''.
■ 5. Revise § 8.7 by:
■ a. Removing in the first sentence of paragraph (a) the phrase ''each district bank,'';
■ b. Removing in the first sentence of paragraph (a) the word ''currency'' and by adding in lieu thereof the word ''Currency'';
■ c. Removing the third sentence of paragraph (a);
■ d. Revising the first two sentences of paragraph (b) introductory text; and
■ e. Revising the first sentence of paragraph (b)(2).

The revisions read as follows:

§ 8.7 Payment of interest on delinquent assessments and examination and investigation fees.

* * * * *

(b) In the event that an entity that is required to make semiannual assessment payments or trust examination fee payments believes that the notice of assessments prepared by the Comptroller of the Currency contains an error of miscalculation, the entity may provide the Comptroller of the Currency with a written request for a revised assessment notice and a

refund of any overpayments. Any such request for a revised notice and refund must be made after timely payment of the semiannual assessment under the dates specified in § 8.2. * * *

* * * * *

(2) Provide notice of its unwillingness to accept the request for a revised notice of assessments. * * *

* * * * *

§ 8.8 [Amended]

■ 6. Revise § 8.8 by:

■ a. Removing in the heading of paragraph (b) the word ''comptroller'' and by adding in lieu thereof the word ''Comptroller''; and

■ b. Removing in the first sentence of paragraph (b) the word ''Office'' and by adding in lieu thereof the word ''OCC''.

Dated: November 10, 2005.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. 05–22815 Filed 11–16–05; 8:45 am]

BILLING CODE 4810–33–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 602, 603, 604, and 606

RIN 3052–AB82

Organization and Functions; Releasing Information; Privacy Act Regulations; Farm Credit Administration Board Meetings; and Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) issues a final rule amending its regulations on the FCA's organization and functions to reflect the Agency's organization, update the statutory citation for the Farm Credit Act, and identify those FCA employees responsible for various functions named in parts 602, 603, 604, and 606 to conform to organizational changes.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479, TTY (703) 883–4434; or

Jane Virga, Senior Counsel, Legal Counsel Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: We are amending our regulations to reflect changes to the FCA's organization and identification of those FCA employees responsible for various functions.

We revise the regulations by:

(1) Deleting a Chief Operating Officer from the description of the organization;

(2) Changing the name of the Office of Policy Development and Risk Control to the Office of Regulatory Policy;

(3) Changing the name of the Office of Resources Management to the Office of Management Services;

(4) Including the Secretary to the Board in FCA's organizational structure; and

(5) Providing the addresses of FCA field offices. We also updated the statutory citation for the Farm Credit Act.

These amendments involve matters of Agency organization and other minor technical changes. Therefore, pursuant to the Administrative Procedures Act, 5 U.S.C. 553(b), notice and public comment are not required and/or are unnecessary and contrary to the public interest.

List of Subjects

12 CFR Part 600

Organization and functions (Government agencies).

12 CFR Part 602

Courts, Freedom of information, Government employees.

12 CFR Part 603

Privacy.

12 CFR Part 604

Sunshine Act.

12 CFR Part 606

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

■ As stated in the preamble, parts 600, 602, 603, 604, and 606 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 600—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 5.7, 5.8, 5.9, 5.10, 5.11, 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2241, 2242, 2243, 2244, 2245, 2252, 2279aa–11).

■ 2. Revise subpart A, consisting of §§ 600.1 to 600.4 to read as follows:

Subpart A—Farm Credit Administration

Sec.

600.1 The Farm Credit Act.
600.2 Farm Credit Administration.
600.3 Farm Credit Administration Board.
600.4 Organization of the Farm Credit Administration.

§ 600.1 The Farm Credit Act.

The Farm Credit Act of 1971, Public Law 92–181 recodified and replaced the prior laws under which the Farm Credit Administration (FCA) and the institutions of the Farm Credit System (System or FCS) were organized and operated. The prior laws, which were repealed and superseded by the Act, are identified in section 5.40(a) of the Act. Subsequent amendments to the Act and enactment dates are as follows: Public Law 94–184, December 31, 1975; Public Law 95–443, October 10, 1978; Public Law 96–592, December 24, 1980; Public Law 99–190, December 19, 1985; Public Law 99–198, December 23, 1985; Public Law 99–205, December 23, 1985; Public Law 99–509, October 21, 1986; Public Law 100–233, January 6, 1988; Public Law 100–399, August 17, 1988; Public Law 100–460, October 1, 1988; Public Law 101–73, August 9, 1989; Public Law 101–220, December 12, 1989; Public Law 101–624, November 28, 1990; Public Law 102–237, December 13, 1991; Public Law 102–552, October 28, 1992; Public Law 103–376, October 19, 1994; Public Law 104–105, February 10, 1996; Public Law 104–316, October 19, 1996; Public Law 107–171, May 13, 2002. The law is codified at 12 U.S.C. 2000, *et seq.*

§ 600.2 Farm Credit Administration.

(a) *Background.* The Farm Credit Administration is an independent, non-appropriated fund agency in the executive branch of the Federal Government. The FCA Board and employees carry out the FCA's functions, powers, and duties.

(b) *Locations.* FCA's headquarters address is 1501 Farm Credit Drive, McLean, Virginia 22102–5090. The FCA has the following field offices:

1501 Farm Credit Drive, McLean, VA 22102–5090.

2051 Killebrew Drive, Suite 610, Bloomington, Minnesota 55425–1899.

511 East Carpenter Freeway, Suite 650, Irving, TX 75062–3930.

3131 South Vaughn Way, Suite 250, Aurora, CO 80014–3507.

2180 Harvard Street, Suite 300, Sacramento, California 95815–3323.

§ 600.3 Farm Credit Administration Board.

(a) *FCA Board.* The President appoints the three full-time Board members with the advice and consent of the Senate. The Board manages, administers, and establishes policies for FCA. The Board promulgates the rules and regulations implementing the Farm Credit Act of 1971, as amended, and provides for the examination of Farm Credit System institutions.

(b) *Chairman of the FCA Board.* The Chairman of the Board is FCA's Chief Executive Officer. The Chairman directs the implementation of the policies and regulations adopted by the Board and, after consulting the Board, the execution of the administrative functions and duties of FCA. In carrying out the Board's policies, the Chairman acts as the spokesperson for the Board and represents the Board and FCA in their official relations within the Federal Government.

§ 600.4 Organization of the Farm Credit Administration.

(a) *Offices and functions.* The primary offices of the FCA are:

(1) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs performs Congressional liaison duties and coordinates and disseminates Agency communications.

(2) *Office of Examination.* The Office of Examination evaluates the safety and soundness of FCS institutions and their compliance with law and regulations and manages FCA's enforcement and supervision functions.

(3) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the FCA Chairman, the FCA Board, and Agency staff.

(4) *Office of Inspector General.* The Office of Inspector General conducts independent audits, inspections, and investigations of Agency programs and operations and reviews proposed legislation and regulations.

(5) *Office of Regulatory Policy.* The Office of Regulatory Policy develops policies and regulations for the FCA Board's consideration; evaluates regulatory and statutory prior approvals; manages the Agency's chartering activities; and analyzes policy and strategic risks to the System.

(6) *Office of Management Services.* The Office of Management Services provides financial management services. It administers the Agency's information resources management program; human resources management program; and contracts, procurement, mail services, and payroll.

(7) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight regulates and examines the Federal Agricultural Mortgage Corporation for safety and soundness and compliance with law and regulations.

(8) *Secretary to the Board.* The Secretary to the Board serves as the parliamentarian for the Board and keeps permanent and complete records and minutes of the acts and proceedings of the Board.

(b) *Additional Information.* You may obtain more information on the FCA's organization by visiting our Web site at *http://www.fca.gov.* You may also contact the Office of Congressional and Public Affairs:

(1) In writing at FCA, 1501 Farm Credit Drive, McLean, Virginia 22102–5090;

(2) By e-mail at *info-line@fca.gov;* or

(3) By telephone at (703) 883–4056.

PART 602—RELEASING INFORMATION

■ 3. The authority citation for part 602 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 301, 552; 52 FR 10012; E.O. 12600; 52 FR 23781, 3 CFR 1987, p. 235.

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.8 [Amended]

■ 4. Amend § 602.8 as follows:

■ A. By removing the words ''Office of Resources Management (ORM)'' and adding in their place, the words ''Office of Management Services (OMS)'' in the second sentence of paragraph (a).

■ B. By removing the acronym ''ORM'' and adding in its place, the acronym ''OMS'' each place it appears in paragraphs (b) and (c).

PART 603—PRIVACY ACT REGULATIONS

■ 5. The authority citation for part 603 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. app. 3, 5 U.S.C. 552a(j)(2) and (k)(2).

§ 603.340 [Amended]

■ 6. Amend § 603.340 by removing the words ''Office of Resources Management'' and adding in their place, the words ''Office of Management Services'' each place they appear in paragraphs (a) and (b).

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

■ 7. The authority citation for part 604 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252.

§ 604.435 [Amended]

■ 8. Amend § 604.435 by removing the words ''Director, Office of Resources Management'' and adding in their place, the words ''Secretary to the Board'' in paragraph (e).

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

■ 9. The authority citation for part 606 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 606.670 [Amended]

■ 10. Amend § 606.670 as follows:

■ A. By removing the words ''Office of Resources Management'' and adding in their place, the words ''Office of Management Services'' in paragraph (c).

■ B. By removing the words ''Equal Employment Opportunity Manager'' and adding in their place, the words ''Director, Equal Employment Opportunity'' in paragraph (i).

Dated: November 9, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–22731 Filed 11–16–05; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Gulf Opportunity Pilot Loan Program (GO Loan Pilot); Waiver of Regulatory Provisions

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of waiver of regulatory provisions.

SUMMARY: The U.S. Small Business Administration (SBA) announces the waiver for SBA's GO Loan Pilot of certain Agency regulations applicable to the 7(a) Business Loan Program, including those relating to personal assets of borrowers, interest rates and provisions that prohibit lenders from charging certain fees. SBA's GO Loan Pilot provides expedited small business financing to those communities severely impacted by Hurricanes Katrina and Rita. SBA intends for these waivers to minimize the burden on businesses applying for loans through the GO Loan Pilot and to provide incentives for lenders to participate in the pilot.

DATES: The waiver is effective for GO Loan Pilot loans approved from

November 17, 2005 until September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6490, e-mail address: *Charles.W.Thomas@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA is continuing to respond to the unprecedented devastation incurred by those small businesses located in the communities affected by Hurricanes Katrina and Rita. The Agency has announced a new initiative called the GO Loan Pilot, which is one important component of the Agency's response. The GO Loan Pilot generally will apply the policies and procedures in place for the Agency's SBAExpress program, although there will be several substantial differences. The pilot is designed to streamline SBA financing on an emergency basis to those small businesses located in, locating to or re-locating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina and Rita, plus any contiguous parishes/counties. The maximum loan amount under the pilot is $150,000 and loans carry a full 85 percent guaranty by SBA. The GO Loan Pilot will be available for use in FY 2006 and will expire on September 30, 2006.

To maximize the effectiveness of the GO Loan Pilot, SBA is waiving certain Agency regulations for the 7(a) Business Loan Program. These waivers will also minimize the burdens on the businesses applying for loans through the GO Loan Pilot and provide incentives for lenders to participate in the pilot.

Under § 120.102 of SBA's regulations (13 CFR 120.102), an applicant for an SBA-guaranteed loan through the 7(a) program must show that the desired funds are not available from the personal resources of any owner of 20 percent or more of the equity of the applicant. If such personal resources are readily available, SBA requires that those resources above a certain amount, which varies with the size of the loan, must be injected into the applicant firm's financing package to reduce the amount of SBA's funding. Under the GO Loan Pilot, the maximum loan amount is limited to $150,000, so under standard 7(a) program procedures, each 20 percent or more owner of the applicant business normally would be required to inject any personal liquid assets which are in excess of two times the total financing package, or in excess of $100,000, whichever is greater.

However, in recognition of the scope and magnitude of the destruction suffered by these communities as a result of Hurricanes Katrina and Rita, and the need for immediate reconstruction, SBA believes that, due to other disaster-related exigencies, prospective borrowers under the GO Loan Pilot will be unable to expediently meet SBA's requirement that personal resources above a certain amount must be injected into the firm's capitalization. Therefore, to further facilitate and expedite the processing of SBA loans under the GO Loan Pilot, and to avoid over-taxing the resources of financially-strapped borrowers, SBA is waiving § 120.102 for loans approved under this pilot.

Under §§ 120.213 through 120.215, SBA prescribes the maximum interest rates that a Lender may charge a borrower. For loans approved under the GO Loan Pilot, SBA is waiving the regulatory provisions set out at §§ 120.213(a), 120.214(a) through (e) and 120.215. GO Loan Pilot lenders may charge the interest rates applicable to the SBAExpress program as set forth in the SBAExpress Program Guide, available on SBA's Web site at *http://www.sba.gov/banking/exguide.pdf*. SBA is also waiving § 120.222, which prohibits lenders from charging certain fees to borrowers. Thus, under the Pilot, lenders will be permitted to charge the same fees on GO Loans as they charge on their non-SBA guaranteed commercial loans. SBA is waiving §§ 120.213(a), 120.214(a) through (e), 120.215 and 120.222 to provide incentives to lenders to participate in the pilot program.

SBA's waiver of these provisions is authorized by § 120.3 of its regulations (13 CFR 120.3). These waivers apply only to those loans approved under the GO Loan Pilot and will last only for the duration of the pilot, which expires September 30, 2006. As part of the GO Loan Pilot, these waivers apply only to those small businesses located in, locating to or re-locating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina or Rita, plus any contiguous parishes/counties. (A list of all eligible parishes/counties is located at *http://www.sba.gov/financing/index.html*.)

Authority: 15 U.S.C. 636(a)(24); 13 CFR 120.3.

Hector V. Barreto,

Administrator.

[FR Doc. 05–22834 Filed 11–16–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Establishment of Class E Airspace; Arctic Village, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Arctic Village, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAPs) and one new Instrument Flight Rules (IFR) Departure Procedure (DP). This rule results in revised Class E airspace upward from 700 feet (ft.) above the surface and from 1,200 ft. above the surface at Arctic Village Airport, AK.

DATES: Effective 0901 UTC, February 16, 2006.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, September 9, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. and 1,200 ft above the surface at Arctic Village, AK (70 FR 53594). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs and one new DP for the Arctic Village Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, original; (2) RNAV (GPS) RWY 20, original. The DP is the TUVVO One. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Arctic Village Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference.

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

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Arctic Village, Alaska. This Class E airspace is established to accommodate aircraft executing two new SIAPs 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 Arctic Village Airport, Arctic Village, Alaska.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Arctic Village 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 Arctic Village, AK [New]

Arctic Village Airport, AK
(Lat. 58°06′53″ N., long. 145°34′46″ W.)

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

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22771 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22094; Airspace Docket No. 05–AAL–28]

Revision of Class E Airspace; Nikolai, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective 0901 UTC, February 16, 2006

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

SUPPLEMENTARY INFORMATION:

History

On Friday, September 9, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface at Nikolai, AK (70 FR 53598). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Nikolai Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 04, original; (2) RNAV (GPS) RWY 22, original. Class E controlled airspace extending upward from 700 ft. above the surface in the Nikolai Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA

Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

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

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Nikolai 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 Nikolai, AK [New]

Nikolai Airport, AK

(Lat. 63°01′07″ N., long. 154°21′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4 nautical mile (NM) radius of the Nikolai Airport.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22770 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22022; Airspace Docket No. 05–AAL–21]

Establishment of Class E Airspace; Nenana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, September 9, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface at Nenana, AK (70 FR 53597). The action was proposed in order to revise Class E airspace to be sufficient in size to contain aircraft while executing SIAPs. The change is necessary in order to account for magnetic variation changes associated with runway orientation. Class E controlled airspace extending upward from 700 ft. above the surface in the Nenana 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 Nenana, Alaska. This Class E airspace is established to accommodate magnetic variation changes associated with runway orientation, 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 Nenana Municipal Airport, Nenana, Alaska.

The FAA has determined that this regulation only involves an established

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Nenana Municipal 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 Nenana, AK [Revised]

Nenana Airport, AK

(Lat. 64°32′50″ N., long. 149°04′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nenana Municipal Airport and within 3 miles each side of the 239° bearing of the Ice Pool Nondirectional Beacon (NDB) extending from the 6.5-mile radius to 10.3 miles West of the airport.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22767 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22023; Airspace Docket No. 05–AAL–22]

Revision of Class E Airspace; Egegik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, September 9, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace upward from 700 ft. above the surface at Egegik, AK (70 FR 53595). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two revised SIAPs for the Egegik Airport. The approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 12, Amendment (Amdt) 1; (2) RNAV (GPS) RWY 30, Amdt 1. Class E controlled airspace extending upward from 700 ft. above the surface in the Egegik Airport area is modified 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 Egegik, Alaska. This Class E airspace is modified to accommodate aircraft executing two revised SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Egegik Airport, Egegik, Alaska.

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

under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Egegik 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 Egegik, AK [Revised]

Egegik Airport, AK
(Lat. 58°11′08″ N., long. 157°22′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Egegik Airport.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22766 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 45

[OAG Docket No. 112; AG Order No. 2789–2005]

RIN 1105–AB11

Procedures To Promote Compliance With Crime Victims' Rights Obligations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 102(f) of the Justice for All Act, establishing procedures to promote compliance with crime victims' rights statutes by Department of Justice employees.

DATES: This final rule becomes effective December 19, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Battle, Director, Executive Office for United States Attorneys, United States Department of Justice, Washington, DC 20530, (202) 514–2121.

SUPPLEMENTARY INFORMATION:

Justice for All Act

Congress enacted, and the President signed, the Justice for All Act (''Act''), which became effective October 30, 2004. Section 102 of the Act, 18 U.S.C. 3771 (''section 3771''), codifies crime victims'' rights, requires officers and employees of the Department of Justice (''Department'') and other government departments and agencies to exercise best efforts to accord victims those rights, establishes enforcement measures for those rights, and requires the Attorney General to promulgate regulations to promote compliance by responsible Department of Justice officials with their obligations regarding victims' rights. Section 3771(f) states that the regulations must: (a) Designate an administrative authority within the Department to receive and investigate complaints relating to the provision or violation of the rights of a crime victim by Department employees; (b) require a course of training for Department employees and offices that fail to comply with their obligations regarding victims' rights; (c) contain disciplinary sanctions for willful and wanton failure to comply with obligations regarding victims' rights; and (d) provide that the Attorney General or his designee shall be the final arbiter of a complaint. *See* 18 U.S.C. 3771(f).

Proposed Rule

In order to implement section 102 of the Act, the Department published a proposed rule on July 7, 2005, that proposed to create a new section in part 45, Employee Responsibilities, of title 28, Judicial Administration, of the Code of Federal Regulations. 70 FR 39206–01. The proposed rule provided for the creation of the office of the Victims' Rights Ombudsman (VRO) within the Executive Office for United States Attorneys (EOUSA) as the designated administrative authority within the Department to receive and investigate complaints relating to the provision or violation of the rights of a crime victim. The proposed rule delineated the powers and duties of the VRO as well as the basic procedures of its operations.

The proposed rule authorized the VRO to designate points of contact (POCs) in each office of the Department to perform initial investigations and review of complaints, in order to allow for complaints to be addressed at the most local level.

The proposed rule then established a procedure for filing complaints, investigations of those complaints, and imposition of disciplinary sanctions against employees where warranted. The proposed rule required that a complaint be in writing and contain sufficient information to enable an investigation of the complaint by the POC. Complaints were to be filed within 30 days of the alleged violation of a victim's rights, unless the victim demonstrated good cause for the delay. The precise requirements for the investigation were to be established by internal Department policy guidance. At the end of the investigation, the POC was to prepare a written report of the results of the investigation, including a signed statement by the victim as to whether or not he was satisfied that his complaint had been resolved. In either case, however, the report was to be forwarded to the VRO for review. The VRO would then decide whether (a) no further action was necessary; (b) further investigation, to be conducted by the VRO, was necessary; or (c) the employee would be required to undergo training or be subject to disciplinary sanctions. The VRO's determination was not to be dependent on the victim's satisfaction, although it could be taken into account. The VRO would be the final arbiter of whether the complaint had been adequately addressed.

If the VRO determined that no further action was necessary, the matter was to be closed.

The VRO, upon either review of the POC's investigation or his own further investigation, could require an employee to undergo training on the obligations of Department employees regarding victims' rights. If, upon either review of the POC's investigation or his own further investigation, the VRO determined that the employee had willfully or wantonly violated a crime victim's rights, the VRO was authorized to recommend, in conformity with laws and regulations regarding employee discipline, a range of disciplinary sanctions to the head of the office in which the employee was located, or to the official who had been designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office. The head of that office of the Department of Justice, or the other official designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office, was to be the final decision-maker regarding the disciplinary sanction to be imposed.

Because of restrictions on the release of information regarding the status of Department employees and the need to balance the rights of the victim with the rights of the employee, the proposed rule provided that the victim would be notified of the results of the investigation only at the discretion of the VRO and in accordance with relevant statutes and regulations regarding privacy of Federal employees.

Both the POC and the VRO were required to refer to the Office of the Inspector General (OIG) or the Office of Professional Responsibility (OPR) any matters that fell under those offices' jurisdictions that may have come to light in the POC's or the VRO's investigation.

For purposes of the new section, victims of crime were defined identically to the definition in the Justice for All Act, and victims' rights were defined as those established in the Act.

Response to Public Comments

Three public comments were received in response to the proposed rule from victim rights' advocates and advocacy organizations. This section explains the Department's response to those comments and notes changes to the proposed rule taken in response to several of them. The comments are divided into three categories structure of the office, powers of the office, and the complaint process.

Structure of the Office

One commenter commented that the proposed rule improperly placed the VRO in EOUSA. According to this commenter, EOUSA is viewed within the Department only as a resource, rather than an authority. Further, claimed this commenter, although all Department offices are subject to the statute, including investigative and corrections agencies, EOUSA deals only with U.S. Attorneys' Offices (USAOs). Rather than EOUSA, this commenter suggested that the VRO should be located in the office of the Deputy Attorney General or, alternatively, within OPR.

The Department has declined to adopt changes to the proposed rule in response to this comment. Although it is true that all Department employees are subject to the regulation, the Department expects that the large majority of complaints will relate to Assistant United States Attorneys (AUSAs), since the rights in the Act primarily apply to the prosecution stage. Furthermore, the Department does not agree that EOUSA is only a resource and not an authority. EOUSA is a central policy coordination office that routinely disseminates binding guidance for the operation of U.S. Attorneys' Offices. OPR is not a proper location for the VRO because it is anticipated that most of the complaints raised by victims will not implicate the investigative, litigative, or advice-giving conduct of Department attorneys normally handled by OPR. In the unusual case in which such conduct is implicated, the regulations provide that the complaint be referred to OPR by the VRO or by the POC. The Department therefore determined that EOUSA was the most appropriate office in which to locate the VRO and declines to revise that determination.

One commenter commented that the decisions of the VRO should be appealable by the victim in case he is unsatisfied with the outcome of his complaint. According to the commenter, this is another reason to locate the VRO in the office of the Deputy Attorney General, so that the Deputy Attorney General can serve as the reviewing official.

The Department declines to adopt changes to the proposed rule in response to this comment. The only two outcomes provided for in the statute for violations of the Act are the requirement of training and the possible imposition of disciplinary sanctions. In the first case, the VRO has no discretion under the statute, once he has made a finding of a violation, not to require training. If the VRO declined to require training, the only reason would be a lack of factual basis for doing so. A reviewing official, such as the Deputy Attorney General, would not be in a better position than the VRO to make findings of fact. In the second case, the decision to impose disciplinary sanctions on an employee is a confidential matter under other provisions of federal law. A complaining member of the public would not be permitted to know the results of the VRO's investigation if it resulted in a recommendation for the imposition of disciplinary sanctions or whether those sanctions were in the end imposed.

Powers of the Office

One commenter commented that the rule should direct that the VRO require training for Department employees or offices when the VRO finds a violation of victims' rights that are not willful or wanton, rather than authorizing the VRO to require training if the VRO deems it necessary.

Upon review of the statutory language, the Department accepts this comment and has made changes in the final rule directing the VRO to require training in response to violations of victims' rights. The statute makes clear that such training shall be required, with no room for discretion on the part of the VRO.

One commenter commented that the VRO should, in consultation with the Department's Office for Victims of Crime (OVC), identify and promote best practices in victims' rights training.

The Department declines to adopt this comment. The Act neither requires nor authorizes the VRO to perform this function, and the victim-witness staff at the components already do so. Indeed, it is expected that the required training will be conducted by the relevant component.

Complaint Procedures

One commenter commented that a victim should not be required to submit complaints to a POC in each different office of the Department. Rather, the commenter suggested, complaints should go directly to the VRO. According to the commenter, a victim might not even be aware of which office had violated his rights.

The Department declines to adopt changes to the proposed rule in response to this comment. The Department proposed the POC system for both the benefit of victims and for administrative practicability. The Department believes that complaints by victims are most likely to be resolved at the local level. A local POC can more

easily and effectively investigate and resolve the complaint. The Department acknowledges that a victim might not necessarily know which office failed to provide him his rights, but a guide to the system and instructions on how to contact the appropriate POC will be made available to victims. Further, the Department is unable to determine how many complaints may be filed. It is impracticable to have one central office receive and investigate all complaints from across the nation without some form of initial review as to the sufficiency of the complaint and the possibility for local resolution.

One commenter commented that a victim may have a complaint against the POC himself and that, therefore, the final rule should provide for an alternative complaint procedure in such circumstances, such as having an alternative POC available to the crime victim.

The Department declines to accept his comment. Such a provision would be highly burdensome to enact. The burdens of doubling the number of individuals trained in VRO procedures do not seem worthwhile for the likely very small number of complaints actually brought against the POC. Further, some United States Attorneys' Offices may not be able to designate two POCs. Nevertheless, the Department has made a small change to the final rule to require all complaints alleging a violation that would create a conflict of interest for the POC to investigate to be forwarded immediately to the VRO.

One commenter commented that the requirements for the information to be provided in the written complaint were too burdensome on the victim. For example, the required information could be beyond the knowledge of the victim. The commenter suggested that the requirements instead be recommended items. This commenter also commented that the requirement that the complaint include information regarding whether the complainant had contacted the employee who is the subject of the complaint indicated an exhaustion-of-remedies requirement.

The Department accepts this comment in part and has written the final rule to require only as much information as is known to, or reasonably available to, the victim. However, the Department declines to make the information only recommended rather than required. The information is intended to provide as much background to the POC and the VRO as possible in order to expedite the investigation. Further, to be clear, there is no exhaustion-of-remedies requirement.

Two commenters commented that the information required in the complaint included the district court case number and the name of the defendant in the case, although a victim could file a complaint prior to an indictment. The commenters recommended that the final rule clarify that such information is required only when such information exists.

The Department accepts this comment, but believes that the change in the final rule noted in the paragraph above adequately resolves the issue raised by the commenter.

Two commenters commented that the Department should draft standard complaint forms for victims to fill out and should provide assistance to victims in completing and submitting the forms.

The Department declines to adopt changes to the proposed rule in response to this comment. The Department does not rule out the possibility of providing written complaint forms, but does not believe that it is necessary to do so in this final rule. Likewise, the Department does not believe it is necessary to state in this final rule that the POC or VRO will provide assistance to victims in submitting complaints.

Two commenters commented that the proposed rule's requirement that a complaint make a prima facie case of a violation was unfair to complainants. According to the commenters, the rule did not define the standards for making a determination as to whether a prima facie case had been made, such that the complainant would be unaware of the quantum of evidence required for the complaint.

The Department partially adopts this comment. The Department has replaced the term ''prima facie'' with language similar to that found in the regulations governing the operations of the Alaska Office of Victims' Rights (OVR). Under those regulations, the Alaska OVR conducts a preliminary examination of a complaint to assess whether ''there is specific and credible information to indicate that one or more crime victim rights guaranteed by the laws and constitution of this state may have been violated by a justice agency or person.'' 23 AAC 10.030(2). The final rule states that a complaint must provide ''specific and credible information that demonstrates that one or more crime victims' rights listed in 18 U.S.C. 3771 may have been violated by a Department of Justice employee or office.''

Three commenters commented that the time limit of 30 days for filing of a complaint was unfair and burdensome to victims. According to the commenters, many victims are unaware of their rights or are unaware when those rights have been violated. The commenters recommended eliminating the time frame for complaints, considerably extending the time frame, or making the time frame begin when the victim became aware of the violation of his rights.

The Department partially adopts this comment. The Department does not wish victims to have their ability to file a complaint of violation of their rights arbitrarily limited; at the same time, however, the Department must design the complaint process so that complaints can be investigated and resolved expeditiously and effectively and in such a way that Department employees' due process rights are protected. A reasonable limitation period can be fair to both parties. The Department has therefore changed the final rule to provide that complaints must be filed within 60 days of knowledge of the violation, but not more than one year after the actual violation. Because of the significant extension of time to file a complaint, the exemption for good cause for a delay has been removed.

Three commenters commented that, while the proposed rule placed time limits on the ability of the victim to file a complaint, the rule did not require the POC and VRO to reply to the complaint within a specific time frame.

The Department partially adopts this comment. The final rule requires that the POC or the VRO shall investigate the complaint ''within a reasonable time period.'' The Department is unable to require a specific time frame for response in this final rule because of the uncertainty regarding the number and complexity of complaints that may be filed. The definition of ''reasonable time period'' will be addressed in internal guidance and may be adjusted as experience with the complaint process refines the Department's procedures.

Two commenters commented that the proposed rule's limitations on information as to the resolution of the complaint being made available to the victim, including prohibition of disclosure of the proposed POC written report, are unfair to the victim. According to the commenters, open government requires that information should be presumptively available and that, without disclosure to the fullest extent possible, victims will not be confident that their complaints have been addressed.

The Department declines to adopt this comment. The Department recognizes that victims desire to know that their complaints have been taken seriously

and have been addressed. However, as a matter of law, the Department is severely restricted regarding what information about individuals in its possession it may release. *See* 5 U.S.C. 552a(b). The Department regrets that victims might therefore not receive information regarding the ultimate disposition of their complaints, but believes that providing a discretionary disclosure by the POC or the VRO within the bounds of the law and Department policy is the best compromise between the right of the victim to an open process and the right of an accused employee to confidential adjudication of a potential disciplinary action.

Three commenters commented that the proposed rule's requirement that the victim sign a statement indicating his or her satisfaction (or lack thereof) in response to the initial investigation of the complaint was unfair and unworkable, particularly in combination with the prohibition on the disclosure of the report to the victim.

The Department accepts this comment and has eliminated the requirement of the victim statement.

One commenter made several suggestions for additional provisions in the regulations. The commenter stated that the final rule, similar to those governing the operations of the Alaska OVR, should list reasons for which the POC or VRO may decline to investigate a complaint and should provide standards for prioritizing the processing of complaints. The Department agrees that such guidance would be helpful to the POC and VRO, but it is unnecessary to include in this final rule.

The same commenter suggests that the final rule include procedures for maintaining confidentiality of information provided by a victim to the VRO, including creation of a testimonial privilege on the part of the VRO for information provided to the VRO by the victim, such as inconsistent or contradictory statements about the crime at issue. The Department declines to adopt these suggestions. First, a victim's privacy will be protected under the Privacy Act and other relevant statutes and Department policy. Second, the VRO, unlike, for example, the Alaska OVR, will be part of a law enforcement agency. Therefore, under certain circumstances the VRO may be legally required to disclose information received from a victim. For example, any information that would tend to exculpate a defendant must be disclosed to the defense, *see Brady* v. *Maryland*, 373 U.S. 83 (1963).

Regulatory Procedures

Regulatory Flexibility Act

Because this final rule affects only internal Department procedures, the Department states that this final rule will not have any effect on small businesses of the type described in 5 U.S.C. 605. Accordingly, the Department has not prepared an initial Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

Executive Order 12866

The Department of Justice has reviewed this final rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this final rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f)(4), Regulatory Planning and Review. Accordingly, this final rule has been reviewed by the Office of Management and Budget.

In particular, the Department has assessed both the costs and benefits of this final rule as required by Executive Order 12866 section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs. The costs that the Department considered included the costs to victims of submitting complaints to the POC and VRO, the costs to the employees of participating in the complaint and disciplinary process, and the costs to the Federal Government of creating and maintaining the VRO office. The benefits considered by the Department are that the purpose of the Act and of these regulations is to protect victims' rights. The Department believes that the costs imposed by these regulations are justified by the benefits.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This final rule is exempt from the requirements of the Paperwork Reduction Act under 5 CFR 1320.4(1) because it relates to the conduct of a Federal criminal investigation or prosecution.

All comments and suggestions relating to the Paperwork Reduction Act, or questions regarding additional information, should be directed to Brenda Dyer, Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, 601 D Street, NW., Washington, DC 20530.

List of Subjects in 28 CFR Part 45

Employee responsibilities; Victims' rights.

■ Accordingly, for the reasons stated in the preamble, the Department of Justice amends 28 CFR chapter I part 45 as follows:

PART 45—EMPLOYEE RESPONSIBILITIES

■ 1. The authority citation for part 45 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 18 U.S.C. 207, 3771; 28 U.S.C. 503, 528; DOJ Order 1735.1.

■ 2. In part 45, a new § 45.10 is added to read as follows:

§ 45.10 Procedures to promote compliance with crime victims' rights obligations.

(a) *Definitions.* The following definitions shall apply with respect to

this section, which implements the provisions of the Justice for All Act that relate to protection of the rights of crime victims. *See* 18 U.S.C. 3771.

Crime victim means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights, but in no event shall the defendant be named as such guardian or representative.

Crime victims' rights means those rights provided in 18 U.S.C. 3771.

Employee of the Department of Justice means an attorney, investigator, law enforcement officer, or other personnel employed by any division or office of the Department of Justice whose regular course of duties includes direct interaction with crime victims, not including a contractor.

Office of the Department of Justice means a component of the Department of Justice whose employees directly interact with crime victims in the regular course of their duties.

(b) The Attorney General shall designate an official within the Executive Office for United States Attorneys (EOUSA) to receive and investigate complaints alleging the failure of Department of Justice employees to provide rights to crime victims under 18 U.S.C. 3771. The official shall be called the Department of Justice Victims' Rights Ombudsman (VRO). The VRO shall then designate, in consultation with each office of the Department of Justice, an official in each office to serve as the initial point of contact (POC) for complainants.

(c) Complaint process. (1) Complaints must be submitted in writing to the POC of the relevant office or offices of the Department of Justice. If a complaint alleges a violation that would create a conflict of interest for the POC to investigate, the complaint shall be forwarded by the POC immediately to the VRO.

(2) Complaints shall contain, to the extent known to, or reasonably available to, the victim, the following information:

(i) The name and personal contact information of the crime victim who allegedly was denied one or more crime victims' rights;

(ii) The name and contact information of the Department of Justice employee who is the subject of the complaint, or other identifying information if the complainant is not able to provide the name and contact information;

(iii) The district court case number;

(iv) The name of the defendant in the case;

(v) The right or rights listed in 18 U.S.C. 3771 that the Department of Justice employee is alleged to have violated; and

(vi) Specific information regarding the circumstances of the alleged violation sufficient to enable the POC to conduct an investigation, including, but not limited to: The date of the alleged violation; an explanation of how the alleged violation occurred; whether the complainant notified the Department of Justice employee of the alleged violation; how and when such notification was provided to the Department of Justice employee; and actions taken by the Department of Justice employee in response to the notification.

(3) Complaints must be submitted within 60 days of the victim's knowledge of a violation, but not more than one year after the actual violation.

(4)(i) In response to a complaint that provides the information required under paragraph (c)(2) of this section and that contains specific and credible information that demonstrates that one or more crime victims' rights listed in 18 U.S.C. 3771 may have been violated by a Department of Justice employee or office, the POC shall investigate the allegation(s) in the complaint within a reasonable period of time.

(ii) The POC shall report the results of the investigation to the VRO.

(5) Upon receipt of the POC's report of the investigation, the VRO shall determine whether to close the complaint without further action, whether further investigation is warranted, or whether action in accordance with paragraphs (d) or (e) of this section is necessary.

(6) Where the VRO concludes that further investigation is warranted, he may conduct such further investigation. Upon conclusion of the investigation, the VRO may close the complaint if he determines that no further action is warranted or may take action under paragraph (d) or (e) of this section.

(7) The VRO shall be the final arbiter of the complaint.

(8) A complainant may not seek judicial review of the VRO's determination regarding the complaint.

(9) To the extent permissible in accordance with the Privacy Act and other relevant statutes and regulations regarding release of information by the Federal government, the VRO, in his discretion, may notify the complainant of the result of the investigation.

(10) The POC and the VRO shall refer to the Office of the Inspector General and to the Office of Professional Responsibility any matters that fall under those offices' respective jurisdictions that come to light in an investigation.

(d) If the VRO finds that an employee or office of the Department of Justice has failed to provide a victim with a right to which the victim is entitled under 18 U.S.C. 3771, but not in a willful or wanton manner, he shall require such employee or office of the Department of Justice to undergo training on victims' rights.

(e) *Disciplinary procedures.* (1) If, based on the investigation, the VRO determines that a Department of Justice employee has wantonly or willfully failed to provide the complainant with a right listed in 18 U.S.C. 3771, the VRO shall recommend, in conformity with laws and regulations regarding employee discipline, a range of disciplinary sanctions to the head of the office of the Department of Justice in which the employee is located, or to the official who has been designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office. The head of that office of the Department of Justice, or the other official designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office, shall be the final decision-maker regarding the disciplinary sanction to be imposed, in accordance with applicable laws and regulations.

(2) Disciplinary sanctions available under paragraph (e)(1) of this section include all sanctions provided under the Department of Justice Human Resources Order, 1200.1.

Dated: November 10, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–22801 Filed 11–16–05; 8:45 am]

BILLING CODE 4410–19–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0054; FRL–7997–9]

RIN 2060–AM94

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action on reconsideration.

SUMMARY: On May 16, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at brick and structural clay products (BSCP) manufacturing facilities (the final rule). Subsequently, the Administrator received a petition for reconsideration of the final rule. On April 22, 2005, EPA announced its reconsideration of one issue arising from the final rule. Specifically, we (EPA) requested public comment on our decision to base the maximum achievable control technology (MACT) requirements for certain tunnel kilns on dry limestone adsorption technology. As a result of this reconsideration process, we have concluded that the MACT floors and standards determined at promulgation are correct, and no changes to the final rule are warranted. We, therefore, are taking no amendatory action with respect to these requirements.

DATES: This final action is effective on November 17, 2005.

ADDRESSES: *Docket.* EPA has established an official public docket for the NESHAP for brick and structural clay products manufacturing including both Docket ID No. OAR–2002–0054 and Legacy Docket ID No. A–90–30. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to the BSCP rulemaking and the reconsideration action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they are aware of all materials relevant to the BSCP rulemaking and this action. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, Combustion Group, Emission Standards Division (MC–C439–01), EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; fax number: (919) 541–5450; e-mail address: *johnson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information
A. What is the source of authority for the reconsideration action?
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II. Background
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. General Information

A. What is the source of authority for the reconsideration action?

EPA is reconsidering one aspect of its final BSCP rule under sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

B. What entities are potentially affected by the reconsideration action?

Entities potentially affected are those industrial facilities that manufacture BSCP. Brick and structural clay products manufacturing is classified under Standard Industrial Classification (SIC) codes 3251, Brick and Structural Clay Tile; 3253, Ceramic Wall and Floor Tile; and 3259, Other Structural Clay Products. The North American Industry Classification System (NAICS) codes for BSCP manufacturing are 327121, Brick and Structural Clay Tile; 327122, Ceramic Wall and Floor Tile Manufacturing; and 327123, Other Structural Clay Products. The categories and entities that include potentially affected sources are shown below:

Category	SIC	NAICS	Examples of potentially regulated entities
Industrial	3251	327121	Brick and structural clay tile manufacturing facilities.
Industrial	3253	327122	Extruded tile manufacturing facilities.
Industrial	3259	327123	Other structural clay products manufacturing facilities.

The reconsideration action does not concern the NESHAP for clay ceramics manufacturing facilities (40 CFR part 63, subpart KKKKK), which were published with the final BSCP rule (40 CFR part 63, subpart JJJJJ).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the reconsideration action. To determine whether your facility may be affected by the reconsideration action, you should examine the applicability criteria in 40 CFR 63.8385 of the final BSCP rule. If you have any questions regarding the applicability of the final rule to a particular entity or the implications of the reconsideration action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. How do I obtain a copy of this action?

In addition to being available in the dockets, an electronic copy of today's action also will be available on the Worldwide Web (WWW). Following the Administrator's signature, a copy of this action will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

A. History

Section 112 of the CAA requires that we establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing major sources. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area and under common control that emit or have the potential to emit considering controls, in the aggregate, 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more of any one HAP or 22.68 Mg/yr (25 tpy) or more of any combination of HAP. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor is the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor is the level of emission control that is achieved in practice by the best-controlled similar source. The MACT floor for existing sources is the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory, as in the case of each BSCP subcategory).

In developing MACT standards, we also consider control options capable of achieving a level of emission control more stringent than the floor. We establish more stringent standards where we find greater reductions are achievable, taking into consideration the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

We proposed NESHAP for major sources manufacturing BSCP on July 22, 2002 (67 FR 47894), and we published the final BSCP rule on May 16, 2003 (68 FR 26690). Following promulgation, the Administrator received a petition for reconsideration (dated July 15, 2003) filed by Earthjustice on behalf of Sierra Club pursuant to section 307(d)(7)(B) of the CAA. The petition requested reconsideration of three aspects of the final rule. We also received a letter (dated October 10, 2003) from counsel for the Brick Industry Association (BIA), commenting on the Sierra Club's petition for reconsideration. On April 19, 2004, EPA issued a letter to the Sierra Club's counsel granting its petition for reconsideration with respect to one issue. On April 22, 2005, we announced our reconsideration of and requested public comment on that issue, specifically our decision to base the MACT requirements for certain tunnel kilns on DLA technology.

In addition to the petition for reconsideration, three petitions for judicial review of the final NESHAP for BSCP manufacturing and clay ceramics manufacturing (40 CFR part 63, subparts JJJJJ and KKKKK, published together on May 16, 2003) were filed with the U.S. Court of Appeals for the District of Columbia Circuit by the Sierra Club, BIA, and two clay ceramics manufacturers (Monarch Ceramic Tile, Incorporated and American Marazzi Tile, Incorporated).[1] The litigation has been stayed to enable EPA to act on Sierra Club's petition for reconsideration prior to briefing. On May 10, 2005, the Court issued its most recent order, holding the case in abeyance until November 10, 2005.

B. Overview of Decisions at Promulgation

In the proposed rule, the MACT floors for the kiln exhaust from certain tunnel kilns were based on the use of dry lime injection fabric filters (DIFF), dry lime scrubber fabric filters (DLS/FF), or wet scrubbers (WS). Dry limestone adsorber (DLA) technology, which is the most prevalent type of air pollution control device (APCD) used to control emissions from existing brick kilns, was not proposed as a MACT floor technology because we had questions and concerns about DLA based on the information we had at the time. In response to the proposed rule, however, we received numerous comments from industry representatives, kiln manufacturers, and APCD vendors on issues related to the application and performance of the APCD discussed in the preamble. Many commenters reported technical obstacles to the use of DIFF, DLS/FF, and WS technologies, particularly for retrofitting BSCP kilns, as well as other disadvantages of those technologies, and provided information to address our questions and concerns about DLA technology.

As a result of these public comments, we realized that there was more information on DLA technology to be considered and that we did not fully understand the limitations of applying the other technologies that were the focus of our MACT floors analysis at proposal. After reviewing all of the available information, we determined that MACT for some new tunnel kilns should be based on DIFF, DLS/FF, and WS technologies, but that for existing tunnel kilns retrofitting with DIFF, DLS/FF, or WS is not feasible or practical in many cases. We concluded that retrofitting existing BSCP tunnel kilns with certain APCD would likely alter brick quality and color for many kilns, resulting in changes to the product that are central to its character and value. We also determined that our principal concerns with DLA at proposal (*i.e.*, generation or no control of particulate matter (PM) emissions and consistency of performance) had been allayed by the information we received in response to the proposal.

In light of the public comments received regarding technical features and limitations of DIFF, DLS/FF, WS, and DLA technologies, we came to new conclusions regarding the effective application of these technologies. We concluded that DLA are the only currently available technology that can be used to retrofit existing tunnel kilns without potentially significant impacts on aspects of the production process that affect the character of the product itself. In the final BSCP rule, we thus allowed existing large tunnel kilns to use the DLA technology.

In addition, we concluded that, because of retrofit concerns, it is not technologically or economically feasible for an existing small tunnel kiln that would otherwise meet the criteria for reconstruction and whose design capacity is increased such that it becomes a large tunnel kiln to meet the relevant standards (*i.e.*, new source MACT) by retrofitting with a DIFF, DLS/FF, or WS. We also similarly concluded that it is not technologically and economically feasible for an existing large DLA-controlled tunnel kiln that would otherwise meet the criteria for reconstruction to meet the relevant standards (*i.e.*, new source MACT) by retrofitting with a DIFF, DLS/FF, or WS.

[1] The cases, which have been consolidated, are: *Brick Industry Association* v. *EPA,* No. 03–1142 (D.C. Cir.); *Sierra Club* v. *EPA,* No. 03–1202 (D.C. Cir.); and *Monarch Ceramic Tile, Inc.* v. *EPA,* No. 03–1203 (D.C. Cir.).

However, we determined that it is technologically and economically feasible for these types of kilns, whether existing or reconstructed, to retrofit or continue operating with a DLA, and the final rule required that such kilns meet the emissions limits that correspond to the level of control provided by a DLA.

In the final rule, we concluded that DIFF, DLS/FF, and WS are appropriate technologies for new large tunnel kilns and for reconstructed large tunnel kilns that were equipped with DIFF, DLS/FF, or WS prior to construction. For small tunnel kilns, however, we concluded that DLA are the only APCD that have been adequately demonstrated, and, therefore, we based the final requirements for new and reconstructed small tunnel kilns on DLA control.

III. Today's Action

A. Final Action

At this time, we are announcing our final action regarding the one issue in the Sierra Club's petition for reconsideration that we agreed to reconsider. The petition sought reconsideration of three issues relating to EPA's promulgation of final MACT floor standards based on DLA technology. One of the concerns was whether EPA had adequately complied with public notice and comment requirements. Noting that EPA had proposed MACT floor standards based on three different technologies, DIFF, DLS/FF and WS, the Sierra Club argued that EPA had provided no opportunity to comment on either the final DLA-based floors or the final floor approach. Pursuant to section 307(d)(7)(B) of the CAA,[2] we granted the Sierra Club's petition for reconsideration only with respect to that one issue ''namely, the Sierra Club's claim that the MACT floors (and MACT standards based on the floors) at promulgation were set using a different control technology than those proposed and that EPA did not provide adequate opportunity for public comment on the revised MACT floors.[3]

As stated in the April 22, 2005, notice announcing reconsideration of one aspect of the final rule, the arguments Sierra Club presented in the petition for reconsideration did not persuade us that our MACT floor determination for the final BSCP rule was erroneous or inappropriate. However, because we changed the technological basis of the MACT floors and standards between proposal and promulgation in response to comments received on the proposed rule, we decided to grant reconsideration on this issue and provide an opportunity for public comment on the DLA-based floors and standards reflected in the final rule.

In our notice of reconsideration, we requested comment on the DLA-based floors and standards, including technical issues related to the performance of DLA as compared to DIFF, DLS/FF, and WS; the ability to retrofit existing kilns with DLA, DIFF, DLS/FF, and WS; and whether this should be a consideration when selecting MACT control options. We also specifically requested (1) additional information regarding whether there have been technical difficulties associated with DIFF, DLS/FF, WS, and DLA; (2) additional information on how these control devices have performed at plants operating these technologies; and (3) additional information on the successful application of these technologies to existing kilns. We received 15 responses to our request for public comment. These comment letters are available in the official public docket (Docket ID No. OAR–2002–0054).

The comments we received provided limited new information related to APCD technology performance, including retrofitting issues, technical difficulties, overall performance, or successful application of the control technologies. Instead, the commenters generally referred to comments they had previously submitted on the proposed rule. Overall, the reconsideration notice did not bring to light additional technical information for EPA to weigh in revisiting its original MACT floor and standard-setting decisions. While one commenter argued that the CAA does not permit EPA to consider the feasibility of retrofitting existing kilns with APCD when determining the MACT floor, we disagree with the commenter's legal analysis for the reasons discussed below. Since the reconsideration comments did not provide a basis for us to conclude that our prior analysis was incorrect or flawed, we reaffirm the validity of the determinations we made at promulgation and are making no changes to the final rule. A summary of major comments received on the reconsideration issue and EPA's responses to those comments are provided below.

B. Comments Received on Reconsideration Issue

We received both comments in support of and comments objecting to the DLA-based MACT floors and standards in the final rule. Multiple industry commenters supported our decision to include DLA as a retrofit technology in the MACT floor analyses for BSCP manufacturing. They also agreed with our statement in the April 22, 2005, notice that the petitioners did not provide sufficient information in their petition for reconsideration to warrant any changes to the final rule; indeed, they argued that the final rule should not even be subject to reconsideration. These commenters stated that the comments EPA received on the proposed rule specifically addressed the use of DLA, and thus, inclusion of DLA could have been anticipated by anyone following the public record. The commenters also asserted that the ability to retrofit certain APCD to an existing kiln has not been demonstrated to be achievable. They considered unreasonable the petitioner's assertion that the ability to retrofit a control is irrelevant to the determination of MACT and is equivalent to considering costs. The commenters stated that EPA cannot set a standard that has not been demonstrated as achievable. According to the commenters, under MACT, when the existing sources included in the top 12 percent have controls in place but these controls have not been demonstrated as a ''retrofitable'' device (*i.e.*, they were installed when designing and building the kiln rather than after it was built), then they are not a retrofit control device for that process. In addition, the commenters argued that if the same products cannot be produced after the installation of the control device, then it is not the same process. The commenters could think of no MACT standard where EPA added

[2] Section 307(d)(7)(B) of the CAA provides that if a person raising an objection to a rule during judicial review ''can demonstrate to the Administrator that * * * the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.'' 42 U.S.C. 7607(d)(7)(B).

[3] In its petition for reconsideration, the Sierra Club also raised two issues relating to our overall MACT approach, which was the same at proposal and promulgation. Specifically, the Sierra Club argued: that ''in setting floors, EPA unlawfully considered more kilns than the best performing twelve percent of sources for which it had emissions information''; and that ''EPA's floors do not reflect the average emission level achieved by the best performing twelve percent of kilns for which the Administrator has emissions information.'' We addressed these issues in the response to Earthjustice's comments on the proposal (See p. 2–44, EDOCKET document no. OAR–2002–0054–0005). Therefore, they do not meet the criteria for reconsideration under CAA section 307(d)(7)(B), and they are not discussed in this action.

controls that changed the targeted industry's products.

Industry commenters highlighted major points made regarding DLA in previous comments on the proposed rule, including: (1) DLA are viable controls and have been demonstrated as a retrofit technology; (2) DLA are the most prevalent control in the industry because DLA achieve essentially the same reductions in emissions (*e.g.*, of hydrogen fluoride (HF)), but do not present the same retrofit issues, as the other controls; (3) contrary to previous concerns raised by EPA, DLA have the potential to reduce PM emissions; (4) the small amount of PM that comes from these units has not been shown to contain any significant HAP emissions, and is likely significantly smaller than the already low amount in kiln exhaust; and (5) DLA have been demonstrated as a control that does not interfere with the operation of the kiln (*i.e.*, airflow within the kiln). This last point is particularly important to the brick industry, which raised concerns with the other control devices that were considered by EPA. Industry commenters noted that among the controls considered for retrofit purposes, only DLA do not impact the types of products that can be produced, and not impacting the products is critical to the ongoing viability of a brick plant.

Multiple industry commenters agreed with key EPA statements made in the promulgation preamble, specifically where EPA: (1) Concluded that ''retrofitting existing kilns with DIFF or DLS/FF systems is not feasible in many cases;'' (2) acknowledged that ''retrofitting existing BSCP kilns with certain APCD (particularly those that affect kiln airflow) can alter time-honored recipes for brick color, thereby changing the product;'' (3) concluded that ''DLA are the only currently available technology that can be used to retrofit existing kilns without potentially significant impacts on the production process;'' (4) concluded that ''it is not technologically and economically feasible for an existing large DLA-controlled kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 * * * to meet the relevant (*i.e.*, new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS;'' and (5) concluded that ''DIFF and DLS/FF systems, if attempted on smaller kilns, would experience more difficulties with respect to airflow than systems on larger kilns because as the design airflow decreases, the acceptable operating range also would be expected to decrease.'' According to the commenters, the petitioners have provided no arguments or technical information that would change these conclusions.

In response, we agree that our decisions at promulgation were a natural progression based on the comments received after proposal regarding the control technologies used in the industry. The comments and additional technical information not available to EPA prior to proposal provided a more complete explanation of the application of DLA and other control technologies to existing kilns in the BSCP source category. The previous comments submitted and referenced by these commenters are included in the official public docket (Docket ID No. OAR–2002–0054). We also agree that there is no new technical information relevant to the MACT floor analysis in the final rule.

Some industry commenters also argued that if EPA does reconsider the DLA-based MACT for the BSCP industry, then decisions at promulgation that stemmed from the DLA-based MACT must also be reviewed. Specifically, EPA must: (1) Reevaluate the use of risk-based alternatives for this rule, and (2) revisit the issue of removing existing DLA from revised MACT determinations. In addition, they stated that EPA must re-propose the rule if the Agency concludes that MACT must be based on anything other than DLA. According to the commenters, numerous facilities have begun to comply with the promulgated rule by installing or committing to install DLA. The commenters stated that the large costs that would be incurred by ripping out a DLA and replacing it with a DIFF, DLS/FF or WS would be unreasonable, unwarranted, and not justified by the minimal benefits that would accrue, assuming the other APCD could be made to work. According to the commenters, those facilities most impacted and penalized would be the environmentally proactive facilities that have installed DLA to reduce emissions even before required by MACT, because they would be ripping out controls less than 2 years old.

As explained further below, based on our evaluation of the reconsideration comments received, EPA is not making any changes to the MACT floors and standards. We acknowledge that changes to the promulgated MACT floor and standards based on DLA control technology could necessitate reevaluation of related decisions; however, since EPA is not making any changes, these comments are not relevant to this action.

Earthjustice, in its comments on behalf of Sierra Club, reiterated its objection, originally stated at proposal, that EPA's decision to base MACT floors on the alleged performance of a control technology is unlawful, arbitrary and capricious. The commenter resubmitted its comments on the proposed rule and its Petition to Reconsider letter. The commenter argued that EPA's decision to base MACT floors on the alleged performance of DLA-equipped kilns contravenes the CAA MACT floor mandate because DLA-equipped kilns are not the best-performing kilns for which EPA has information. The commenter referenced EPA's own data, which indicated that (1) kilns equipped with other control technologies are achieving better emission levels than DLA-equipped kilns, (2) DLA have low hydrogen chloride (HCl) removal efficiencies, (3) DLA do not provide a mechanism for PM removal, and (4) DLA may actually create PM in some instances.

This commenter argued that EPA's statement that ''DLA are the only currently available technology that can be used to retrofit existing large kilns without potentially significant impacts on the production process'' is statutorily irrelevant. According to the commenter, the CAA requires EPA to set MACT floors regardless of what control equipment the best-performing kilns are using, and EPA cannot choose to ignore that mandate based on its policy preference for setting floors that allegedly reflect what is achievable through using DLA. The commenter stated that EPA's argument that DLA is the only available technology depends largely on arguments irrelevant to MACT floor calculations, *e.g.*, that retrofitting kilns with other technologies (1) would create solid waste or wastewater that is difficult or expensive to dispose of, and (2) could require kilns to change their recipes or incur downtime or reduction in capacity. The commenter argued that the possibility that other technologies may cost more or require sources to overcome technological difficulties does not support EPA's refusal to consider the performance of kilns equipped with those technologies. The commenter further argued that the record does not support or explain EPA's claim that those technologies may have technical difficulties, *e.g.*, that they need a different airflow, which might affect brick color. The commenter noted that many existing kilns already are using those other technologies, which shows that it is possible to maintain the airflows and still produce bricks in the

colors the manufacturers choose. According to the commenter, EPA's suggestion that changes in airflow might affect brick color is only speculation, based on unsubstantiated and self-serving assertions by industry.

Previous comments submitted at proposal related to DLA control technology and referenced by this commenter are in the official public docket (Docket ID No. OAR–2002–0054). The commenter's Petition to Reconsider letter is part of the docket at OAR–2002–0054–0010. As mentioned previously, one issue from that letter is the focus of this reconsideration action.

In response to these comments, we reviewed our MACT floor analysis and its factual and statutory basis. Contrary to the commenter's claims, there is ample support in the rulemaking record for the concerns expressed by the brick industry about the feasibility of retrofitting existing kilns with DIFF, DLS/FF or WS (unless the existing kiln had been designed and built with that technology). As explained in more detail below, the attempts that have been made to retrofit using DIFF or DLS/FF have not met with success, and we do not have a basis for concluding that the technological obstacles that have been encountered to date can be overcome in the 3 years that existing sources have to comply with the NESHAP.[4] While sources subject to NESHAP typically face challenges in meeting the applicable requirements, here the concern is whether existing BSCP kilns can retrofit APCD without changing the very products they make. As for WS, we continue to believe that retrofits using that technology are only feasible for kilns having access to a sewer system for wastewater disposal. Indeed, a WS system that includes the type of wastewater treatment that would be required in the absence of sewer system access has never been built or demonstrated in the BSCP industry. Based on our review of the rulemaking record, we again conclude that DLA are the only currently available technology that can be used to retrofit existing tunnel kilns without potentially significant impacts on the production process and the resulting product of many kilns.

We also believe that the MACT floor analysis upon which we based the promulgated standards for existing tunnel kilns in the BSCP industry properly took into account the technical obstacles to retrofitting those kilns with available APCD. We disagree that the ability to retrofit a technology to an existing source is irrelevant to the MACT floor. Under CAA section 112(d)(2), EPA is required to set NESHAP that reflect the ''maximum degree of reduction in emissions'' of the relevant HAP that the Agency, considering various factors, ''determines is *achievable*'' (emphasis added). In surveying existing tunnel kilns, we found that DIFF, DLS/FF and WS were used almost exclusively by kilns that had been designed and built to work with those technologies. Kilns which had been retrofitted with ACPD primarily used DLA because, among other things, that technology, unlike DIFF and DLS/FF, does not affect airflow crucial to product quality and color, and, unlike WS, does not generate large quantities of wastewater. As described in detail below, the kilns that had been retrofitted with DIFF or DLS/FF experienced serious and so far insurmountable problems.

While kilns using DIFF, DLS/FF or WS technologies achieve lower emission rates than kilns using DLA, the CAA does not require that we turn a blind eye to compelling evidence that kilns not already equipped with DIFF, DLS/FF or WS cannot be reliably retrofitted with those technologies without significantly affecting the kiln's production process and its product. On its face, CAA section 112(d) repeatedly calls for ''achievable'' standards. BSCP facilities that are otherwise similar in terms of kiln type and size are demonstrably dissimilar in their ability to be retrofitted with the various APCD. EPA may appropriately account for technological differences that affect whether a control technology can be feasibly applied to all existing sources that will require additional controls to lower their HAP emissions.

Recognizing these technological issues, we clearly laid out in the final rule preamble the four basic steps taken in determining the MACT floor control level:

(1) We reviewed available data on pollution prevention techniques (including substitution of raw materials and/or fuels) and the performance of add-on control devices to determine the techniques that were viable for and effective at reducing HAP emissions;

(2) For each subcategory, we ranked the kilns from the best performing to the worst performing based on the emission reduction technique used on the kilns;

(3) For each subcategory, we then identified the 94th percentile kiln and the emission reduction technique that represented the MACT floor technology; and

(4) For each subcategory, we then selected production-based or percent-reduction emission limits that correspond to the 94th percentile kiln and emission reduction technique, and we based our selections on the available data while considering variability in the performance of a given emission reduction technique.

A full explanation of the MACT floor and MACT determination is provided in the promulgation preamble (see 68 FR 26698, May 16, 2003).

Key points and information provided by the commenters after proposal included the following: (1) DIFF, DLS/FF, and WS are not demonstrated technologies for retrofitting BSCP kilns; kilns that have used those technologies for a retrofit have experienced significant problems, as explained further below; (2) different products require different airflows to produce distinctive characteristics of the product; (3) DIFF, DLS/FF, and WS require minimum airflow rates to operate properly; (4) DIFF, DLS/FF, and WS affect the product line when process/kiln airflow rates must be changed to accommodate control device operation; (5) DIFF, DLS/FF, and WS result in kiln downtime and reductions in kiln production capabilities; (6) during kiln slowdowns, DIFF, DLS/FF, and WS APCD may not be able to operate at all; (7) DIFF, DLS/FF, and WS produce large amounts of solid waste and wastewater that pose environmental issues of their own; (8) most BSCP facilities are located in areas that do not have available sewer access for WS wastewater; (9) few DIFF, DLS/FF, and WS systems have been developed specifically for brick kilns; (10) DLA do not require minimum airflow rates; (11) lower airflow rates increase the control efficiency of DLA; (12) DLA do not impact kiln operation, airflow, and production level; (13) DLA do not generate PM emissions; (14) DLA do perform over the life of the sorbent; (15) DLA limestone is continually replaced and HF and HCl control efficiencies are maintained; and (16) DLA control technology is applied to brick kilns all over the world, and vendors are experienced in applying the technology to the BSCP industry.

Commenters noted that most of the DIFF, DLS/FF, and WS in place in the BSCP industry have been installed on new kilns, and those that were installed on existing kilns have created problems with kiln operation. Commenters pointed out that all injection and wet control devices need a certain airflow to operate, and because the airflow rate within a brick kiln can vary by 50 percent or more, depending primarily

[4] Consistent with CAA section 112(i), EPA's final rule provided existing covered sources with the maximum allowable lead time of 3 years to comply with the BSCP NESHAP.

on the size of the product, control systems with any type of injection are problematic. Each product has a given set of kiln operating parameters, and the airflow varies from product to product. Balancing airflow in the kiln is critical to the operation of the kiln. Any changes to the firing characteristics and/or airflow rate that result from the use of DIFF, DLS/FF, and WS controls have an impact on the quality and aesthetic value of the product. If these control devices are used, then the control devices will dictate how the kiln is operated.

Commenters shared their actual experience with DIFF, DLS/FF and WS technologies in retrofit applications. In the case of WS, they noted that short-term pilot tests of WS had encountered significant problems and that full-scale WS had never been used on BSCP kilns (with the exception of one facility, discussed below, that operates two WS). Multiple commenters stated that, rather than being reduced, PM was generated by WS during pilot tests. One commenter stated that, during the 3-month pilot test, the longest time of continuous operation of the WS was 6 days. Following the pilot tests, the facilities chose not to install a full scale WS due to the insurmountable issues. The one facility operating WS has a permit to discharge untreated wastewater to the local sewer system, thus making wet scrubbing a feasible option for that facility. According to a letter submitted by the company, one of the WS at this facility has ongoing problems with fouling of scrubber packing.

With respect to DIFF, commenters explained that the only commercially available retrofit DIFF installation was problematic and still not operating correctly more than 2 years after installation. This system had problems with the dampers and reagent feeding systems. Commenters noted that the original cost for this DIFF was $1 million; however, the facility spent over $2 million without achieving successful operation. Furthermore, another retrofit DIFF installation changed the kiln draft enough to result in kiln capacity reduction from 13.5 to 12.2 cars/day; this was a loss in revenue of $1 million per year. According to commenters, the vendor who installed this DIFF system is no longer in business.

Commenters indicated that the only DLS/FF retrofit that has been attempted is also problematic and led to product quality problems and kiln downtime. This system was a prototype and so had no operational, troubleshooting, or maintenance history, leaving the facility to diagnose operational problems. The vendor who installed this DLS/FF is no longer providing systems to the BSCP industry according to the commenters.

In sum, the commenters provided information showing that few injection (*i.e.*, DIFF and DLS/FF) or WS systems have been developed specifically for brick kiln operations, and retrofit experience shows that vendors have been unable to successfully design these systems for retrofit applications in the BSCP industry. Commenters charged that EPA did not account for retrofitting problems associated with installing DIFF, DLS/FF, and WS on older kilns and the costs associated with these problems. Commenters described how attempts at retrofitting kilns with these APCD have resulted in significant kiln downtime and permanent reductions in kiln production capacities. Commenters stated that DIFF and DLS/FF systems produce large amounts of solid waste that is difficult and expensive to dispose of, and use of WS is not practical for most facilities because the facilities have no viable options for wastewater disposal. Commenters also pointed out that there are high costs and marginal additional emissions reductions associated with replacing an existing DLA with a DIFF system.

Based on the many comments received following proposal regarding retrofit concerns with DIFF, DLS/FF, and WS and our own review of all the available information, we concluded that retrofitting existing kilns with these technologies is not feasible in most cases. We note that in addition to comments received from brick manufacturers, we received comments from a kiln vendor and APCD vendors explaining the importance of airflow to kiln operation, product quality and color, and for proper APCD operation; these comments further substantiated many of the claims submitted by industry representatives. We find it particularly compelling that: (1) Attempts to retrofit older kilns with injection systems (*i.e.*, DIFF and DLS/FF) have been unsuccessful due to interference with the kiln airflow, such that product quality cannot be maintained, and (2) injection system retrofits have experienced operational problems (*i.e.*, settling of lime sorbent in the ductwork and subsequent APCD malfunction, early and unanticipated fabric filter bags failure) during the airflow variations that are necessary for various products. We also find quite compelling the argument that WS are not an option for most BSCP facilities because of limited or no sewer access. Although we also received many comments after proposal regarding the cost of control technologies, our MACT floor decisions are based on what is technically achievable and demonstrated as opposed to cost as section 112(d)(3) of the CAA does not allow consideration of cost when determining MACT floors.

As described above, in the reconsideration proposal notice we asked for additional comments and information on technical issues related to the performance of control technologies, including DLA, DIFF, DLS/FF, and WS. We also requested information on the successful retrofit of DIFF, DLS/FF, and WS on existing tunnel kilns. We received no additional information that would lead us to different conclusions today regarding the MACT floor for existing large tunnel kilns. Therefore, we continue to believe that DLA are the only currently available technology that can be used to retrofit existing large tunnel kilns without potentially significant impacts on the production process.

One commenter also took issue with EPA's decisions on reconstructed sources. Specifically, the commenter rejected as irrelevant EPA's arguments that it would not be technologically and economically feasible for the following reconstructed sources to meet the relevant (*i.e.*, new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS: (1) An existing small tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2, and whose design capacity is increased such that it becomes a large tunnel kiln; and (2) an existing large DLA-controlled tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2. The commenter argued that EPA is not relieved of its statutory obligation to set new source floors reflecting the performance of the best-performing source based on the possibility that some sources may incur costs or have to overcome technological obstacles to match the performance of the relevant best source. According to the commenter, such a possibility also does not allow EPA to simply declare that certain reconstructed BSCP are not subject to these requirements, which the commenter argued would contravene the CAA's definition of ''new source'' and statutory mandate requiring reconstructed sources to meet new source MACT. The commenter argued that this decision is nothing more than an attempt by EPA to substitute its own views for the plainly expressed intent of Congress. The commenter also argued that EPA missed the point in basing the MACT floor for new small tunnel kilns on the alleged performance of DLA (with EPA concluding that ''DLA are the

only APCD that have been demonstrated on small tunnel kilns'') because the floor must reflect the actual performance of the single best kiln, not what EPA thinks is achievable through the use of DLA.

Based on the retrofit comments discussed above, the same technological retrofit concerns for existing sources are also relevant to (1) existing small tunnel kilns that are rebuilt such that they become large kilns and (2) existing large DLA-controlled tunnel kilns that are rebuilt. Retrofitting these types of existing kilns with DIFF, DLS/FF, or WS is not feasible. The only currently available technology that can be used to retrofit these reconstructed kilns without potentially significant impacts on the production process is DLA. Additionally, DIFF, DLS/FF, and WS have not been demonstrated for small kilns. Smaller kilns have even smaller airflow rates than larger kilns, and any fluctuations in airflow rates have significant impact on the ability of the DIFF, DLS/FF, or WS to operate correctly. DLA are the only APCD that have been demonstrated on small tunnel kilns, and, therefore, the requirements for new and reconstructed small tunnel kilns were based on the level of control that can be achieved by DLA.

With respect to the commenter's argument that EPA must meet the statutory mandate requiring reconstructed sources to meet new source MACT, we point out that the definition of ''Reconstruction'' at 40 CFR 63.2 includes the text ''* * * to such an extent that * * * it is *technologically* and *economically feasible* for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act.'' (emphasis added) This regulatory definition, which was promulgated on March 16, 1997 (59 FR 12430) and amended on April 5, 2002 (67 FR 16595), reflects EPA's view that the statutory requirements for reconstructed sources allow for the consideration of both technological and economical issues. In view of the regulatory definition, we believe we correctly identified the MACT floors and standards for reconstructed sources and for new small tunnel kilns.

Multiple commenters expressed concern about EPA's statement in the reconsideration notice that no change in the compliance date is warranted. The commenters argued that the reconsideration process has been slow, and EPA reopened the rule because it did not follow its own proper procedures, neither of which is due to any fault or action by industry. According to these commenters, EPA will have used more than two-thirds of the compliance period for existing sources just to process this reconsideration petition. With the compliance date less than 1 year away, the commenters stated that it may not be possible for the limited number of vendors worldwide to supply every company that needs an APCD in time. One commenter argued that the 1-year case-by-case extension offered by the General Provisions is not a reasonable solution to a systemic problem and creates another burden for industry to apply for and obtain this extension. The commenters argued that EPA should not rely on past precedents for not providing compliance extensions when litigation occurs on a rule, because this is not litigation but reconsideration and because EPA has determined that its rulemaking process has deficiencies that must be corrected. Commenters noted that their industry is composed primarily of small businesses, where a single financial decision, such as which control to install, can have profound impacts on the facility's viability. In light of these concerns, multiple commenters argued that EPA should set a compliance date 3 years from the date that EPA publishes its conclusions on the reconsideration, while other commenters suggested 1-year or 2-year extensions of the compliance date. One commenter indicated that neither EPA nor environmental groups would be affected by an extension.

As mentioned above, section 112(i)(3) of the CAA specifies that NESHAP for existing sources can have compliance deadlines of no more than 3 years. For the BSCP NESHAP, EPA provided the maximum 3 years for covered sources to comply with the new standards. It is not at all unusual for promulgation of CAA standards to be followed by litigation or petitions for reconsideration. CAA section 307(b)(1) specifically provides that the filing of a petition for reconsideration of a rule does not postpone the effectiveness of the rule. The final BSCP rule was effective as of the date of its promulgation and it has remained in effect during the reconsideration period. Sources covered by the final rule have thus remained subject to its requirement for compliance to be achieved by May 16, 2006.

EPA made it clear in its reconsideration notice that the Agency did not believe a change in the compliance date was warranted. We noted that Sierra Club, in its petition for reconsideration, ''has not provided information which persuades us that our decision to base the MACT floors on DLA technology is erroneous or inappropriate.'' (See 70 FR 21094, April 22, 2005.) We explained that ''[i]f we decide to amend the final rule as a result of the reconsideration process, we will reevaluate the compliance date as early as possible.'' Covered sources were thus on notice that we were unlikely to change the compliance deadline unless we determined that the final rule should be amended based on new information, and that the petition for reconsideration had not provided any new information.

To date, EPA has not, during the pendancy of a reconsideration request, extended the compliance deadlines for promulgated MACT standards to provide compliance periods in excess of the statutory 3 year maximum. In contrast, only where the Agency has amended a MACT standard in a significant way have we found it appropriate to set a new compliance date for the rule that takes into account new requirements not contained in the original rule. In this case, we decided that no amendments to the standards are warranted, so the final rule and its compliance deadline remain unchanged.

EPA acknowledges that the time to complete the reconsideration has been lengthy, and has comprised approximately 2.5 years of the 3-year compliance period. To the extent any covered source finds it cannot comply with the BSCP NESHAP in the 3 years of lead time provided, it may seek an extension in accordance with 40 CFR 63.6(i)(3). We understand that the majority of the affected businesses are small businesses for which installation of the requisite emission controls entails a significant investment in time and money. The process to install equipment involves the evaluation and selection of a control device and a control device vendor, the application and issuance of a permit from the regulatory authority, the installation of the controls and the potentially lengthy process of insuring that the installed control can meet the MACT limits while still maintaining product quality. Given the small number of controls that have been installed in this industry prior to the standards, and the relatively small number of vendors with an understanding of this industry, some individual facilities may require an extension to come into compliance. We encourage States to make appropriate use of the extension authority granted to them under 40 CFR 63.6(i)(3).

Although commenters acknowledged that we stated in the April 22, 2005, reconsideration notice that we would only address comments on our decision to base MACT for certain tunnel kilns

on DLA, they offered comments on other issues as well. These issues are outside the scope of this reconsideration, but we would like to offer a few thoughts on two of the issues raised: The requirement for a daily visual limestone check and the start-up definitions.

Regarding the first of these issues, commenters specifically requested that EPA change the requirement for the daily visual check of the limestone level in the DLA, and cited significant safety hazards and the generation of minimal information associated with climbing to the top of the limestone hopper each day, especially on days with wet, freezing, or windy weather. According to the commenters, better, safer approaches are available to confirm the adequacy of limestone present (*e.g.*, monitoring the amount of limestone added and removed from the system, installing numerous level indicators throughout the storage bins to ensure that limestone is flowing, monitoring pressure drop on the scrubber on a daily basis, and monitoring flow as an alternative in systems with recycle). They argued that requesting an alternative monitoring plan under the General Provisions was an avoidable financial burden for each facility when EPA could easily add compliance alternatives to the rule.

Commenters also requested clarification on the start-up definition with respect to the timing of the requirement to vent through a DLA. The commenters disagreed with the dual definition of start-up in the final rule, which depended on the type of control device used, because a facility may not know which control will ultimately be needed for its system. At a minimum, the commenters believed the DLA-based definition should be clarified because there is the potential for confusion. While the kiln may be considered to have reached ''initial start-up'' at 260 °C (500 °F), there are no known HAP emissions from bricks at this temperature. However, there is still moisture in the exhaust when the kiln first reaches this temperature, and venting through the control device at this temperature could create devastating clogging of the limestone. According to the commenters, bricks are not a source of HAP emissions until they reach a temperature at which dehydroxylation occurs (500–600 °C (932–1112 °F)). At a minimum, the commenters believed EPA should clarify that, while the kiln may be considered ''started,'' this does not mean that the exhaust must be vented through the control device.

We would like to address these issues at least to some extent in this action since they pertain to compliance with the promulgated MACT standards. The compliance requirement to verify that the limestone hopper and storage bin contain adequate limestone by performing a daily visual check is not limited to being met only by climbing to the top of the limestone hopper each day. Other methods of visually confirming that the hopper and storage bin contain adequate limestone could include some type of visual access point (*e.g.*, a window) on the side of the hopper, installing a camera in the hopper that provides continuous feed to a video monitor in the control room (a common practice in other mineral products industries), or confirming that load level indicators in the hopper are not indicating the need for additional limestone. With respect to the start-up definitions, the final rule's definitions of start-up are based on public comments regarding DIFF-, DLS/FF-, and WS-controlled kilns and information from an owner of DLA-controlled kilns. If in the future it is determined that revisions to the compliance requirements or start-up definitions in the final rule are warranted, they will be addressed at that time in a rule amendment.

IV. Statutory and Executive Order Reviews

On May 16, 2003, we published the final NESHAP for BSCP manufacturing pursuant to section 112 of the CAA. With today's action, we are promulgating no changes to the final rule. Accordingly, we believe that the rationale provided with the final BSCP rule is still applicable and sufficient.

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's action does not constitute a ''significant regulatory action'' because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not promulgating any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's final action. The OMB has previously approved the information collection requirements contained in the final rule (40 CFR part 63, subpart JJJJJ) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0508 (EPA ICR number 2022.02) for the BSCP rule. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the reconsideration of one issue arising from the final rule, since the reconsideration did not result in a proposed change to final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. At promulgation of the BSCP rule, we estimated a total annual cost of $24 million for any 1 year. Because today's action results in no changes to the final rule, the estimated total annual cost for the final BSCP rule remains the same, and today's action will not increase regulatory burden to the extent of requiring expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that today's action contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because we are not promulgating any changes to the final rule, today's action will not increase regulatory burden to the extent that it would result in substantial direct effects on the States. Thus, the requirements of Executive Order 13132 do not apply to today's action.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's action does not have tribal implications. The final BSCP rule, which today's action does not change, will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No

tribal governments are known to own or operate BSCP manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rule or today's action.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's action is not subject to Executive Order 13045 because the final BSCP rule, which today's action does not change, is based on technology performance and not on health or safety risks.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

Today's action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866 nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 10, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–22805 Filed 11–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[OAR–2002–0030; FRL–7997–3]

RIN 2060–AK01

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are amending the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. Under the authority of section 231 of the Clean Air Act (CAA), 42 U.S.C. 7571, the Environmental Protection Agency (EPA) is establishing new emission standards for oxides of nitrogen (NO_X) for newly certified commercial aircraft gas turbine engines with rated thrust greater than 26.7 kilonewtons (kN). This action adopts standards equivalent to the NO_X standards of the United Nations International Civil Aviation Organization (ICAO), and thereby brings the United States emission standards into alignment with the internationally adopted standards (ICAO standards for newly certified engines were effective beginning in 2004). In addition, today's action amends the test procedures for gaseous exhaust emissions to correspond to recent amendments to the ICAO test procedures for these emissions.

On December 19, 2005, the new NO_X standards will apply to newly certified gas turbine engines—those engines designed and certified after the effective date of the regulations (for purposes of this action, the date of manufacture of the first individual production model means the date of type certification). Newly manufactured engines of already certified models (*i.e.*, those individual engines that are part of an already certified engine model, but are built after the effective date of the regulations for such engines and have never been in service) will not have to meet these standards.

Today's amendments to the emission test procedures are those recommended by ICAO and are widely used by the aircraft engine industry. Thus, today's action will help establish consistency between U.S. and international standards, requirements, and test procedures. Since aircraft and aircraft engines are international commodities, there is commercial benefit to consistency between U.S. and international emission standards and control program requirements. In addition, today's action ensures that domestic commercial aircraft meet the current international standards, and thus, the public can be assured they are receiving the air quality benefits of the international standards.

DATES: This final rule is effective December 19, 2005.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of December 19, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2002–0030. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available,

i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket in the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4832; fax number: (734) 214–4816; e-mail address: *manning.bryan@epa.gov,* or Assessment and Standards Division Hotline; telephone number: (734) 214–4636; e-mail address: *asdinfo@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

Entities potentially regulated by this action are those that manufacture and sell commercial aircraft engines and aircraft in the United States. Regulated categories include:

Category	NAICS [a] codes	SIC codes [b]	Examples of potentially affected entities
Industry	336412	3724	Manufacturers of new aircraft engines.
Industry	336411	3721	Manufacturers of new aircraft.

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in 40 CFR 87.20 (part 87). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2002–0030 at *http://www.epa.gov/edocket.* The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

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I. Introduction

A. Brief History of EPA's Regulation of Aircraft Engine Emissions

Section 231(a)(2)(A) of the Clean Air Act (CAA) directs the EPA Administrator to ''issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' 42 U.S.C. 7571(a)(2)(A). In addition, section 231(a)(3) provides that after we propose standards, the Administrator shall issue such standards ''with such modifications as he deems appropriate.'' 42 U.S.C. 7571(a)(3). Under this authority EPA has conducted several rulemakings since 1973 establishing emission standards and related requirements for several classes (commercial and general aviation engines) of aircraft and aircraft engines. Most recently, in 1997 EPA promulgated NO_X emission standards for newly manufactured gas turbine engines of already certified models [1] (those individual engines that are part of an already certified engine model, but are built after the effective date of the regulations for such engines and have never been in service) [2] and for newly certified gas turbine engines (those engines designed and certified after the effective date of the regulations [3]).[4] In addition, EPA promulgated a carbon monoxide (CO) emission standard for newly manufactured gas turbine engines in this same 1997 rulemaking. At the time, the 1997 rulemaking established consistency between the U.S. and international standards. (See 40 CFR part 87 for a description of EPA's aircraft engine emission control requirements and 14 CFR part 34 for the Department of Transportation's regulations for ensuring compliance with these standards in accordance with section 232 of the Clean Air Act.)

B. Interaction With the International Community

Since publication of the initial standards in 1973, EPA, together with the Federal Aviation Administration (FAA), has worked with the International Civil Aviation Organization (ICAO) on the development of international aircraft engine emission standards. ICAO was established in 1944 by the United Nations (by the Convention on International Civil Aviation, the ''Chicago Convention'') ''* * * in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.'' [5] ICAO's responsibilities include developing aircraft technical and operating standards, recommending practices, and generally fostering the growth of international civil aviation.

In 1972 at the United Nations Conference on the Human Environment, ICAO's position on the human environment was developed to be the following: ''[i]n fulfilling this role ICAO is conscious of the adverse environmental impact that may be related to aircraft activity and its responsibility and that of its member States to achieve maximum compatibility between the safe and orderly development of civil aviation and the quality of the human environment.'' Also, in 1972 ICAO established the position to continue ''* * * with the assistance and cooperation of other bodies of the Organization and other international organizations * * * the work related to the development of Standards, Recommended Practices and Procedures and/or guidance material dealing with the quality of the human environment * * *.'' [6] At the 35th Assembly in October 2004, ICAO's 188 Contracting States affirmed that ICAO should continue to take the leadership role in all international civil aviation matters relating to the environment.[7]

The United States is one of 188 participating member States of ICAO.[8] Under the basic ICAO treaty established in 1944 (the Chicago Convention), a participating nation which elects not to adopt the ICAO standards must provide a written explanation to ICAO describing why a given standard is impractical to comply with or not in its national interest.[9] ICAO standards require States to provide written notification and failure to provide such notification could have negative consequences as detailed below.

If a Contracting State files a written notification indicating that it does not meet ICAO standards, other Contracting States are absolved of their obligations to ''recognize as valid'' the certificate of airworthiness issued by that Contracting State, since that certificate will not have been issued under standards ''equal to or above'' ICAO standards. In other words, other Contracting States do not have to allow aircraft belonging to that Contracting State to travel through their airspace.[10] Further, if it fails to file a written notification, it will be in default of its obligations, and risks mandatory exclusion of its aircraft from the airspace of other Contracting States and

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[1] In the proposal, we referred to such engines as already certified, newly manufactured engines or already certified engines; however, this terminology may need some clarification for the final rulemaking (thus, we use the term ''newly manufactured engines of already certified models'').

[2] This does not mean that in 1997 we promulgated requirements for the re-certification or retrofit of existing in-use engines.

[3] Throughout this rule, the date of manufacture of the first individual production model means the date of type certification.

[4] U.S. EPA, ''Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures;'' Final Rule, 62 FR 25356, May 8, 1997.

[5] ICAO, ''Convention on International Civil Aviation,'' Sixth Edition, Document 7300/6, 1980. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int.*

[6] International Civil Aviation Organization (ICAO), Foreword of ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int.*

[7] ICAO, ''Assembly—35th Session, Report of the Executive Committee on Agenda Item 15,'' Presented by the Chairman of the Executive Committee, A35–WP/32, October 12, 2004.

[8] As of March 2, 2005 there were 188 Contracting States according to the ICAO Web site located at *http://www.icao.int.*

[9] Text of Article 38 of Chicago Convention:

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard * * * In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

[10] Text of Article 33 of Chicago Convention:

Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

the loss of its voting power in the Assembly and Council.[11]

The Chicago Convention does not require all Contracting States to adopt identical airworthiness standards. Although the Convention urges a high degree of uniformity, it is expected that States will adopt their own airworthiness standards, and it is anticipated that some states may adopt standards that are more stringent than those agreed upon by ICAO. However, because any State can ban use within its airspace of any aircraft that does not meet ICAO standards, States that wish to use aircraft in international air transportation have agreed to adopt standards that meet or exceed the stringency levels of ICAO standards.[12] Because States are required to recognize certificates of any State whose standards meet or exceed ICAO standards, a State is assured its aircraft will be permitted to operate in any other Contracting State if its standards meet or exceed the minimum stringency levels of ICAO standards.

As long as a participating nation of ICAO adopts aircraft emission standards that are equal to or more stringent than ICAO's standards, the certificates of airworthiness for such nations are valid. Thus, aircraft belonging to countries with more stringent standards are permitted to travel through the airspace of other countries without any restriction. To ensure operation internationally without constraints, a participating nation which elects to adopt more stringent standards is obligated to notify ICAO of the differences between its standards and ICAO standards.[13] However, if a nation sets tighter standards than ICAO, air carriers not based in that nation (foreign-flag carriers) would only be required to comply with the ICAO standards.

The ICAO Council's Committee on Aviation Environmental Protection (CAEP) undertakes ICAO's technical work in the environmental field. The CAEP is responsible for evaluating, researching, and recommending measures to the ICAO Council that address the environmental impact of international civil aviation. CAEP is composed of various Study Groups, Work Groups, Committees and other contributing memberships that include atmospheric, economic, aviation, environmental, and other professionals committed to ICAO's previously stated position regarding aviation and the environment. At CAEP meetings, the United States is represented by the FAA, which plays an active role at these meetings (see section VI for further discussion of FAA's role). EPA has historically been a principal participant in the development of U.S. policy in ICAO/CAEP and other international venues, assisting and technically advising FAA on aviation emissions matters. If the ICAO Council adopts a CAEP proposal to adopt a new environmental standard, it then becomes part of the ICAO standards and recommended practices (Annex 16 to the Chicago Convention).[14]

On June 30, 1981, the ICAO Council adopted its first international standards and recommended practices covering aircraft engine emissions.[15] These standards limit aircraft engine emissions of NO_X, CO, and hydrocarbons (HC), in relation to other engine performance parameters, and are commonly known as stringency standards. On March 24, 1993, the ICAO Council approved a proposal adopted at the second meeting of the CAEP (CAEP/2) to tighten the original NO_X standard by 20 percent and amend the test procedures. At the next CAEP meeting (CAEP/3) in December 1995, the CAEP recommended a further tightening of 16 percent and additional test procedure amendments, but on March 20, 1997 the ICAO Council rejected this stringency proposal and approved only the test procedure amendments. At its next meeting (CAEP/4) in April 1998, the CAEP adopted a similar 16 percent NO_X reduction proposal, which the ICAO Council approved on February 26, 1999.[16] The CAEP/4 16 percent NO_X reduction standard applies to new engine designs certified after December 31, 2003 (*i.e.*, it applies only to newly certified engines, rather than to newly manufactured engines of already certified models).[17] [18]

As discussed earlier, in 1997 EPA amended its regulations to adopt the 1981 ICAO NO_X and CO emission standards, as well as the NO_X emission standards and test procedures revised by ICAO in 1993. As discussed above, the U.S. has an obligation under the Convention on International Civil Aviation to notify ICAO regarding differences between U.S. standards and ICAO standards, and to provide notification on the date by which the program requirements will be consistent. In response to the recent actions by ICAO and for the reasons discussed below, in today's rulemaking EPA is adopting standards for newly certified engines that are equivalent to ICAO's 1999 amendment to the NO_X emission standard and the test procedure changes approved by ICAO in 1997, and EPA is adopting other technical amendments to further align EPA and ICAO requirements.

C. EPA's Responsibilities Under the Clean Air Act

As discussed earlier, section 231 of the CAA directs EPA, from time to time, to propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in its judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. 7571(a)(2)(A). Section 231(a)(3) provides that after we propose standards, the Administrator shall issue such standards ''with such modifications as he deems appropriate.'' 42 U.S.C. 7571(a)(3). In addition, EPA is required to ensure, in consultation with the Secretary of Transportation, that such standards' effective dates provide the necessary time to permit the development and application of the requisite technology, giving appropriate consideration to compliance cost. 42 U.S.C. 7571(b). Also, EPA must consult with the FAA before proposing or promulgating emission standards. 42 U.S.C. 7571(a)(2)(B)(i). (See section VI of today's proposal for further discussion of EPA's coordination with FAA and FAA's responsibilities under the CAA.)

In addition, section 233 of the CAA vests authority to implement emission standards for aircraft or aircraft engines only in EPA.[19] States are preempted

[11] Articles 87 and 88 of Chicago Convention.

[12] Article 33 of Chicago Convention.

[13] Article 38 of Chicago Convention.

[14] ICAO, ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[15] ICAO, Foreword of ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[16] International Civil Aviation Organization (ICAO), Aircraft Engine Emissions, Annex 16, Volume II, Second Edition, July 1993, Amendment 4 effective on July 19, 1999. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[17] These NO_X standards will be interchangeably be referred to as the 1998 CAEP/4 standards and the 1999 ICAO standards throughout this Notice.

[18] Newly manufactured engines of already certified models are those individual engines that are part of an already certified engine model, but are built after the effective date of the regulations for such engines and have never been in service. This does not mean the re-certification or retrofit of existing in-use engines.

[19] CAA section 233 entitled ''State Standards and Controls'' states that ''No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air

Continued

from adopting or enforcing any standard respecting aircraft engine emissions unless such standard is identical to EPA's standards. 42 U.S.C. 7573.

II. Why Is EPA Taking This Action?

As mentioned above, section 231(a)(2)(A) of the CAA authorizes the Administrator to ''from time to time, issue proposed emission standards applicable to emission of any air pollution from any class or classes of aircraft or aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' 42 U.S.C. 7571(a)(2)(A).

One of the principal components of aircraft exhaust emissions is NO_X. NO_X is a precursor to the formation of ozone.[20] Many commercial airports are located in urban areas and many of these areas have ambient ozone levels above the National Ambient Air Quality Standards (NAAQS) for ozone (*i.e.*, they are in nonattainment for ozone). This section discusses the contribution of aircraft engines to the national NO_X emissions inventory and the health and welfare impacts of these emissions.

A. Inventory Contribution

EPA's estimate of the contribution of aircraft to the national NO_X emission inventory is set out in Table II.A–1. Note that this table provides the inventory contributions only for 2001, and therefore does not take into account the impacts of our recent mobile source emission control programs for highway vehicles and nonroad engines and equipment which will go into effect in the coming years.[21] Those new standards are expected to reduce NO_X emissions from highway and nonroad engines by 90 percent or more on a per-engine basis. (Nor does the table account for aviation's reduced NO_X emissions due to slower growth and changes in fleet composition after 2001.) Nonetheless, as these new programs go into effect, the relative size of the contribution of aircraft to national NO_X levels may increase due to the decrease in the contribution of those other mobile sources.

TABLE II.A–1.—ANNUAL NO_X BASELINE LEVELS[a] FROM EPA'S NATIONAL AIR QUALITY AND EMISSIONS TRENDS REPORT, AUGUST 2003

[Short tons, 2001]

Category	NO_X (Thous. Tons)	
Aircraft[b c]	81	0.7%
Nonroad	4,075	32.8%
Highway	8,249	66.5%
Total Mobile Source	12,405	

[a] Source: U.S. EPA, ''Average Annual Emissions, All Criteria Pollutants Years Including 1970–2001,'' Updated August 2003. A copy of this document can be found in Docket No. OAR–2002–0030.

[b] These aircraft emissions are a conservative estimate as they reflect military operations only at FAA and FAA-contracted facilities and not at military bases. See the following memo for further discussion of the contribution of military aircraft to total aircraft emissions: U.S. EPA, ''Earlier and Current Estimates of Military Aircraft Emissions (Updated),'' Memorandum to Docket OAR–2002–0030 from Bryan Manning, May 11, 2005.

[c] There is a new draft version of the national emissions inventories (for 2002), and the percentage contribution of the above sources to the total mobile source NO_X inventory remains essentially the same.

Aircraft emissions are emitted from a variety of aircraft types used for public, private, and military purposes including commercial aircraft, air taxis, general aviation, and military aircraft.[22] Commercial aircraft emissions contribute from 74 to 99 percent of the NO_X aircraft emissions in the U.S. The high end of this range represents commercial aircraft's fraction of national aircraft NO_X emissions when current estimates for all aircraft types (commercial aircraft, air taxis, general aviation, and military aircraft) are added together.[23] The lower end of the range is commercial aircraft's contribution of NO_X aircraft emissions in the U.S. when combining earlier[24] military aircraft estimates with current emission estimates for the three other aircraft types (the earlier and current estimates were based on different methods or models for calculating aircraft emissions in 2001). This range was provided since the current estimates of military aircraft emission have limitations—*i.e.*, military aircraft estimates are a conservative estimate as they reflect military operations only at FAA and FAA-contracted facilities and not at military bases. For a discussion on obtaining improved military aircraft emission estimates, see Section 5 of the Summary and Analysis of Comments for this rulemaking. (See the following memorandum for a further description of the contribution of military aircraft to total aircraft emissions: U.S. EPA, ''Earlier and Current Estimates of Military Aircraft Emissions (Updated),'' Memorandum to Docket OAR–2002–0030 from Bryan Manning (Document No. OAR–2002–0030–0214), May 11, 2005.)

While the current contribution of aircraft to nationwide NO_X is less than one percent, their contribution on a local level, especially in areas containing or adjacent to airports can be much larger and is also expected to grow. This is illustrated by EPA's 1999 study that examined NO_X emissions from aircraft for ten cities: Atlanta, Boston-Lawrence-Worcester, Charlotte-Gastonia, Chicago-Gary-Lake County, Houston-Galveston-Brazoria, New York-New Jersey-Long Island, Philadelphia, Phoenix, Los Angeles Air Basin and

pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.'' 42 U.S.C. 7573.

[20] Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOC) and NO_X in the presence of heat and sunlight. Standards that reduce NO_X emissions will help address ambient ozone levels. They can also help reduce particulate matter (PM) levels as NO_X emissions can also be part of the secondary formation of PM. See Section II.B below.

[21] For additional information on the inventory impacts of our new rules, see Tables IV–A–1 and IV–A–2 in our Advance Notice of Proposed Rulemaking for an additional tier of standards for locomotives and marine diesel engines below 30 liters per cylinder displacement (69 FR 39276, June 29, 2004).

[22] Commercial aircraft include those aircraft used for scheduled service transporting passengers, freight, or both. Air taxis also fly scheduled service carrying passengers, freight or both, and they usually are smaller aircraft than those operated by air carriers. Air taxis have played an increasing role in the operations of the U.S. aviation system, and by 2015, such operations are forecast to represent 54 percent of operations (see Table II.A–2 and the FAA website *http://www.apo.data.faa.gov/main/taf.asp*). General aviation includes most other aircraft used for recreational flying and personal transportation. Aircraft that support business travel, usually on an unscheduled basis, are included in the category of general aviation. Military aircraft cover a wide range of sizes, uses, and operating missions. While they are often similar to civil aircraft, they are modeled separately because they often operate primarily out of military bases and frequently have distinctive flight profiles.

[23] U.S. EPA, ''Average Annual Emissions, All Criteria Pollutants Years Including 1970–2001,'' Updated August 2003. A copy of this document can be found in Docket No. OAR–2002–0030.

U.S. EPA, ''Documentation for Aircraft, Commercial Marine Vessel, Locomotive, and other Nonroad Components of the National Emissions Inventory, Volume I—Methodology,'' Prepared for EPA by Eastern Research Group, Inc., October 7, 2003. A copy of this document can be found in Docket No. OAR–2002–30.

[24] The earlier military estimates are based on emission inventories from the Final Rule for Control of Emissions from Land-based Nonroad Diesel Engines, 69 FR 38958, June 29, 2004. Also, see the following memorandum for further discussion of the contribution of military aircraft to total aircraft emissions and related references: U.S. EPA, ''Earlier and Current Estimates of Military Aircraft Emissions (Updated),'' Memorandum to Docket OAR–2002–0030 from Bryan Manning (Document No. OAR–2002–0030–0214), May 11, 2005.

Washington DC.[25] [26] Nineteen airport facilities with significant commercial jet aircraft activity were identified within these selected areas. On average for these ten cities, commercial aircraft's contribution is expected to increase from about 2 percent of regional total NO_X emissions in 1990 to about 5 percent in 2010.

It should be noted that the above study of the impacts of airports on regional air quality was conducted before the tragic events of September 11, 2001, and the economic downturn in the aircraft transportation sector and resulting slowing of emissions growth. A report by the Department of Transportation in 2003 indicated that the combination of the September 11, 2001 terrorist attacks and cut-backs in business travel have had a significant effect on air transportation demand.[27] The FAA expects the demand for air travel to recover and then continue a long-term trend of annual growth, though from a lower base and a slower rate in the United States.[28] Thus, there is both a short-term decrease in aircraft transportation activity as a result of 9/11, with negative growth for a few years and associated decreases in aircraft emission contributions and lower emissions growth than originally anticipated over the time period assessed. This is illustrated in Table II.A–2, which compares the results of an earlier, pre-9/11 FAA activity forecast to a recent, post-9/11 forecast. As operations increase, the inventory impact of these aircraft on national and local NO_X inventories and on ozone levels will also increase.

TABLE II.A–2.—FAA TERMINAL AREA FORECAST SUMMARY REPORT OF NATIONWIDE AIR CARRIER AND COMMUTER/AIR TAXI OPERATIONS [a b c d e]

Year	Air carrier & commuter/air taxi operations 12/14/00 forecast (pre-9/11)	Percent change 12/14/00 forecast between years listed	Air carrier & commuter/air taxi operations 6/30/05 forecast (post-9/11)	Percent change 6/30/05 forecast between years listed	Percent change versus earlier forecast
1999	28,860,731	.....	28,947,500	.....	0.3
2000	29,445,619	2.0	29,714,995	2.7	0.9
2001	30,033,967	2.0	29,366,221	−1.2	−2.2
2002[c]	30,663,508	2.1	27,803,970	−5.3	−9.3
2005	32,619,194	6.4	29,877,529	7.5	−8.4
2010	36,015,595	10	33,118,411	11	−8.0
2015	39,549,526	10	36,280,526	10	−8.3
2020	N/A	.....	39,695,796	9	

[a] Source: U.S. FAA, ''APO Terminal Area Forecast Summary Report,'' Aircraft Operations, December 14, 2000; and ''APO Terminal Area Forecast Summary Report,'' Aircraft Operations, June 30, 2005. See the following FAA Web site: *http://www.apo.data.faa.gov/main/taf.asp*. A copy of these reports can be found in Docket No. OAR–2002–0030.

[b] Operations means the number of arrivals and departures (see Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0258).

[c] Air carrier operations refers to flights of commercial aircraft with seating capacity of more than 60 seats.

[d] Commuter/air taxi operations refers to aircraft with 60 or fewer seats conducting scheduled commercial flights/non-scheduled or for-hire flights.

[e] The change in operations from 2000 to 2002 was +4.1% for the 12/14/2000 forecast, and it was −6.4% for the 6/30/2005 forecast.

The data in Table II.A–2 show that prior to 9/11 growth in air carrier and commuter/air taxi operations was expected to increase by 34 percent from 2000 to 2015.[29] The revised growth forecast for this period estimates that aircraft activity will now increase only 22 percent in the period 2000–2015. In fact, the originally anticipated operation levels in 2015 are now forecast not to be reached until 2020.[30]

Aircraft emissions are a large portion of total emissions associated with airports. Air pollutants resulting from airport operations are emitted from several types of sources including aircraft main engines and auxiliary power units (APUs); ground support equipment (GSE), which includes vehicles such as aircraft tugs, baggage tugs, fuel trucks, maintenance vehicles, and other miscellaneous vehicles used to support aircraft operations; and ground access vehicles (GAV), which include vehicles used by passengers, employees, freight operators, and other persons to enter and leave an airport.

[25] U.S. EPA, ''Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft,'' April 1999, EPA420–R–99–013. A copy of this document is available at *http://www.epa.gov/otaq/aviation.htm*. It can also be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0002. As indicated in the report, comments received from reviewers of this study indicated that uncertainty may exist in the national forecasts of growth in aircraft activity, on future composition of the aircraft fleet, and on the accuracy of a default mixing height. Such uncertainties carry over into projections of future emissions, and resolution of uncertainties may result in higher or lower ground-level emissions estimates from future aircraft.

[26] Based on the one-hour ozone standard, nine of the ten metropolitan areas are currently not in attainment of NAAQS for one-hour ozone; the tenth city has attained the one-hour ozone standard and is considered an one-hour ozone ''maintenance'' area. Based on the 8-hour ozone standard, all ten metropolitan areas are currently not in attainment of NAAQS for 8-hour ozone. See section II.B.1 of this rule for further discussion on the ozone NAAQs. Also, for more detailed information on the 8-hour ozone standard, see the following EPA Web sites: *http://www.epa.gov/airlinks/ozpminfo.html*, *http://www.epa.gov/airlinks/airlinks4.html* or *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr*.

[27] U.S. Department of Transportation, Office of Inspector General, ''Airline Industry Metrics,'' CC–2203–007, January 7, 2003. A copy of this document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0012.

[28] U.S. General Accounting Office, ''Aviation and the Environment: Strategic Framework Needed to Address Challenges Posed by Aircraft Emissions,'' GAO–03–252, February 2003. This document is available at *http://www.gao.gov/cgi-bin/getrpt?GAO-03-252*, and it can also be found in the Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0005.

[29] U.S. FAA, ''APO Terminal Area Forecast Summary Report,'' Aircraft Operations, December 14, 2000. A copy of this document can be found in Docket No. OAR–2002–0030.

[30] U.S. FAA, ''APO Terminal Area Forecast Summary Report,'' Aircraft Operations, June 30, 2005. The flight forecast data is based on FAA's Terminal Area Forecast System (TAFS). TAFs is the official forecast of aviation activity at FAA facilities. This includes FAA-towered airports, federally-contracted towered airports, nonfederal towered airports, and many non-towered airports. For detailed information on TAFS and the air carrier activity forecasts see the following FAA Web site: *http://www.apo.data.faa.gov/main/taf.asp*. The June 30, 2005 aviation forecasts contained in TAFS for Fiscal Years 2002–2020 included the impact of the terrorists' attacks of September 11, 2001 and the recent economic downturn. Currently, the aviation industry is undergoing significant structural and economic changes. These changes may necessitate revisions to forecasts for a number of large hub airports prior to the update of the entire TAF next year. A copy of the June 30, 2005 forecast summary report can also be found in Docket No. OAR–2002–0030.

EPA estimates that aircraft engines comprise approximately 45 percent of total air pollutant emissions from airport operations. GAV account for another 45 percent and APUs and GSE combined make up the remaining 10 percent.[31] [32] Since EPA has established stringent emission standards for GAVs and other highway and nonroad vehicles used at airports, overall emissions from these vehicles will continue to decline for many years. This means that aircraft will contribute an increasing portion of total emissions associated with airport operations.

B. Health and Welfare Effects

NO_X emissions from commercial aircraft and other mobile and stationary sources contribute to the formation of ozone. In addition, NO_X emissions at low altitude also react in the atmosphere to form secondary particulate matter ($PM_{2.5}$), particularly ammonium nitrate, and contribute to regional haze.[33] The NO_X standards adopted in this rule will help reduce ambient ozone and potentially secondary PM levels and thus will help areas with airports achieve and/or maintain compliance with the NAAQS for ozone and potentially PM.[34] In the following section we discuss the adverse health and welfare effects associated with NO_X emissions.

1. Ozone

a. What are the health effects of ozone pollution?

NO_X is a precursor in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_X in the presence of heat and sunlight. The health effects of ozone pollution are described in detail in EPA's Air Quality Criteria Document for Ozone and Other Photochemical Oxidants and are also described in the Final Regulatory Analysis for our recent Clean Air Nonroad Diesel rule.[35] The following is a summary of those effects.

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. In addition, ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period. People who are of particular concern with respect to ozone exposures include children and adults who are active outdoors. Those people particularly susceptible to ozone effects are people with respiratory disease, such as asthma, people with unusual sensitivity to ozone, and children. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.[36] [37]

New research suggests additional serious health effects beyond those that were known when the ozone NAAQS was revised in 1997. Between 1997 and a 2002 literature review, over 1,700 new health and welfare studies relating to ozone have been published in peer-reviewed journals.[38] Many of these studies investigate the impact of ozone exposure on such health effects as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital and emergency room visits for asthma and other respiratory causes, and premature mortality. EPA is currently evaluating these and other studies as part of the ongoing review of the air quality criteria and NAAQS for ozone. A revised Air Quality Criteria Document for Ozone and Other Photochemical Oxidants will be prepared in consultation with EPA's Clean Air Science Advisory Committee (CASAC).[39] Key new health information falls into four general areas: development of new-onset asthma, hospital admissions for young children, school absence rate, and premature mortality. In all, the new studies that have become available since the 8-hour ozone standard was adopted in 1997 continue to demonstrate the harmful effects of ozone on public health and the need for areas with high ozone levels to attain and maintain the NAAQS.

b. What are the current and projected 8-hour ozone levels?

There is currently one ozone NAAQS, an 8-hour standard. The 8-hour ozone standard is met when the fourth highest daily maximum 8-hour average ozone concentration measured over a 3-year period is less than or equal to 0.084 parts per million (ppm). The former 1-hour ozone standard was revoked in June 2005.[40]

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[31] The California FIP, signed by the Administrator 2/14/95, is located in EPA Air Docket A–94–09, item number V–A–1. The FIP was vacated by an act of Congress before it became effective.

[32] For comparison, the 1997 EPA Draft Final Report entitled, ''Analysis of Techniques to Reduce Air Emission at Airports'' (prepared by Energy and Environmental Analysis, Inc), estimated that for the four airports studied (which are large air traffic hubs) on average aircraft comprise approximately 35 percent of NO_X emissions from airport operations; GAV account for another 35 percent, and APUs and GSE contribute about 15 percent each for the remaining 30 percent. For NO_X and VOC together, aircraft contribute about 35 percent; GAV account for another 40 percent, and APUs and GSE combined make up the remaining 25 percent. This document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0071.

[33] As described later in section II.B.2, fine particles refer to those particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (also known as $PM_{2.5}$).

[34] The NO_X standards being set today will also help reduce levels of nitrogen dioxide (NO_2), for which NAAQS have been established. Currently, every area in the United States has been designated to be in attainment with the NO_2 NAAQS.

[35] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. This document can be found in Docket No. OAR–2002–0030. Document Nos. OAR–2002–0030–0165 through OAR–2002–0030–0194. (U.S. EPA (2005), Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), EPA/600/R–05/004aA–cA. This document can be found in Docket No. OAR–2002–0030, Document Nos. OAR–2002–0030–0202, –0210, and –0211.) U.S. EPA (2004). Final Regulatory Assessment: Control of Emissions from Nonroad Diesel Engines, EPA420–R–04–007. This document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0128.

[36] U.S. EPA (1996). Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007. Docket No. A–99–06. Document No. II–A–22.

[37] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. This document can be found in Docket No. OAR–2002–0030, Document Nos. OAR–2002–0030–0165 through OAR–2002–0030–0194. (U.S. EPA (2005). Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), EPA/600/R–05/004aA–cA. This document can be accessed electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_cd.html.* This document can also be found in Docket No. OAR–2002–0030, Doc. Nos. OAR–2002–0030–0202, –0210, and –0211.)

[38] New Ozone Health and Environmental Effects References, Published Since Completion of the Previous Ozone AQCD, National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (7/2002). This document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0131.

[39] U.S. EPA (2005), Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), Volume I Document No. EPA/600/R–05/004aA, Volume II Document No. EPA/600/R–05/004bA, Volume III Document No. EPA/600/R–05/004cA. This document can be found in Docket No. OAR–2002–0030, Document Nos. OAR–2002–0030–0202, –0210, and –0211.

[40] U.S. EPA, National Ambient Air Quality Standards for Ozone; Final Rule. 62 FR 38855 (July 18, 1997). U.S. EPA, ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1,'' Final Rule, 69 FR 23951 (April 30, 2004).

On June 15, 2004, the 8-hour ozone nonattainment designations became effective.[41] Nationwide, there are approximately 159 million people living in 126 areas that are designated as not attaining the 8-hour ozone NAAQS based upon the monitored data from 2001–2003 and other factors. The CAA defines a nonattainment area as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. All or part of 474 counties are designated as nonattainment for the 8-hour ozone NAAQS. These counties are spread over wide geographic areas, including most of the nation's major population centers, which include much of the eastern half of the U.S. and large areas of California.[42]

From air quality modeling performed for the recent Clean Air Interstate Rule (CAIR),[43] we anticipate that without emission reductions beyond those already required under promulgated regulation and approved State Implementation Plans (SIPs), ozone nonattainment will likely persist into the future. With reductions from programs already in place, including the CAIR, the number of counties in the eastern U.S. violating the ozone 8-hour standard is expected to decrease in 2015 to 16 counties where 12 million people are projected to live.

On June 2, 2003 (68 FR 32802), EPA issued a proposal for the implementation process to bring the nation's air into attainment with the 8-hour ozone NAAQS, including proposed requirements that States submit SIPs that address how areas will attain the 8-hour ozone standard.[44] The second phase (Phase II) of this proposed implementation process for the 8-hour ozone NAAQS will be finalized in the next few months, and it will describe the SIP submittal date requirements. (Phase I of the proposed implementation process was finalized on April 30, 2004 (69 FR 23951), but it did not include these SIP submittal date requirements.)[45]

The Act (Title I, Part D) contains two sets of requirements for State plans implementing the national ozone air quality standards in nonattainment areas. Subpart 1 contains general requirements for SIPs for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment SIPs. Under subpart 1, a state must demonstrate that its nonattainment areas will attain the ozone 8-hour standard as expeditiously as practicable, but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date ''for a period of no greater than 10 years from the date of designation as nonattainment.'' Based on these provisions, we expect that most or all areas covered under subpart 1 will attain the 8-hour ozone standard in the 2007 to 2014 time frame. For areas covered under subpart 2, the maximum attainment dates provided under the Act range from 3 to 20 years after designation, depending on an area's classification. Thus, we anticipate that areas covered by subpart 2 will attain the 8-hour ozone standard in the 2007 to 2024 time period.

Since the emission reductions expected from the standards we are adopting in this rule will occur during the time period when areas will need to attain the standard under either option, projected reductions in aircraft engine emissions will assist States in their efforts to attain and maintain the 8-hour ozone NAAQS.

2. Particulate Matter

a. What is particulate matter?

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. PM_{10} refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. Fine particles refer to those particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (also known as $PM_{2.5}$). The emission sources, formation processes, chemical composition, atmospheric residence times, transport distances and other parameters of fine and coarse particles are distinct. This discussion focuses on fine PM since the NO_X emitted by aircraft engines can react in the atmosphere to form fine PM as discussed below.

Fine particles are directly emitted from combustion sources and are formed secondarily from gaseous precursors such as oxides of nitrogen (NO_X). Fine particles are generally composed of sulfate, nitrate, chloride, ammonium compounds, organic carbon, elemental carbon, and metals. Aircraft engines emit NO_X which reacts in the atmosphere to form secondary $PM_{2.5}$ (namely ammonium nitrate). Combustion of coal, oil, diesel, gasoline, and wood, as well as high temperature process sources such as smelters and steel mills, produce emissions that contribute to fine particle formation. Fine particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers. Thus emissions from aircraft, as well as those from other sources, could affect nonattainment areas far from their source.

The relative contribution of various chemical components to $PM_{2.5}$ varies by region of the country. Data on $PM_{2.5}$ composition are available from the EPA Speciation Trends Network in 2001 and the *I*nteragency *M*onitoring of *PRO*tected *V*isual *E*nvironments (IMPROVE) network in 1999 covering both urban and rural areas in numerous regions of the U.S. These data show that nitrates formed from NO_X play a major role in the western U.S., especially in the California area where it is responsible for about a quarter of the ambient $PM_{2.5}$ concentrations.[46] (However, the majority of NO_X involved in this process does not come from aircraft.)

b. What are the health effects of $PM_{2.5}$?

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in the recently released EPA Criteria Document for PM.[47] They are also described in the Final Regulatory Analysis for our recent

[41] U.S. EPA, ''Air Quality Designations and Classifications for the 8-hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective Dates,'' Final Rule, 69 FR 23858 (April 30, 2004).

[42] A map that shows the current 8-hour ozone and $PM_{2.5}$ nonattainment areas, federal Class I areas, and a list of affected counties can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0209.

[43] U.S. EPA, ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call,'' Final Rule, 70 FR 25162, May 12, 2005.

[44] U.S. EPA, ''Proposed Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard,'' Proposed Rule, 68 FR 32802 (June 2, 2003).

[45] U.S. EPA, ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1,'' Final Rule, 69 FR 23951 (April 30, 2004).

[46] See the Regulatory Impact Analysis: ''Final Regulatory Analysis: Control of Emissions from Nonroad Diesel Engines,'' EPA420–R–04–007, May 2004. This document is available at *http://www.epa.gov/nonroad/* and in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0128.

[47] U.S. EPA, Air Quality Criteria for Particulate Matter (OCT 2004), Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. This document is available in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0129 and OAR–2002–0030–0130.

Clean Air Nonroad Diesel rule.[48] The following is a summary of those effects.

The health effects associated with short-term variation in ambient particulate matter (PM) have been indicated by epidemiologic studies showing associations between exposure and increased hospital admissions for ischemic heart disease, heart failure, respiratory disease, including chronic obstructive pulmonary disease (COPD) and pneumonia. Short-term elevations in ambient PM have also been associated with increased cough, lower respiratory symptoms, and decrements in lung function. Additional studies have associated changes in heart rate and/or heart rhythm in addition to changes in blood characteristics with exposure to ambient PM. Short-term variations in ambient PM have also been associated with increases in total and cardiorespiratory mortality. Studies examining populations exposed to different levels of air pollution over a number of years, including the Harvard Six Cities Study and the American Cancer Society Study, suggest an association between exposure to ambient $PM_{2.5}$ and premature mortality.[49] [50] Additionally, one long-term study provides evidence for premature mortality specifically associated with PM generated by mobile sources.[51] Two studies further analyzing the Harvard Six Cities Study's air quality data have also established a specific influence of mobile source-related $PM_{2.5}$ on daily mortality [52] and a concentration-response function for mobile source-associated $PM_{2.5}$ and daily mortality.[53]

c. What are current and projected levels of PM?

The NAAQS for $PM_{2.5}$ were established by EPA in 1997 (62 FR 38651, July 18, 1997). The short-term (24-hour) standard is set at a level of 65 $\mu g/m^3$ based on the 98th percentile concentration averaged over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 15 ug/m^3 averaged over three years.

Approximately 88 million people live in 208 full and partial counties and 39 areas which EPA has designated nonattainment for the $PM_{2.5}$ NAAQS.[54] In addition, tens of millions of people live in areas where there is a significant future risk of failing to maintain or achieve the $PM_{2.5}$ NAAQS.

This is illustrated by the air quality modeling performed recently in connection with our CAIR rule, which suggests that elevated $PM_{2.5}$ levels are likely to continue to exist in the future in many areas in the absence of additional emission controls.[55] For example in the eastern U.S. in 2015, based on emission controls currently adopted, we project that 16 million people will live in 18 counties with average $PM_{2.5}$ levels above 15 μ/m^3.

While the final implementation process for bringing the nation's air into attainment with the $PM_{2.5}$ NAAQS is still being completed in a separate rulemaking action, the basic framework is well defined by the statute. EPA designated $PM_{2.5}$ nonattainment areas on April 5, 2005. Following designation, section 172(b) of the Clean Air Act allows states up to three years to submit a revision to their state implementation plan (SIP) that provides for the attainment of the $PM_{2.5}$ standard. Based on this provision, states could submit these SIPs as late as the end of 2007. Section 172(a)(2) of the Clean Air Act requires that these SIP revisions demonstrate that the nonattainment areas will attain the $PM_{2.5}$ standard as expeditiously as practicable but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date ''for a period of no greater than 10 years from the date of designation as nonattainment.'' Therefore, based on this information, we expect that most or all are as will need to attain the $PM_{2.5}$ NAAQS in the 2009 to 2014 time frame, and then be required to maintain the NAAQS thereafter.

Potentially, today's aircraft NO_X standards may contribute to attainment and maintenance of the existing PM NAAQS since NO_X contributes to the secondary formation of $PM_{2.5}$.

C. Other Environmental Effects

This section presents information on four categories of public welfare and environmental impacts related to NO_X and fine PM emissions: Acid deposition, eutrophication of water bodies, plant damage from ozone, and visibility impairment. These environmental effects are described in detail in the Final Regulatory Assessment for our recent Clean Air Nonroad Diesel rule.[56]

1. Acid Deposition

Acid deposition, or acid rain as it is commonly known, occurs when NO_X and SO_2 react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles.[57] Acid rain contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle for a total of $80–85 million per year when applied to all new cars and trucks sold in the U.S. each year.

The NO_X reductions from today's action will help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and

[48] U.S. EPA (2004). Final Regulatory Assessment: Control of Emissions from Nonroad Diesel Engines, EPA420–R–04–007. This document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0128.

[49] Dockery, DW; Pope, CA, III; Xu, X; *et al.* (1993) An association between air pollution and mortality in six U.S. cities. N Engl J Med 329:1753–1759.

[50] Pope, CA, III; Thun, MJ; Namboordiri, MM; *et al.* (1995) Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. Am J Respir Crit Care Med 151:669–674.

[51] Hoek, G; Brunekreef, B; Goldbohm, S; *et al.* (2002) Association between mortality and indicators of traffic-related air pollution in the Netherlands: a cohort study. Lancet 360:1203–1209.

[52] Laden F; Neas LM; Dockery DW; *et al.* (2000) Association of fine particulate matter from different sources with daily mortality in six U.S. cities. Environ Health Perspect 108(10):941–947.

[53] Schwartz J; Laden F; Zanobetti A. (2002) The concentration-response relation between $PM_{(2.5)}$ and daily deaths. Environ Health Perspect 110(10): 1025–1029.

[54] A map that shows the current 8-hour ozone and $PM_{2.5}$ nonattainment areas, federal Class I areas, and a list of affected counties can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0209. The final $PM_{2.5}$ designations were effective on April 5, 2005. (U.S. EPA, ''Air Quality Designations and Classifications for the Fine Particles ($PM_{2.5}$) National Ambient Air Quality Standards,'' Final Rule, January 5, 2005 (70 FR 944); ''Air Quality Designations for the Fine Particles ($PM_{2.5}$) National Ambient Air Quality Standards,'' Supplemental Notice, April 5, 2005, located at *http://www.epa.gov/pmdesignations/.*)

[55] U.S. EPA, ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call,'' Final Rule, 70 FR 25162, May 12, 2005.

[56] U.S. EPA (2004). Final Regulatory Assessment: Control of Pollution from Nonroad Diesel Engines, EPA420–R–04–007. This document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0128.

[57] Much of the information in this subsection was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995. A copy of this document is available in Docket No. OAR 2002–0030, Document No. OAR–2002–0030–0028.

streams throughout the country and helping to accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels will also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition will be reduced, and the costs borne to prevent acid-related damage may also decline.

2. Eutrophication and Nitrification

In recent decades, human activities have greatly accelerated nutrient impacts, such as nitrogen and phosphorus, causing excessive growth of algae and leading to degraded water quality and associated impairment of fresh water and estuarine resources for human uses.[58] Eutrophication is the accelerated production of organic matter, particularly algae, in a water body. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations.

Deposition of nitrogen from aircraft engines contributes to elevated nitrogen levels in waterbodies. The NO_X reductions from today's promulgated standards will help reduce the airborne nitrogen deposition that contributes to eutrophication of watersheds, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings.

3. Plant Damage From Ozone

Ground-level ozone can also cause adverse welfare or environmental effects.[59] Specifically, ozone enters the leaves of plants where it interferes with cellular metabolic processes. This interference can be manifest either as visible foliar injury from cell injury or death, and/or as decreased plant growth and yield due to a reduced ability to produce food. With fewer resources, the plant reallocates existing resources away from root storage, growth and reproduction toward leaf repair and maintenance. Plants that are stressed in these ways become more susceptible to disease, insect attack, harsh weather and other environmental stresses. Because not all plants are equally sensitive to ozone, ozone pollution can also exert a selective pressure that leads to changes in plant community composition.

As discussed earlier, aircraft engine emissions of NO_X contribute to ozone. The final standards will aid in the reduction of ozone and, therefore, help reduce crop damage and stress from ozone on vegetation.

4. Visibility

Visibility can be defined as the degree to which the atmosphere is transparent to visible light.[60] Fine particles with significant light-extinction efficiencies include organic matter, sulfates, nitrates, elemental carbon (soot), and soil.

Visibility is important because it directly affects people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, both in where they live and work, and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas such as national parks and wilderness areas, because of the special emphasis given to protecting these lands now and for future generations.

As discussed previously, aircraft engine emissions of NO_X are precursors to $PM_{2.5}$. In 1997, EPA established the secondary (welfare-based) $PM_{2.5}$ NAAQS as equal to the primary (health-based) NAAQS of 15 ug/m^3 (based on a 3-year average of the annual mean) and 65 ug/m^3 (based on a 3-year average of the 98th percentile of the 24-hour average value) (62 FR 38669, July 18, 1997). EPA concluded that $PM_{2.5}$ causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. In 1997, EPA demonstrated that visibility impairment is an important effect on public welfare and that unacceptable visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote federal Class I areas.[61]

Furthermore, in setting the $PM_{2.5}$ NAAQS, EPA acknowledged that levels of fine particles below the NAAQS may also contribute to unacceptable visibility impairment and regional haze problems in some areas, and section 169 of the Act provides additional authorities to remedy existing impairment and prevent future impairment in the 156 national parks, forests and wilderness areas labeled as mandatory Federal Class I areas (62 FR 38680–81, July 18, 1997).

Taken together with other programs, potential reductions from this final rule may help to improve visibility across the nation, including mandatory Federal Class I areas.

III. Aircraft Engine Standards

Under the authority of section 231 of the CAA, EPA today adopts standards equivalent to ICAO's February 1999 NO_X emission standards (these NO_X standards were adopted at CAEP/4 in 1998 and approved by the ICAO Council in 1999) and March 1997 test procedure amendments. Today's emission standards and test procedure amendments apply to commercial aircraft engines, and these standards do not apply to aircraft engines used only for general aviation or military applications.[62] (General aviation and military aircraft can use commercial aircraft engines subject to these standards—e.g., small regional jet engines are also utilized in executive general aviation aircraft and larger commercial aircraft engines may also be used in military transport aircraft). The

[58] Deposition of Air Pollutants to the Great Waters, Third Report to Congress, June 2000, EPA–453/R–00–005. This document can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0025. It is also available at *http://www.epa.gov/oar/oaqps/gr8water/3rdrpt/obtain.html.*

[59] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. This document can be found in Docket No. OAR–2002–0030. Document Nos. OAR–2002–0030–0165 through OAR–2002–0030–0194. (U.S. EPA (2005), Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), EPA/600/R–05/004aA—cA. This document can be found in Docket No. OAR–2002–0030, Document Nos. OAR–2002–0030–0202, –0210, and –0211.)

[60] National Research Council, 1993. Protecting Visibility in National Parks and Wilderness Areas. National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas. National Academy Press, Washington, DC. This book can be viewed on the National Academy Press Web site at *http://www.nap.edu/books/0309048443/html/.* See also U.S. EPA Air Quality Criteria Document for Particulate Matter (2004). This document is available in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0129 and OAR–2002–0030–0130. See also Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, 2nd Draft. This document can be found in Docket No. OAR–2002–0030, Document Nos. OAR–2002–0030–0198 through—0201. It is also available electronically at *http://www.epa.gov/ttn/naaqs/standards/pm/data/pm_staff_paper_2nddraft.pdf.*

[61] A map that shows the current 8-hour ozone and $PM_{2.5}$ nonattainment areas, federal Class I areas, and a list of affected counties can be found in Docket No. OAR–2002–0030, Document No. OAR–2002–0030–0209.

[62] In the proposal, we stated that no general aviation or military engines are covered by the proposal; however, this statement may need some clarification in today's final rulemaking. See the Section 5.2 of the Summary and Analysis of Comments of this rulemaking for further discussion of general aviation and military aircraft.

commercial aircraft engines subject to today's NO_X standards are those gas turbine engines that are newly certified (and newly designed) after the effective dates of the regulations. (Newly manufactured engines of already certified models—i.e., those individual engines that are part of an already certified engine model, but are built after the effective date of the regulations for such engines and have never been in service—will not have to meet these standards).[63] The NO_X emission standards and their effective dates are described below in this section, and the test procedure amendments are discussed later in section IV.

A. What Are The NO_X Standards For Newly Certified Engines?

As discussed earlier in sections I and II of today's notice, section 231(a)(2)(A) of the CAA authorizes EPA to establish emission standards for aircraft engine emissions ''* * * which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' The Administrator may revise such standards from ''time to time.'' 42 U.S.C. 7571(a)(2). CAA section 231(b) requires that any emission standards provide sufficient lead time ''to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' 42 U.S.C. 7571(b).

Today's rule adopts near-term standards that will go into effect December 19, 2005 to ensure future engines do not jeopardize recent or past technology gains. These standards are equivalent to the CAEP/4 NO_X international consensus emissions standards for aircraft engines adopted by ICAO's CAEP in 1998.[64] This final rule to promulgate aircraft engine NO_X standards equivalent to CAEP/4 standards is consistent with U.S. obligations under ICAO. By issuing standards that meet or exceed ICAO CAEP/4 standards, we satisfy these obligations. As indicated earlier in section I of today's rule, the implementation date, December 31, 2003, has already occurred for the CAEP/4 standards, and we need to promulgate the standards in accordance with U.S. obligations under ICAO. At the same time, EPA anticipates establishing more stringent NO_X standards in the future. In February 2004, CAEP/6 (sixth meeting of CAEP) agreed to establish more stringent international consensus emission standards for aircraft engines. Such standards will be a central consideration in a future EPA regulation of aircraft engine emissions.

We believe this approach is the most appropriate means to address emissions from aircraft engines in this rulemaking. It codifies current practice, with no significant lead time, as a near-term approach.[65] EPA has authority to revise emission standards from ''time to time.'' EPA intends to address more stringent emission standards requiring more lead time in a future rulemaking (see section III.A.5 for further discussion of future standards), as the ICAO and CAEP process develops progressively more stringent standards.

1. Today's NO_X Standards

EPA is adopting standards equivalent to ICAO's 1999 NO_X emission standards for newly certified aircraft gas turbine engines (turbofan and turbojet engines) of rated thrust or output greater than 26.7 kilonewtons (kN) with compliance dates as follows:[66]

For engines of a type or model of which that date of manufacture of the first individual production model was after December 31, 2003 (see below for further discussion on the effective date of these standards):

(a) For engines with a pressure ratio of 30 or less:

(i) For engines with a maximum rated output of more than 89.0 kN:

NO_X = (19 + 1.6(rated pressure ratio)) g/kN rated output

(ii) For engines with a maximum rated output of more than 26.7 kN but not more than 89.0 kN:

NO_X = (37.572 + 1.6(rated pressure ratio)—0.2087(rated output))g/kN rated output

(b) For engines with a pressure ratio of more than 30 but less than 62.5:

(i) For engines with a maximum rated output of more than 89.0 kN:

NO_X = (7 + 2.0(rated pressure ratio)) g/kN rated output

(ii) For engines with a maximum rated output of more than 26.7 kN but not more than 89.0 kN:

NO_X = (42.71 + 1.4286(rated pressure ratio)—0.4013(rated output) + 0.00642(rated pressure ratio × rated output))g/kN rated output

(c) For engines with a pressure ratio of 62.5 or more:

NO_X = (32 + 1.6(rated pressure ratio)) g/kN rated output.

The NO_X emission standards presented above are equivalent to the ICAO NO_X standards that have an implementation date of December 31, 2003.[67] However, since this date has passed, the NO_X emission standards prescribed above for newly certified engines shall take effect as prescribed beginning December 19, 2005.

2. NO_X Standards for Newly Certified Mid- and High-Thrust Engines

EPA is adopting NO_X standards for newly certified mid- and high-thrust engines (those engines designed and certified after the effective date of the regulations, which have a rated output or thrust greater than 89 kN) that generally represent about a 16 percent reduction (or increase in stringency) from the existing standard. (See section III.A.1(a)(i) and III.A.1(b)(i) above for the standards for mid- and high-thrust engines.) More specifically, at a rated pressure ratio of 30 the NO_X standards represent a 16 percent reduction from the existing standard. At rated pressure ratios of 10 and 20, the standards correspond to 27 and 20 percent reductions, respectively. In addition, at rated pressure ratios of 40 and 50, the NO_X standards signify 9 and 4 percent reductions, respectively. Also, today's and existing standards are equivalent at a rated pressure ratio of 62.5. See Figure III.B–1 in section III.B for a comparison of today's NO_X standards (equivalent to CAEP/4 standards) to the existing standards (equivalent to CAEP/2 standards) .

3. NO_X Standards for Newly Certified Low-Thrust Engines

For newly certified low-thrust engines (engines with a thrust or rated output of more than 26.7 kN but not more than 89.0 kN), EPA is adopting near-term

[63] Applying standards to newly manufactured engines of already certified models does not mean the re-certification or retrofit of existing in-use engines. Instead such a provision would require the ongoing production of engines that have already been certified to meet the new standards. However, we are not adopting this provision in today's rulemaking

[64] ICAO, CAEP, Fourth Meeting, Montreal, Quebec, April 6–8, 1998, Report, Document 9720, CAEP/4. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int.*

[65] As described later, more information and greater lead time would be necessary to require more stringent standards.

[66] This includes standards for low-, mid-, and high-thrust engines (see below for further discussion of the different standards based on the thrust of the engines).

[67] ICAO's CAEP/4 NO_X standards became effective July 19, 1999, and applicable as of November 4, 1999. December 31, 2003 is the implementation date for these standards. However, for the purpose of this Notice the effective date is considered the implementation date. (ICAO, ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993—Amendment 4, July 19, 1999.)

NO_X standards that are equivalent to CAEP/4 standards for such engines, and these standards are different than today's standards for mid- and high-thrust engines (engines with thrust greater than 89.0 kN).[68] In addition to rated pressure ratio, the standards for low-thrust engines will also be dependent on an engine's thrust or rated output.[69] (See section III.A.1(a)(ii) and III.A.1(b)(ii) for a description of these different standards.) For example, at a rated pressure ratio of 30 and a thrust of 58 kN (thrust level in the middle of 26.7 kN and 89 kN), these standards are an 8 percent reduction (or increase in stringency) from the existing standard compared to a 16 percent reduction for the standards for mid- and high-thrust engines.[70]

The existing standards were not set at a stringency level that created a need for low-thrust engines to have different requirements, but at the level of NO_X stringency adopted today different requirements are considered necessary for such engines. Due to their physical size, it is difficult to apply the best NO_X reduction technology to low thrust or small engines. The difficulty increases progressively as size is reduced (from around 89 kN).[71] For example, the relatively small combustor space and section height of these engines creates constraints on the use of low NO_X fuel staged combustor concepts which inherently require the availability of greater flow path cross-sectional area than conventional combustors.[72] Also, fuel staged combustors need more fuel injectors, and this need is not compatible with the relatively lower total fuel flows of lower thrust engines. (Reductions in fuel flow per nozzle are difficult to attain without having clogging problems due to the small sizes of the fuel metering ports.) In addition, lower thrust engine combustors have an inherently greater liner surface-to-combustion volume ratio, and this requires increased wall cooling air flow. Thus, less air will be available to obtain acceptable turbine inlet temperature distribution and for emissions control.[73] Since the difficulties increase progressively as engine thrust size is reduced, EPA believes it is appropriate to make a graded change in stringency of today's NO_X standards for low-thrust engines.

4. Rationale for Today's NO_X Standards for Newly Certified Low-, Mid-, and High-Thrust Engines

Today's standards for low-, mid-, and high-thrust engines, which are equivalent to the CAEP/4 standards, ensure that new engine designs will incorporate the existing combustor technology and will not perform worse than today's current engines. This final rule to promulgate aircraft engine NO_X standards equivalent to CAEP/4 standards is consistent with U.S. obligations under ICAO. By issuing standards that meet or exceed the minimum stringency levels of ICAO CAEP/4 standards, we satisfy these obligations. (See section I.B for a discussion of the obligation of ICAO's participating nations). As indicated earlier, the implementation date, December 31, 2003, has already occurred for the CAEP/4 standards, and we need to promulgate the standards to meet our obligations for the CAEP/4 standards. Moreover, since we have already gone past the implementation date of the ICAO/CAEP/4 standards, there is not sufficient lead time to require more stringent emission standards in the very near term. As discussed later in section III.A.5 for future standards, we plan to address whether to take action on more stringent NO_X standards in the future because pursuant to section 231(b) of the CAA we need more time to better understand the cost of compliance with such standards (see section III.A.5 for further discussion regarding lead time). Also, see the Summary and Analysis of Comments for this rulemaking for further discussion of this near-term approach.

EPA believes that today's standards will not impose any additional burden on manufacturers, because manufacturers are already designing new engines to meet the ICAO international consensus standards by 2004 (see section VIII of today's action for further discussion of regulatory impact). Even though the U.S. did not immediately adopt the ICAO NO_X standards after 1999, engine manufacturers have continued to make progress in reducing these emissions. Today's standards are aimed at assuring that this progress is not reversed in the future.

We received a number of comments from state and local governments and environmental groups stating that the NO_X standards should be technology-forcing standards (a performance level that is beyond what sources are currently achieving). They stated that the standards are not technology forcing since 94 percent of all engine models currently in production already meet the standards (85 percent did in 1999 when the ICAO adopted the standards). Also, state and local governments and environmental groups stated that since the standards are not technology-forcing and most engines already meet the standards, aircraft engine NO_X will increase. They expressed concern the many states are facing air quality challenges with implementation of the new 8-hour ozone national ambient air quality standards (NAAQS). Decreases in ozone and its precursors, including NO_X, requires controls of emissions from all sectors, in addition to controls already implemented for 1-hour ozone NAAQS. For nonattainment areas, aircraft emissions are problematic, and the standards will not reduce aircraft emissions or address aircraft NO_X pollution.

Engine and airframe manufacturers and airlines supported the standards and opposed the concept of technology-forcing standards. Airlines indicated that the rulemaking would codify aircraft emission standards determined to be technologically feasible. In addition, airlines expressed that technology-forcing standards would be contrary to the CAA. Aircraft engine emission standards adopted according

[68] Today's NO_X standards for low thrust or small engines specify that engines with a rated output or thrust at 26.7 kN meet the existing standard, and engines with a rated output at 89 kN meet today's (or CAEP/4) standards. For engines with rated outputs or thrust levels between 26.7 and 89 kN, a linear interpolation was made between the low range of the existing standard and the high range of today's standard based upon the rated output to determine the NO_X limits for such engines. Thus, thrust dependent standards are being adopted for engines with rated output or thrust between 26.7 kN and 89 kN.

[69] The standards for mid- and high-thrust engines are dependent only on an engine's rated pressure ratio.

[70] Additional examples of the standards for low-thrust engines in comparison to the standards for mid- and high-thrust engines are provided below. At rated pressure ratios of 10 and 20 with a thrust of 58 kN, today's low-thrust engine standards are a 14 and 10 percent reduction from the existing standard, respectively. Whereas, at these same rated pressure ratios, today's standards for mid- and high-thrust engines are 27 and 20 percent reductions. In addition, at rated pressure ratios of 40 and 50 with a thrust of 58 kN, these low-thrust engine standards signify a 5 and 2 percent reduction from the existing standard, respectively. In comparison, at these same rated pressure ratios, today's standards for mid- and high-thrust engines are 9 and 4 percent reductions.

[71] ICAO/CAEP, Report of Third Meeting, Montreal, Quebec, December 5–15, 1995, Document 9675, CAEP/3.

[72] ''The burner section of an aircraft engine, which contains the combustion chamber, burns a mixture of fuel and air, and delivers the resulting gases to the turbine at a temperature which will not exceed the allowable limit at the turbine inlet.'' (United Technologies Pratt and Whitney, ''The Aircraft Gas Turbine Engine and Its Operation,'' August 1998.)

[73] ICAO/CAEP Working Group 3 (Emissions), ''Combined Report of the Certification and Technology Subgroups,'' section 2.3.6.1, Presented by the Chairman of the Technology Subgroup, Third Meeting, Bonn, Germany, June 1995. A copy of this paper can be found in Docket OAR–2002–0030.

section 231 of the CAA must be based on what is technologically feasible, and the standards cannot be amended if the change would significantly increase noise or adversely affect safety. They suggested that a technology-forcing NO_X standard could adversely affect noise and safety. In addition, they indicated that section 231 of the Act is different from other sections of the CAA that call for technology-forcing standards. Airlines expressed that section 231 requires that standards already be technologically feasible and not compromise noise and safety. In addition, airlines expressed that whether a ''standard is technologically feasible depends not just on whether it can be achieved in a laboratory setting, but whether it can be achieved on a range of actual aircraft engine and airframe combinations that are certified as airworthy, safe, and fully operable under flight conditions. Moreover, such demonstrated technology must be available for application over a sufficient range of newly certificated aircraft, not just on a few airframe/engine combinations.'' (See the Summary and Analysis of Comments of this rulemaking for further discussion of comments.)

In response to these comments, we refer to sections 231(a)(2)(B) and (b) of the CAA. Section 231(b) requires that any emission standards ''take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance during such period.'' 42 U.S.C. 7571(b). Section 231(a)(2)(B) provides that the Administrator shall consult with the Administrator of the FAA on standards, and ''shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.'' 42 U.S.C. 7571(a)(2)(B). Future aircraft emission standards will involve appropriate consultations between EPA and the FAA in applying these provisions of the CAA.

EPA also needs to have a technical basis for expecting the standards will be achievable in a specific period of time. While the statutory language of section 231 is not identical to other provisions in title II of the CAA that direct EPA to establish technology-based standards for various types of engines, EPA interprets its authority under section 231 to be somewhat similar to those provisions that require us to identify a reasonable balance of specified emissions reduction, cost, safety, noise, and other factors. *See, e.g., Husqvarna AB* v. *EPA,* 254 F.3d 195 (DC Cir. 2001) (upholding EPA's promulgation of technology-based standards for small non-road engines under section 213(a)(3) of the CAA). However, we are not compelled under section 231 to obtain the ''greatest degree of emission reduction achievable'' as per sections 213 and 202 of the CAA, and so EPA does not interpret the Act as requiring the agency to give subordinate status to factors such as cost, safety, and noise in determining what standards are reasonable for aircraft engines. Rather, EPA has greater flexibility under section 231 in determining what standard is most reasonable for aircraft engines, and is not required to achieve a ''technology-forcing'' result. The fact that most engines already meet standards would not in itself mean that the standard is inappropriate, provided the agency has a reasonable basis after considering all the relevant factors for setting the standard (with an appropriate period of lead time for that standard) at a level that results in no actual emissions reduction from the baseline.

By the same token, EPA does not agree that a technology-forcing standard would be precluded by section 231, in light of section 231(b)'s forward-looking language. Nor would EPA have to demonstrate that a technology is currently available universally or over a broad range of aircraft in order to base a standard on the emissions performance of such technology—the Agency is not limited in identifying what is ''technologically feasible'' as what is already technologically achieved. However, EPA would, after consultation with the Secretary of Transportation, need to provide manufacturers sufficient lead time to develop and implement requisite technology. As section 231 conveys, there is an added emphasis on the consideration of safety (*see, e.g.,* sections 231(a)(2)(B)(ii) (''The Administrator shall not change the aircraft engine emission standards if such change would [* * *] adversely affect safety''), 42 U.S.C. 7571(a)(2)(B)(ii), and 231(c) (''Any regulations in effect under this section [* * *] shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety''), 42 U.S.C. 7571(c). Therefore, it is reasonable for EPA to give greater weight to considerations of safety in this context than it might in balancing emissions reduction, cost, and energy factors under other title II provisions.

EPA is aware that many states face air quality challenges in light of the new ozone NAAQS, and since section 233 of the CAA vests authority only in EPA to set aircraft emission standards, we understand their perspective regarding the importance of setting more stringent NO_X standards in the future. For these future standards, we expect to adopt standards developed through the CAEP process in ICAO. Further, federal agencies plan on working through the environmental Integrated Product Team for the Next Generation Air Transportation System (NGATS), to conduct a review of technology for aircraft engines and the resulting trend in aircraft emissions as well as interrelationships with noise (e.g., standards effect on projected aircraft emissions growth and expected effects on noise). See section III.A.5 below for further discussion of future NO_X standards. (See the Summary and Analysis of Comments of this rulemaking for further discussion of our responses to comments.)

5. Future NO_X Standards for Newly Certified Low-, Mid-, and High-Thrust Engines

More stringent standards for low-, mid-, and high-thrust engines will likely be necessary and appropriate in the future. As discussed earlier in section II, the growth in aircraft emissions is projected to occur at a time when other mobile source categories are reducing emissions.[74] The 1999 EPA study of commercial aircraft activity in ten cities projected that the aircraft NO_X emissions would double in some of these cities by 2010, and the aircraft component of the regional mobile source NO_X emissions in the ten cities would grow from a range of 1 to 4 percent that existed in 1990 to a range of 2 to 10 percent in 2010.[75] As

[74] The projected growth in aircraft emissions is not simply from the number of operations, but it could also be attributed to the change in the types of aircraft being operated. For example, regional aircraft activity is growing (regional aircraft are generally referred to as those aircraft with more than 19 but fewer than 100 seats—regional jets and turboprops). In the U.S., traffic flown by regional airlines increased about 20 percent in 1999 and is expected to grow approximately 7 percent annually during the next ten years, compared to 4 to 6 percent for the major airlines. In addition, regional jets comprised about 25 percent of the regional aircraft fleet in 2000, up from only 4.2 percent in 1996, and their fraction of the fleet is expected to increase to nearly 50 percent by 2011. (R. Babikian, S. P. Lukachko and I. A. Waitz, ''Historical Fuel Efficiency Characteristics of Regional Aircraft from Technological, Operational, and Cost Perspectives,'' Journal of Air Transport Management, Volume 8, No. 6, pp. 389–400, Nov. 2002.)

[75] U.S. EPA, ''Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft,'' April 1999, EPA420–R–99–013. This study is

indicated earlier, the above projections were made prior to the tragic events of September 11, 2001, and the economic downturn. A January 2003 report by the Department of Transportation indicated that the combination of the September 11, 2001 terrorist attacks and a cut-back in business travel had a significant and perhaps long-lasting effect on air traffic demand. While, the FAA expects the demand for air travel to recover, and then continue a long-term trend of annual growth in the United States, it will grow at a lower rate and from a lower base than originally forecast. More recently, as discussed earlier, FAA reports that flights (or activity) of commercial air carriers and commuters/air taxis will increase by 22 percent from 2000 to 2015, about 12 percent less than what was forecast before September 11th.[76] While flight activity, and thus NO_X emissions, will be lower than originally anticipated, the relative size of the contribution of aircraft to national NO_X levels may increase due to the potential decreased contribution from other mobile sources; hence, further action may be necessary in the future to reduce aircraft NO_X emissions in nonattainment areas.

Further stringency of the NO_X standards would reduce the expected growth in commercial aircraft NO_X emissions. The importance of controlling aircraft emissions has grown in many areas (especially areas not meeting the 1-hour and 8-hour ozone NAAQS) as controls on other sources become more stringent and attainment of the NAAQS's has still not been achieved. (Many airports in the U.S. are located in nonattainment areas.[77]) As activity increases, aircraft would emit increasing amounts of NO_X in many nonattainment areas, and thus, aircraft NO_X emissions would further aggravate the problems in these areas (either by emitting pollutants directly within a nonattainment area or by contributing to regional transport emissions in an area upwind of a nonattainment area). More stringent aircraft engine NO_X standards may assist in alleviating these problems in nonattainment areas, and they may aid in preventing future concerns in areas currently designated as attainment (or maintenance) areas. In addition, attainment or maintenance of the NAAQS may depend upon aircraft engines being subject to a program of control compatible with their significance as pollution sources. (See the Summary and Analysis of Comments for this rulemaking for further discussion of future standards and the environmental need for control.)

EPA, therefore, is considering the exploration of more stringent future standards, beyond today's standards. Earlier this year, the ICAO Council adopted more stringent international consensus NO_X emission standards for newly certified aircraft engines (implementation date of after December 31, 2007).[78] The CAEP/6 NO_X standards generally represent about a 12 percent increase in stringency from the standards promulgated in this final rule (or the CAEP/4 NO_X standards).[79] (These standards were accompanied by more stringent standards for low-thrust engines). Moreover, CAEP agreed to review the stringency of the NO_X standards again during the work program for the eighth meeting of CAEP, which will commence in early 2007 and is expected to culminate in early 2010. Such standards will be a central consideration in a future EPA regulation of aircraft engine emissions. Thus, it will be important that the U.S. continue to actively participate in the technical emissions work activity that will endeavor to establish the technological basis for any increase in stringency that CAEP will contemplate. We believe this ongoing phased approach is the most appropriate means to address emissions from aircraft engines.

As we discussed in the proposal, activity is also underway in CAEP to identify and assess the potential for long-term technology goals to be established for further emission reductions, including implementing a CAEP-approved process to set and review these goals.[80] [81] The aim of the goal setting activity is to complement the ICAO CAEP standard setting process with information to aid the engine and airframe manufacturer's design process. The goals are expected to take into account the results of recently completed emissions reduction technology programs such as those conducted by National Aeronautics and Space Administration (NASA) and the European Commission and the timeline necessary to carry those technologies from the research phase through commercialization.[82] We support this CAEP work item for establishing goals. However, this should not be interpreted as agreement on our part that the CAEP process is the exclusive appropriate process for setting aircraft emissions reduction goals or for encouraging the development of better performing technology. For example, the Next Generation Air Transportation System

available at *http://www.epa.gov/otaq/aviation.htm.* It can also be found in Docket No. OAR–2002–0030.

[76] U.S. FAA, ''APO Terminal Area Forecast Summary Report,'' Aircraft Operations, June 30, 2005. The flight forecast data is based on FAA's Terminal Area Forecast System (TAFS). TAFs is the official forecast of aviation activity at FAA facilities. This includes FAA-towered airports, federally-contracted towered airports, nonfederal towered airports, and many non-towered airports. For detailed information on TAFS and the air carrier activity forecasts see the following FAA website: *http://www.apo.data.faa.gov/main/taf.asp.* The June 30, 2005 aviation forecasts contained in TAFS for Fiscal Years 2002–2020 included the impact of the terrorists' attacks of September 11, 2001 and the recent economic downturn. Currently, the aviation industry is undergoing significant structural and economic changes. These changes may necessitate revisions to forecasts for a number of large hub airports prior to the update of the entire TAF next year. A copy of the June 30, 2005 forecast summary report can also be found in Docket No. OAR–2002–0030.

[77] For information on the geographic location of airports, see the following U.S. Department of Transportation (Bureau of Transportation Statistics) website: *http://www.bts.gov/oai.* The report or database provided on the website entitled, ''Airport Activity Statistics of Certificated Air Carriers: Summary Tables 2000,'' lists airports by community. In addition, see the following EPA website for information on nonattainment areas for criteria pollutants: *http://www.epa.gov/oar/oaqps/greenbk.*

[78] ICAO News Release, ''ICAO Council Adopts New Standards for Aircraft Emissions,'' PIO 03/05, March 2, 2005. Copies of this document can be obtained at the ICAO website located at *http://www.icao.int.*

[79] ICAO, CAEP, Sixth Meeting, Montreal, Quebec, February 2–12, 2004, Report, Letter of Transmittal to the President of the Council From the Chairman of the Sixth Meeting of CAEP, CAEP/6–WP/57 (Report on Agenda Item 1). Copies of this document can be obtained from ICAO (*http://www.icao.int*). It can also be found in Docket No. OAR–2002–0030.

[80] ICAO, CAEP, Sixth Meeting, Montreal, Quebec, February 2–12, 2004, Report, Letter of Transmittal to the President of the Council From the Chairman of the Sixth Meeting of CAEP, CAEP/6–WP/57 (Report on Agenda Item 4). Copies of this document can be obtained from ICAO (*http://www.icao.int*). It can also be found in Docket No. OAR–2002–0030.

[81] For the purposes of setting long-term technology goals for aircraft emission reductions, the CAEP/6 (occurred in February 2004) future work program included the following items:

(a) Implement a CAEP-approved process to set, periodically review and update technology goals and identify environmental benefits, taking into account progress in ongoing research and development efforts toward reducing aircraft emissions, environmental interdependencies and trade-offs, and scientific understanding of the effects of aircraft engine emissions;

(b) Support and monitor development and methods for understanding the inter-relationship of technology goals targeting individual emissions performance improvements; and

(c) Develop the inputs appropriate for use of air quality and climate impact models to be used by CAEP to quantify the value of emissions reduction and to estimate the benefit from long-term goals.

ICAO, CAEP, Sixth Meeting, Montreal, Quebec, February 2–12, 2004, Report, Letter of Transmittal to the President of the Council From the Chairman of the Sixth Meeting of CAEP, CAEP/6–WP/57 (Appendix A to the Report on Agenda Item 4—Revised Work Program for CAEP, page 4A–7). Copies of this document can be obtained from ICAO (*http://www.icao.int*). It can also be found in Docket No. OAR–2002–0030.

[82] ICAO, CAEP, Fourth Meeting, Montreal, Quebec, April 6–8, 1998, Report, Document 9720, CAEP/4, see Appendix A to the Report on Agenda Item 4 (page 4–A–1). Copies of this document can be obtained from ICAO (*http://www.icao.int*).

(NGATS) plan was released in December 2004—a Congressionally chartered and Administration endorsed activity to develop research and plans to transform the air transportation system. Efforts there will include assessment of various technological and operational procedures to reduce aircraft emissions, including NO_X, as well as a thorough assessment of interrelationships between noise and emissions and amongst emissions to enable maximizing environmental benefit derived from mitigating actions. Further, in EPA's long history of mobile source regulation, we have found that performance-based standards have been successfully used to stimulate technological development resulting in cleaner, cost-effective, and safe engines.

Manufacturers should be able to achieve additional reductions with more lead time than is provided by today's action. As we discussed in the proposal, in the future we intend to assess, in coordination with the NGATS Environmental Integrated Product Team (IPT) whether or not the new international consensus and longer-term standards, CAEP/6 NO_X standards, would be stringent enough to protect the U.S. public health and welfare. If so, we would plan to propose to adopt the CAEP/6 NO_X standards. EPA in consultation with the Secretary of Transportation retains the discretion to adopt more stringent NO_X standards in the future if the international consensus standards ultimately prove insufficient to protect U.S. air quality. As discussed earlier, the implementation date, December 31, 2003, has already occurred for the CAEP/4 standards, and we need to promulgate today's standards to meet our obligations for the CAEP/4 standards. This final rule to promulgate aircraft engine NO_X standards equivalent to CAEP/4 standards is consistent with U.S. obligations under ICAO. We would not be able to quickly adopt a more stringent standard. However, we intend to consider further stringency in a future rulemaking. In addition, we have not yet assessed the costs (and emission benefits) of more stringent standards, but we anticipate doing so in the future for such standards.

Consideration of more stringent NO_X standards in the future will allow us to obtain important additional information on the costs of such standards.[83] As described earlier, section 231 of the CAA authorizes EPA from ''time to time'' to revisit emission standards, and it requires that any standards' effective dates permit the development of necessary technology, giving appropriate consideration to the cost. We did not propose more stringent NO_X standards primarily because we needed more time to better understand the cost of compliance of such standards. Cost data is now available from CAEP/6 (meeting occurred in February 2004), but we need to first adopt the standards equivalent to CAEP/4 today since we have already gone past the CAEP/4 implementation date. Although, as we described earlier, the CAEP/6 NO_X standards will be a central consideration in a future aircraft engine emission standards, other levels of further stringency would also be under consideration, and additional cost information for such standards would need to be evaluated.

As we discussed in the proposal, producing (and/or developing) new engines or engine technologies requires significant financial investments from engine manufacturers, which takes time to recoup (the amount of time depends upon sales of engines, replacement parts, etc.). After evaluating additional cost information for future standards as well as other emissions reduction approaches, we would then be better situated to make decisions on an appropriate level of stringency and implementation timing that maximizes NO_X reductions from aircraft engines, taking into consideration cost, safety, and noise.

B. Newly Manufactured Engines of Already Certified Models

We requested comment on whether the NO_X standards would apply to newly manufactured engines of already certified models (*i.e.*, those individual engines that are part of an already certified engine model, but are built after the effective date of the regulations for such engines and have never been in service),[84] but after careful consideration and reviewing comments from stakeholders, we have decided not to include such engines in today's final rulemaking. It is important to mention that CAEP/6 did not adopt provisions to apply the CAEP/4 NO_X standards to newly manufactured engines of already certified models (a production cut-off). CAEP/6 noted the industry view that market forces are the primary drivers of the development and incorporation of new technology (asserting voluntary compliance would suffice), and an understanding at CAEP/4 that a production cut-off would not be introduced in the future. CAEP/6, after reviewing that commitment, decided that ''* * *this should not be interpreted as meaning that production cut-offs would not be introduced in the future if the situation so warranted.''[85] [86] (As we discussed in the proposal, CAEP's Forecasting and Economic Analysis Support Group (FESG) further analyzed applying CAEP/4 NO_X standards to newly manufactured engines of already certified models for CAEP/6, and assessed effective dates of 2, 4, and 6 years after December 31, 2003, which is the implementation date for newly certified engines.[87] FESG estimated that the cost per ton of NO_X reduced would range from $3,800 to $11,200 for the three effective dates.[88] The emission benefits and costs of this provision are discussed further below.)

1. What Is the Status of Engines?

According to the ICAO Aircraft Engine Exhaust Emissions Data Bank,[89] nearly all already certified engine models (95 percent of already certified

[83] For low-thrust engines, deferring regulatory action on more stringent future standards until after CAEP/6 would also enable us to obtain additional information on the technological feasibility of such standards.

[84] This provision does not mean the re-certification or retrofit of existing in-use engines. Instead the provision would require the ongoing production of engines that have already been certified to meet the new standards, rather than following CAEP/4 and merely applying today's standards to future engine designs and allowing currently produced engine models to meet the previous standards.

[85] ICAO, CAEP, Sixth Meeting, Montreal, Quebec, February 2–12, 2004, Report, Letter of Transmittal to the President of the Council From the Chairman of the Sixth Meeting of CAEP, CAEP/6–WP/57 (Report on Agenda Item 1). A copy of this document can be found in Docket No. OAR–2002–30.

[86] CAEP/6 noted that industry ''pointed out that introduction of a production cut-off now would cause the manufacturer to modify engines to meet the CAEP/4 standards, whereas if no cut-off were imposed it was likely that they could be modified to meet the new standards agreed at this meeting.'' (ICAO, CAEP, Sixth Meeting, Montreal, Quebec, February 2–12, 2004, Report, Letter of Transmittal to the President of the Council From the Chairman of the Sixth Meeting of CAEP, CAEP/6–WP/57, Report on Agenda Item 1, pages 1–13.)

[87] ICAO, CAEP/6, Information Paper 28—Appendix B, ''FESG Economic Assessment of Applying a Production Cut-off to the CAEP/4 NO_X Standard'' Presented by the FESG Rapporteur, January 29, 2004 (Same as CAEP–SG20031–IP/9, which was presented at June 10, 2003 CAEP Steering Group Meeting). A copy of this document can be found in Docket No. OAR–2002–30.

[88] ICAO, CAEP/6, Information Paper 28—Appendix B, ''FESG Economic Assessment of Applying a Production Cut-off to the CAEP/4 NO_X Standard'' Presented by the FESG Rapporteur, January 29, 2004 (Same as CAEP–SG20031–IP/9, which was presented at June 10, 2003 CAEP Steering Group Meeting). A copy of this document can be found in Docket No. OAR–2002–30.

[89] International Civil Aviation Organization (ICAO), Aircraft Engine Exhaust Emissions Data Bank, July 26, 2004. This data bank is available at *http://www.caa.co.uk/default.aspx?categoryid=702&pagetype=90*. In addition, a copy of a table including data of engine NO_X emissions from the ICAO data bank and their margin to today's NO_X standards can be found in Docket OAR–2002–0030.

and in-production engine models in the Data Bank) currently meet or perform better than the standards we are adopting today.[90] (See Figure III.B–1 below for a comparison of the NO_X emission levels of current in-production engines to the CAEP/4 NO_X standards.[91]) At the time the CAEP/4 NO_X standards were adopted in 1998, all but 11 in-production engines and 5 newly designed engine models (these 5 engines were in the design and development process in 1998) had NO_X emission levels that would perform better than the CAEP/4 standards.[92] Today, nearly all of the engines that did not meet the CAEP/4 NO_X standard in 1998 now comply, except for the JT8D–200 engine family.[93] The other engine models have either, through additional testing or modifications, been improved to meet the standards or the engines are no longer in-production. Although, as described earlier, the ICAO Data Bank shows that eight engine models or three different Pratt and Whitney engine types or families do not meet the NO_X standards, we now know that except for the JT8D–217 and JT8D–219, six of the engine models or two of the engine types are compliant.

(The above reference for the fleet fraction is BACK Aviation Solutions, *http://www.backaviation.com/Information_Services/default.htm.*

The domestic flight information is based on SAGE, the System for Assessing Aviation Emissions. SAGE is an FAA model that estimates aircraft emissions through the full flight profile using non-proprietary input data, such as BACK, FAA's Enhanced Traffic Management System (ETMS), and the Official Airline Guide (OAG). The year 2000 air traffic movements database portion of SAGE was used to estimate the number of flights using the subject engines.)

The PW4090 family of engines (PW4077D, PW4084D, and PW4090) now has the means to eventually meet the standards utilizing technology that would meet the lower ranges of stringency options for the NO_X standards considered at CAEP/6, although the manufacturer has projected it would be some years before it expects to meet CAEP/6 levels (the manufacturer has not provided us with a projected necessary lead-time to meet CAEP/4). The engine family that includes the PW4164, PW4168 and PW4168A engines is now certified with the PW 4168 Technologically Affordable Low NO_X (Talon) II engine combustor technology, which performs significantly better than the CAEP/4 standards. Also, the JT8D–200 engine powers the MD–80 aircraft, which is no longer in production. Yet, the JT8D–200 engine (JT8D–217C and JT8D–219 in-production engines) could potentially apply to future supersonic business jets. As stated in the proposal, the resulting NO_X emission benefits of applying the standards to the JT8D–200 (for these possible supersonic business jets) would be expected to be very small, and the costs would also likely be relatively small on an industry wide basis, although as discussed further below we do not feel we have a sufficient record at this point—nor have we presented it for public comment—to state our definitive views on these issues. However, the direct (development) costs would most likely be borne by one engine manufacturer.[94] As discussed in the proposal, there is only one remaining newly designed engine model—out of the five identified in 1998—that would be certified after 2003, and it also has been made compliant with today's or CAEP/4 NO_X standards.[95]

In addition, as we indicated in the proposal, if an already certified engine design meets the standards that we are adopting today, then it is unlikely that either existing or future engine designs built to that design or type (derivatives or thrust variants with the same build standard) would not meet these standards. However, we may have been imprecise by stating in the proposal that when design modifications are made to an existing engine type, then this engine type would likely need to be recertified. Derivative versions of engines are not typically required to meet new standards for newly certified (and newly designed) engines, but they usually need to comply with the same standards as were applied to the original engine model.[96] [97] Thus, derivative versions of engines typically do not need to be recertified. However, an engine type that does need to recertified will be required to comply with the CAEP/4 and today's NO_X standards.

[90] Based on the ICAO Data Bank, 151 out of 159 (95 percent) engine models that are currently in production perform better than the CAEP/4 NO_X standards. The 8 engine models (which are mid- and high-thrust engines) that are not achieving the CAEP/4 NO_X standards are from three different Pratt and Whitney (PW) engine types or families (engines and their thrust variants with the same build standard). These engines are the following: (1) JT8D–217C E-kit and JT8D–219 E-kit; (2) PW4077D, PW4084D, and PW4090; and (3) PW4164, PW4168, and PW4168A. (See Figure III.B–1 below that specifically shows these 8 in-production models in relation to the CAEP/4 or proposed NO_X standards.) For the year 2000, these 8 engine models were found on approximately 751 out of 20,137 (3.7 percent) aircraft owned by U.S. carriers and accounted for approximately 1,541,172 out of 11,505,063 (13.4 percent) of U.S. domestic flights.

[91] For Figure III.B–1, the Allison, Pratt and Whitney (does not include JT8D–217C E-kit and JT8D–219 E-kit), Rolls-Royce, and Textron Lycoming engines with rated pressure ratios less than or equal to 20 and NO_X levels above the CAEP/4 NO_X standards actually perform better than the standards, since there are different CAEP/4 NO_X standards for these low-thrust engines (see section III.A.3 for further discussion of NO_X standards for low thrust engines). (47 of the 159 engines, 30 percent of engine models in production, in Figure IV.B–1 and the ICAO Aircraft Engine Exhaust Emissions Data Bank are low-thrust engines—engines with thrust greater than 26.7 kN but not more than 89 kN.)

[92] ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of Forecasting and Economic Analysis Support Group (FESG), Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II, See Table 3.1 of paper. A copy of this paper can be found in Docket OAR–2002–0030.

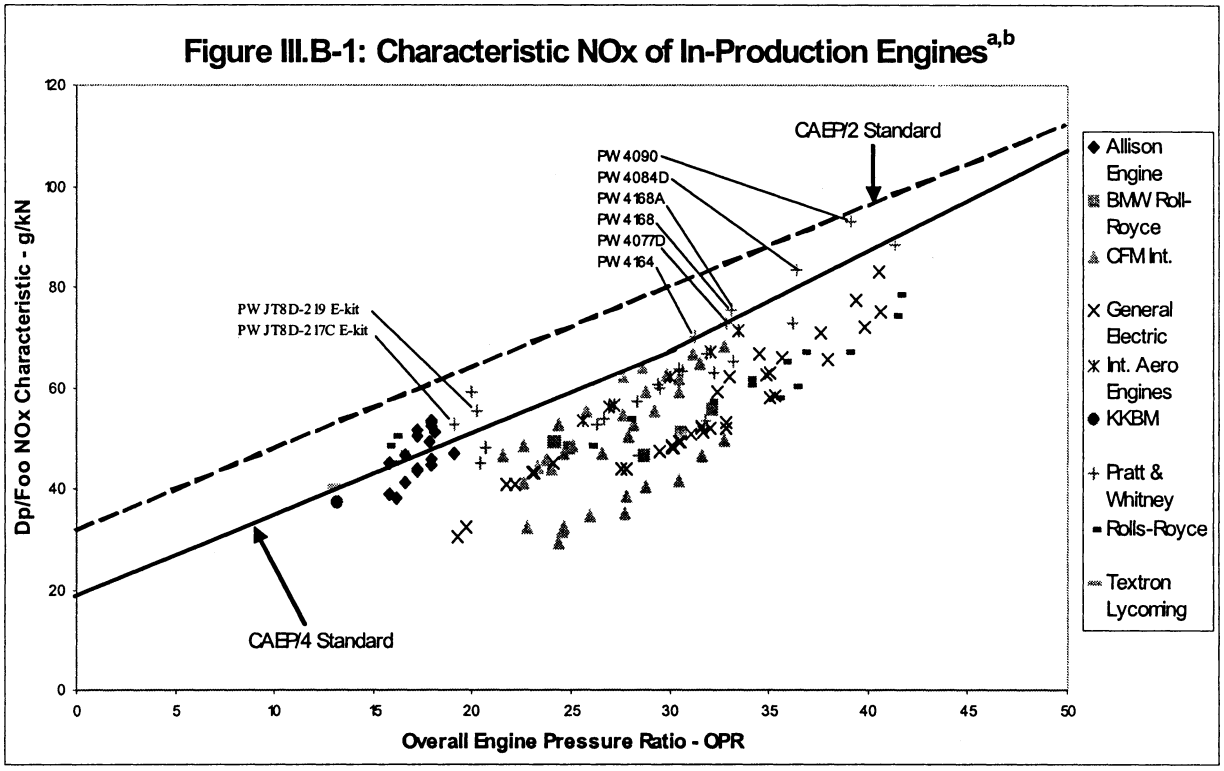
[93] ICAO, CAEP/6, Working Paper 34, ''NO_X Production Cut-off Consideration,'' Presented by the International Coordinating Council of Aerospace Industries Associations (ICCAIA), January 6, 2004. A copy of this document can be found in Docket No. OAR–2002–30.

[94] ICAO, CAEP/6, Information Paper 28—Appendix B, ''FESG Economic Assessment of Applying a Production Cut-off to the CAEP/4 NO_X Standard'' Presented by the FESG Rapporteur, January 29, 2004 (Same as CAEP–SG20031–IP/9, which was presented at June 10, 2003 CAEP Steering Group Meeting). A copy of this document can be found in Docket No. OAR–2002–30.

[95] The PW Canada growth engines are the one remaining type of newly designed engines. The ICAO Aircraft Engine Exhaust Emissions Data Bank currently does not have emissions certification data for such an engine, but Working Paper 34 presented at CAEP/6 indicated it would be compliant. (ICAO, CAEP/6, Working Paper 34, ''NO_X Production Cut-off Consideration,'' Presented by the International Coordinating Council of Aerospace Industries Associations (ICCAIA), January 6, 2004. A copy of this document can be found in Docket No. OAR–2002–30.)

[96] ICAO, CAEP/4, Information Paper 3, ''Clarification of the Definition of Derivative Version,'' Agenda Item 4—Future Work, Presented by United States, April 3, 1998. A copy of this document can be found in Docket No. OAR–2002–30.

[97] Chapter 1 of Part I of the ICAO Annex 16, Volume II, Aircraft Engine Emissions, defines derivative version as follows: ''an aircraft gas turbine engine of the same generic family as an originally type-certificated engine and having features which retain the basic core engine and combustor design of the original model and for which other factors, as judged by the certificating authority, have not changed.''



2. What Are the Issues With Applying Today's NO_X Standards to Newly Manufactured Engines of Already Certified Models?

One commenter expressed that EPA conceded in the proposed rule that it has historically applied aircraft emission standards to newly manufactured engines of already certified models, and doing so this time would prohibit the indefinite continued production of aircraft engines that would meet only the previous standards. ''EPA does not explain why it is proposing a sudden departure from the past practice of regulating already certified, newly manufactured engines—*i.e.*, what is different about this particular rulemaking that justifies the exemption of such engines.'' With the long life of aircraft engines and the availability of newly manufactured engines of already certified models in the future, there is a need to apply the proposed NO_X standards to this category of aircraft engines.

State and local governments recommended that the standards for newly manufactured engines of already certified models should be implemented one year after the effective date of the final rulemaking. At a minimum, EPA should have an implementation date that prohibits engine manufacturers from selling already certified engines unless the engines were recertified or redesigned to meet the proposed standards. Such a provision would be consistent with a stated objective of the rulemaking, which is to assure that progress in reducing aircraft engine emissions is not reversed in the future. Without such standards high-emitting engines can continue to be produced and brought into service, further adding to the long-term growth in aircraft emissions that is anticipated without a more aggressive approach to regulating this source.

Airlines commented that as the proposal acknowledges, market incentives lead manufacturers to bring their engines to the levels of the CAEP/4 NO_X standards as soon as possible once the standards take effect. Airlines investing in costly, long-lasting assets prefer to buy engines that meet the latest standards, and demand engines that perform better than the standard without regulatory intervention of a production cut-off (applying standards to newly manufactured engines of already certified models). Such market forces together with EPA's four-year delay in proposing to adopt the CAEP/4 NO_X standards, account for the fact that 94 percent of in-production engines already meet the standard.

In addition, airlines expressed that for the same reasons that the Agency should generally align with ICAO standards, it should be consistent with ICAO on whether to apply CAEP/4 standards to newly manufactured engines of already certified models. If EPA differed from ICAO on this provision, there would be the very inconsistency between domestic and international practice that aligning with ICAO requirements avoids. Furthermore, if EPA adopts such a provision prior to ICAO, such action would potentially place U.S. manufacturers and airlines at a competitive disadvantage for what EPA acknowledges to be minimal environmental benefit.

In addition, one airline expressed that it presently has the JT8D–219 engine on some of its commercial jets. The proposal indicated that the JT8D–219 would be used in supersonic business jets, which the airline does not operate; however, it (and maybe other domestic airlines) operates this engine in our commercial aircraft fleet. Therefore, the implication of these provisions has not been fully investigated by EPA as mandated by the CAA. (See the Summary and Analysis of Comments for this rulemaking for further discussion of comments.)

In response, as indicated earlier, the implementation date applicable to newly designed and certified engines under CAEP/4, December 31, 2003, has already occurred for the CAEP/4 standards, and at this late date to promulgate a provision to apply today's standards to newly manufactured engines of already certified models (a production cut-off) could be disruptive to the production planning of engine

manufacturers. EPA and ICAO (as we mentioned in the proposal and as one commenter noted in its comments) have historically adopted production cut-offs for previous standards, but in today's unique case the lateness of the rule may not provide manufacturers enough lead time for such planning. However, as we discussed earlier, we intend to consider more stringent NO_X standards in a future rulemaking, and similar to CAEP/6's future plans described above, we also intend to consider applying more stringent standards to newly manufactured engines of already certified models for such a future rulemaking. This provision is an important issue that we expect to fully consider for future standards.

While we solicited comment on extending the CAEP/4 standards to newly manufactured engines of already certified models, we did not develop a record that fully analyzes the emissions benefits (if any) and the implementation costs of going beyond CAEP in this manner. Therefore, the public has not been provided an opportunity to analyze and comment upon these important factors. We believe that our analysis of these factors would need to be weighed through a notice-and-comment process in determining whether a production cut-off, with a specific lead-time period, would be appropriate under CAA section 231 in this case. Particularly regarding the cost of compliance within necessary lead-time issue, we are concerned that there is insufficient data that specifically addresses the appropriate lead time for subjecting the few remaining in-production engine models to the CAEP/4 standards, and that our selection of a production cut-off date could therefore be viewed as arbitrarily chosen.

Since we have not yet provided that opportunity for public comment on our analysis of this issue, and since attempting to do so now would in our view unacceptably slow down this rulemaking, in the interests of expediency and of bringing U.S. domestic law into conformity with our obligations under the Chicago Convention (albeit tardily), we have decided that the most appropriate course for now, under CAA section 231 (a), is to simply update our regulations to track CAEP/4 in terms of both stringency levels and scope of applicability. Similarly, without having developed the necessary record and analysis, at this time we are unable to respond to the substantive comments offered by commenters regarding the production-cutoff issue, and our decision today should in no way be viewed as either endorsing or rejecting the concept of a production cut-off. Given the need to quickly promulgate standards that are at least as stringent as CAEP/4, we must decline to resolve the numerous issues raised either in favor of or in opposition to applying the CAEP/4 standards to newly manufactured engines of already certified models.

IV. Amendments to Criteria on Calibration and Test Gases for Gaseous Emissions Test and Measurement Procedures

In today's rulemaking, EPA will incorporate by reference ICAO's 1997 amendments to the criteria on calibration and test gases for the test procedures of gaseous emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' Second Edition, July 1993; Amendment 3, March 20, 1997, Appendices 3 and 5) in 40 CFR 87.64. ICAO's amendments, which became effective on March 20, 1997, apply to subsonic (newly certified and newly manufactured engines [98]) and supersonic gas turbine engines. The technical changes will correct a few inconsistencies between the specifications for carbon dioxide (CO_2) analyzers (Attachment B of Appendices 3 and 5) and the calibration and test gases (Attachment D of Appendices 3 and 5) of gaseous emissions. The test procedure amendments incorporated by reference will be effective 30 days after the publication of the final rule.

For CAEP/3 in 1995, the Russian Federation presented a working paper entitled, ''Corrections to Annex 16, Volume II,'' that stated the following: [99]

> According to CAEP/2 recommendations, in the list of calibration and test gases (see the table in Attachment of Appendices 3 and 5) ''CO_2 in N_2'' was replaced with ''CO_2 in air'' gas. At the same time the following sub-paragraph was newly introduced into Attachment B (Appendices 3 and 5) :
>
> (g) The effect of oxygen (O_2) on the CO_2 analyzer response shall be checked. For a change from 0 percent O_2 to 21 percent O_2 the response of a given CO_2 concentration shall not change by more than 2 per cent of reading. If this limit cannot be met an appropriate correction factor shall be applied.
>
> Since the best way to carry out this checking procedure is to calibrate the analyzer first with CO_2 in nitrogen and then with CO_2 in air, both ''CO_2 in N_2'' and ''CO_2 in air'' gases have to be retained in the list. It seems then that ''CO in air,'' ''CO_2 in air,'' ''NO in N_2'' and now ''CO_2 in N_2'' have to be replaced with ''CO in zero air,'' ''CO_2 in zero air,'' ''CO_2 in zero nitrogen'' and ''NO in zero nitrogen'' just by analogy with the gaseous mixtures of different hydrocarbons diluted by zero air and listed in the same table.

In addition, at CAEP/3 the United Kingdom then presented a working paper on this same issue.[100] They indicated that CAEP's Working Group 3 (Emissions Working Group) had accepted the above proposals of the Russian Federation paper on correcting inconsistencies in the list of calibration and test gases specified in Annex 16, Volume II, Attachment D to Appendices 3 and 5, and Working Group 3 had recommended that these proposals be presented at CAEP/3. The United Kingdom also recommended the adoption of these Russian Federation proposals—to utilize CO_2 in nitrogen gas mixture to check the effect of oxygen on CO_2 analyzers. In addition, they recommended the specification of all calibration and test gases required for all the gaseous emissions tests required in Annex 16.

At CAEP/3, the CAEP members agreed that the above amendments to the calibration and test gases were justified, and thus, these amendments were then adopted.[101] Today, EPA will incorporate by reference the amendments to the criteria on calibration and test gases for the test procedures of gaseous emissions, because the changes improve the test procedures by correcting inconsistencies and distinguishing between calibration and test gases. The amendments will include the following: (1) Listing all calibration gases separately from test gases for HC, CO_2, CO and NO_X analyzers, (2) changing ''N_2'' to ''zero nitrogen'' in relation to the test gases for the HC and NO_X analyzers, (3) adding ''CO_2 in zero nitrogen'' as a test gas for CO_2 analyzer, (4) changing ''air'' to ''zero air'' in relation to the test gas for CO and CO_2 analyzers, (5) revising the accuracy to ''± 1 percent'' for the ''propane in zero air''

[98] Such engines include newly manufactured engines of already certified models.

[99] Russian Federation, ''Corrections to Annex 16, Volume II,'' Agenda Item 2: Review of reports of working groups relating to engine emissions and the development of recommendations to the Council thereon, Working Paper 19, Presented by A.A. Gorbatko, November 11, 1995 (distributed November 30, 1995), CAEP/3, Montreal, December 5 to 15, 1995. A copy of this paper can be found in Docket OAR–2002–0030.

[100] United Kingdom, ''Amendments to Annex 16, Volume II, Attachment D to Appendices 3 and 5 (Calibration and Test Gases),'' Agenda Item 2: Review of reports of working groups relating to engine emissions and the development of recommendations to the Council thereon, Working Paper 20, Presented by M.E. Wright, November 14, 1995 (distributed November 30, 1995), CAEP/3, Montreal, December 5 to 15, 1995. A copy of this paper can be found in Docket OAR–2002–0030.

[101] ICAO/CAEP, Report of Third Meeting, Montreal, Quebec, December 5–15, 1995, Document 9675, CAEP/3. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

test gas of HC analyzer, (6) amending the accuracy to ''± 1 percent'' for the ''CO_2 in zero air'' test gas of CO_2 analyzer, (7) adding the accuracy ''± 1 percent'' for the ''CO_2 in zero nitrogen'' test gas of CO_2 analyzer, (8) changing accuracy to ''± 1 percent'' for test gas of CO analyzer, and (9) revising accuracy to ''± 1 percent'' for test gas of NO_X analyzer.

Manufacturers are already voluntarily complying with ICAO's 1997 amendments to the criteria on calibration and test gases for the test procedures of gaseous emissions. Thus, formal adoption of these ICAO test procedure amendments will require no new action by manufacturers. In addition, the existence of ICAO's requirements will ensure that the costs of compliance (as well as the air quality impact) with these test procedures will be minimal. (In the 1982 and 1997 final rules on aircraft engine emissions (47 FR 58462, December 30, 1982 and 62 FR 25356, May 8, 1997, respectively), EPA incorporated by reference the then-existing ICAO testing and measurement procedures for aircraft engine emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' First and Second Editions, Appendices 3 and 5 were incorporated by reference in 40 CFR 87.64) in order to eliminate confusion over minor differences in procedures for demonstrating compliance with the U.S. and ICAO standards.)

V. Correction of Exemptions for Very Low Production Models

Because of an editorial error, the section in the aircraft engine emission regulations regarding exemptions for very low production models is incorrectly specified (see section 40 CFR 87.7(b)(1) and (2)). In the October 18, 1984 final rulemaking (49 FR 41000), EPA intended to amend the low production engine provisions of the aircraft regulations by revising paragraph (b) and deleting paragraphs (b)(1) and (b)(2) in order to eliminate the maximum annual production limit of 20 engines per year. In the revisions to paragraph (b), EPA retained the maximum total production limit of 200 units for aircraft models certified after January 1, 1984.[102] For § 87.7(b), today, EPA will correct this editorial error by eliminating paragraph (b)(1) and (b)(2).

As discussed further in the 1984 final rulemaking, this action will provide more flexibility for engine manufacturers in scheduling during the last few engine production years. Also, the air quality impact of eliminating the annual production limit will be very small.

VI. Coordination With FAA

The requirements contained in this action are being promulgated after consultation with the Federal Aviation Administration (FAA). Section 231(a)(2)(B)(i) of the CAA requires EPA to ''consult with the Administrator of the [FAA] on aircraft engine emission standards'' 42 U.S.C. 7571(a)(2)(B)(i), and section 231(a)(2)(B)(ii) indicates that EPA ''shall not change the aircraft engine emission standards if such change would significantly increase noise * * *.'' 42 U.S.C. 7571(a)(2)(B)(ii). Section 231(b) of the CAA states that ''[a]ny regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' 42 U.S.C. 7571(b). Section 231(c) provides that any regulation under section 231 ''shall not apply if disapproved by the President * * * on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety.'' 42 U.S.C. 7571(c). Under section 232 of the CAA, the Department of Transportation (DOT) has the responsibility to enforce the aircraft emission standards established by EPA under section 231.[103] As in past rulemakings and pursuant to the above referenced sections of the CAA, EPA has coordinated with the FAA of the DOT with respect to today's action.

Moreover, FAA is the official U.S. delegate to ICAO. FAA agreed to the 1997 and 1999 amendments at ICAO's Third and Fourth Meetings of the Committee on Aviation Environmental Protection (CAEP/3 and CAEP/4) after advisement from EPA.[104] FAA and EPA were both members of the CAEP's Working Group 3 (among others), whose objective was to evaluate emissions technical issues and develop recommendations on such issues for CAEP/3 and CAEP/4. After assessing emissions test procedure amendments and new NO_X standards, Working Group 3 made recommendations to CAEP on these elements. These recommendations were then considered at the CAEP/3 and CAEP/4 meetings, respectively, prior to their adoption by ICAO in 1997 and 1999.

In addition, as discussed above, FAA will have the responsibility to enforce today's requirements. As a part of its compliance responsibilities, FAA conducts the emission tests or delegates that responsibility to the engine manufacturer, which is then monitored by the FAA. Since the FAA does not have the resources or the funding to test engines, FAA selects engineers at each plant to serve as representatives (called designated engineering representatives (DERs)) for the FAA while the manufacturer performs the test procedures. DERs' responsibilities include evaluating the test plan, the test engine, the test equipment, and the final testing report sent to FAA. DERs' responsibilities are determined by the FAA and today's rulemaking will not affect their duties.

VII. Possible Future Aviation Emission Reductions (EPA/FAA Voluntary Aviation Emissions Reduction Initiative)

As discussed in the proposal, there is growing interest, particularly at the state and local level, in addressing emissions from aircraft and other aviation-related sources. Such interest is often related to plans for airport expansion which is occurring across the country. It is possible that other approaches may provide effective avenues to achieve additional aviation emission reductions, beyond EPA establishing aircraft engine emission standards.

Concerns by state and local air agencies and environmental and public health organizations about aviation emissions, led to EPA and FAA signing a memorandum of understanding (MOU) in March 1998 agreeing to work to identify efforts that could reduce aviation emissions.[105] FAA and EPA participated in a national stakeholder initiative led by states and industry whose goal was to develop a voluntary program to reduce pollutants from aircraft and other aviation sources that

[102] This action was taken in 1984 to provide greater flexibility to manufacturers for scheduling engine production rates during the final years.

[103] The functions of the Secretary of Transportation under part B of title II of the Clean Air Act (§§ 231–234, 42 U.S.C. 7571–7574) have been delegated to the Administrator of the FAA. 49 CFR 1.47(g).

[104] The Third Meeting of CAEP (CAEP/3) occurred in Montreal, Quebec from December 5 through 15 in 1995. CAEP/4 took place in Montreal from April 6 through 8, 1998.

[105] FAA and EPA, ''Agreement Between Federal Aviation Administration and Environmental Protection Agency Regarding Environmental Matters Relation to Aviation,'' signed on March 24, 1998 by FAA's Acting Assistant Administrator for Policy, Planning, and International Aviation, Louise Maillet, and EPA's Acting Assistant Administrator for Air and Radiation, Richard Wilson. A copy of this document can be found in Docket OAR–2002–0030.

contribute to local and regional air pollution in the United States. The major stakeholders that participated in this initiative included representatives of the aviation industry (passenger and cargo airlines and engine manufacturers), airports, state and local air pollution control officials, environmental organizations, and NASA.

Initially, the discussions with stakeholders focused on the prospect of aircraft engine emission reduction retrofit kits, which might be applied to certain existing aircraft engines.[106] However, as the initiative evolved, the focus was expanded by the stakeholders to identify strategies for various types of ground service equipment (GSE) in use at airports,[107] in addition to strategies to reduce aircraft emissions.[108] (At the same time, FAA developed a program, with Congressional approval, to fund conversion of airport infrastructure and ground support vehicles to alternative fuels technologies.[109]) Unfortunately, the state and industry stakeholders did not reach consensus on a national aviation emissions reduction program. The Agencies are currently contemplating next steps following from the national stakeholder initiative and discussions of potential voluntary programs.

In addition, in the proposal EPA invited comment on the national stakeholder initiative and any other approaches for aviation emission reductions, and we received many suggestions from commenters. We may consider these suggested approaches during our current reflection on the stakeholder initiative and for future voluntary programs.

Finally, FAA has two other initiatives that will assist in addressing concerns with respect to emissions from aircraft. First, in September 2003 it created a Center of Excellence—Partnership for Reduction of Air Transportation Noise and Emissions Reduction (PARTNER)—a consortium of 8 universities, 29 industry representatives as well as NASA and Transport Canada-to develop new approaches and solutions to reduce aviation's environmental impacts. Second, with the assistance of the National Academy of Sciences, FAA is developing the next generation of aviation noise and emissions models and analytical tools improve measurement, understanding, and targeted solutions. See the Summary and Analysis of Comments for further discussion of approaches to additional aviation emission reductions.

VIII. Regulatory Impacts

Aircraft engines are international commodities, and thus, they are designed to meet international standards. Today's action will have the benefit of establishing consistency between U.S. and international emission standards and test procedures. Thus, an emission certification test which meets U.S. requirements will also be applicable to all ICAO requirements. Engine manufacturers are already developing improved technology in response to the ICAO standards that match standards promulgated here, and EPA does not believe that the costs incurred by the aircraft industry as a result of the existing ICAO standards should be attributed to today's regulations. Also, the test procedure amendments (revisions to criteria on calibration and test gases) necessary to determine compliance are already being adhered to by manufacturers during current engine certification tests. Therefore, EPA believes that today's regulations will impose no additional burden on manufacturers.

The existence of ICAO's requirements results in minimal cost as well as air quality benefits from today's requirements.[110] Since aircraft and aircraft engines are international commodities, there is commercial benefit to consistency between U.S. and international emission standards and control program requirements. Also, the adoption of the ICAO standards and related test procedures is consistent with our treaty obligations.

IX. Public Participation

A number of interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on September 30, 2003 (68 FR 56226). We considered these comments in developing the final rule. In addition, we held a public hearing on the proposed rulemaking on November 13, 2003, and we have considered comments presented at the hearing.

We have prepared a detailed Summary and Analysis of Comments document, which describes comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the e-docket for this rule, as well as on the Office of Transportation and Air Quality homepage (*http://www.epa.gov/otaq/aviation.htm*). In addition, comments and responses for key issues are included throughout this preamble.

X. Statutory Provisions and Legal Authority

The statutory authority for today's proposal is provided by sections 231 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7571 and 7601(a). See section II of today's rule for discussion of how EPA meets the CAA's statutory requirements.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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[106] Two engine models were indeed certificated with emissions retrofit kits, and a number of these engines have been purchased for aircraft with the retrofit kits installed in their stock configuration. However, retrofit kits have not to date provided widescale emissions improvements because it seems they may have limited applicability to certain engine types, small emission benefits, and cost issues.

[107] The stakeholders considered the impact, operation and design of GSE at airports, and whether to undertake projects at several airports to reduce overall emissions.

[108] Operational strategies, such as reducing the time in which aircraft are in idle and taxi modes and the impact of auxiliary power units (APUs) were also considered.

[109] The Vision 100-Century of Aviation Reauthorization Act, signed into law on December 12, 2003 (Pub. L. 108–176), directs the FAA to establish a national program to reduce airport ground emissions at commercial service airports located in air quality nonattainment and maintenance areas. The new Voluntary Airport Low Emissions (VALE) program will allow airport sponsors to use the Airport Improvement Program (AIP) and Passenger Facility Charges (PFCs) to finance low-emission vehicles, refueling and recharging stations, gate electrification, and other airport air quality improvements. *See* the FAA website located at *http://www.faa.gov/arp/environmental/vale.*

[110] CAEP's Forecasting and Economic Analysis Support Group (FESG) concluded at CAEP/4 that their assessment of these new NO_X standards indicates that the direct costs of the standards would be minimal, and the benefits would be modest. (ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of FESG, Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II. A copy of this paper can be found in Docket OAR–2002–0030.

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any reporting and recordkeeping requirements associated with these standards would be defined by the Secretary of Transportation in enforcement regulations issued later under the provisions of section 232 of the Clean Air Act. Since most if not all manufacturers already measure NO_X and report the results to the FAA, any additional reporting and record keeping requirements associated with FAA enforcement of today's regulations would likely be very small.

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

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

C. Regulatory Flexibility Analysis

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following Table XI–C–1 provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE XI–C–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION

Industry	NAICS [a] codes	Defined by SBA as a small business if: [b]
Manufacturers of new aircraft engines	336412	< 1,000 employees.
Manufacturers of new aircraft	336411	< 1,500 employees.

[a] North American Industry Classification System (NAICS).

[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. Our review of the list of manufacturers of commercial aircraft gas turbine engines with rated thrust greater than 26.7 kN and manufacturers of aircraft with such engines indicates that there are no U.S. manufacturers that qualify as small businesses. We are unaware of any foreign manufacturers with a U.S.-based facility that will qualify as a small business.

As discussed earlier, today's action will codify emission standards that manufacturers currently adhere to (nearly all in-production engines already meet the standards). These standards are equivalent to the ICAO international consensus standards. Today's emission standards will not impose any additional burden on manufacturers because they are already designing engines to meet the ICAO standards. Also, the test procedure amendments (revisions to criteria on calibration and test gases) necessary to determine compliance are already being adhered to by manufacturers during current engine certification tests.

D. Unfunded Mandates Reform Act

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

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local, or tribal governments, in the aggregate or the private sector in any one year. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Today's action will codify emission standards that manufacturers currently adhere to (nearly all in-production engines already meet the standards). These standards are equivalent to the ICAO international consensus standards. Today's emission standards will not impose any additional burden on manufacturers because they are already designing new engines to meet the ICAO standards. Thus, the annual effect on the economy of today's standards will be minimal. Today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

Today's rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As discussed earlier, section 233 of the CAA preempts states from adopting or enforcing aircraft engine emission standards that are not identical to our standards. This rule merely modifies existing EPA aircraft engine emission standards and test procedures and therefore will merely continue an existing preemption of State and local law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This rule does not have tribal implications, as specified in Executive Order 13175. The promulgated emission standards and other related requirements for private industry in this rule have national applicability and therefore do not uniquely affect the communities of Indian Tribal Governments. As discussed earlier, section 233 of the CAA preempts states from adopting or enforcing aircraft engine emission standards that are not identical to our standards. This final rule merely modifies existing EPA aircraft engine emission standards and test procedures and therefore will merely continue an existing preemption of State and local law. In addition, today's rule will be implemented at the Federal level and impose compliance obligations only on engine manufacturers. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. EPA believes that the NO_X emission reductions (NO_X is a precursor to the formation of ozone and PM) from this rulemaking will further improve air quality and will further improve children's health.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As discussed earlier, today's action will codify emission standards that manufacturers currently adhere to (nearly all in-production engines already meet the standards). These standards are equivalent to the ICAO international consensus standards. The final standards will have no likely adverse energy effects because manufacturers are already designing engines to meet the ICAO standards. Also, the test procedure amendments (revisions to criteria on calibration and test gases) necessary to determine compliance are already being adhered to by manufacturers during current engine certification tests. Thus, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

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

This final rulemaking involves technical standards for testing emissions for commercial aircraft gas turbine engines. EPA will use test procedures contained in ICAO International Standards and Recommended Practices Environmental Protection, with the modifications contained in this

rulemaking.[111] These procedures are currently used by all manufacturers of commercial aircraft gas turbine engines (with thrust greater than 26.7 kN) to demonstrate compliance with ICAO emissions standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 19, 2005.

List of Subjects in 40 CFR Part 87

Environmental protection, Air pollution control, Aircraft, Incorporation by reference.

Dated: November 9, 2005.

Stephen L. Johnson,

Administrator.

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

PART 87—CONTROL OF AIR POLLUTION FROM AIRCRAFT AND AIRCRAFT ENGINES

■ 1. The authority citation for part 87 continues to read as follows:

Authority: Secs. 231, 301(a), Clean Air Act, as amended (42 U.S.C 7571, 7601(a)).

Subpart A—[Amended]

■ 2. Section 87.7 is amended by removing paragraphs (b)(1) and (b)(2).

■ 3. A new § 87.8 is added to read as follows:

§ 87.8 Incorporation by reference.

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(a) *ICAO material.* Table 1 of § 87.8 lists material from the International Civil Aviation Organization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the International Civil Aviation Organization, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7. Table 1 follows:

TABLE 1 OF § 87.8.—ICAO MATERIALS

Document number and name	Part 87 reference
International Civil Aviation Organization Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, Including Amendment 3 of March 20, 1997 (as indicated in footnoted pages.).	87.8, 87.64, 87.71, 87.82, 87.89.

(b) [Reserved]

Subpart C—[Amended]

■ 4. Section 87.21 is amended by adding paragraphs (d)(1)(vi) and (d)(1)(vii) to read as follows:

§ 87.21 Standards for exhaust emissions.

* * * * *

(d) * * *

(1) * * *

(vi) Engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 2003:

(A) Engines with a rated pressure ratio of 30 or less:

(*1*) Engines with a maximum rated output greater than 89 kilonewtons:

Oxides of Nitrogen: (19 + 1.6(rPR)) grams/kilonewtons rO.

(*2*) Engines with a maximum rated output greater than 26.7 kilonewtons but not greater than 89 kilonewtons:

Oxides of Nitrogen: (37.572 + 1.6(rPR) − 0.2087(rO)) grams/kilonewtons rO.

(B) Engines with a rated pressure ratio greater than 30 but less than 62.5:

(*1*) Engines with a maximum rated output greater than 89 kilonewtons:

Oxides of Nitrogen: (7 + 2(rPR)) grams/kilonewtons rO.

(*2*) Engines with a maximum rated output greater than 26.7 kilonewtons but not greater than 89 kilonewtons:

Oxides of Nitrogen: (42.71 + 1.4286(rPR) − 0.4013(rO) + 0.00642(rPR × rO)) grams/kilonewtons rO.

(C) Engines with a rated pressure ratio of 62.5 or more:

Oxides of Nitrogen: (32 + 1.6(rPR)) grams/kilonewtons rO.

(vii) The emission standards prescribed in paragraph (d)(1)(vi) of this section shall apply as prescribed beginning December 19, 2005.

* * * * *

Subpart G—[Amended]

■ 5. Section 87.64 is revised to read as follows:

§ 87.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be as specified by Appendices 3 and 5 to ICAO Annex 16 (incorporated by reference in § 87.8).

■ 6. Section 87.71 is revised to read as follows:

§ 87.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated in § 87.64 with the applicable emission standard under this part. An acceptable alternative to testing every

[111] ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' Second Edition, July 1993—Amendment 3, March 20, 1997. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

engine is described in Appendix 6 to ICAO Annex 16 (incorporated by reference in § 87.8). Other methods of demonstrating compliance may be approved by the Secretary with the concurrence of the Administrator.

Subpart H—[Amended]

■ 7. Section 87.82 is revised to read as follows:

§ 87.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified by Appendix 2 to ICAO Annex 16 (incorporated by reference in § 87.8).

■ 8. Section 87.89 is revised to read as follows:

§ 87.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16 (incorporated by reference in § 87.8).

[FR Doc. 05–22704 Filed 11–16–05; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO 630–1610–EI–25–2Z]

RIN 1004–AD77

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Proper Offices for Recording of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the Arizona State Office of the Bureau of Land Management (BLM), which moved on October 5, 2005. All filings and other documents relating to public lands in Arizona must be filed at the new address of the State Office.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION CONTACT: Diane Williams, Regulatory Affairs Group, (202) 452–5030. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; Attention: RIN 1004–AD77.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Matters

I. Background

This final rule reflects the administrative action of changing the address of the Arizona State Office of the BLM. It changes the street address for the personal filing of documents relating to public lands in Arizona, but makes no other changes in filing requirements. The BLM has determined that it has no substantive impact on the public, imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553 (b)(B) and 553 (d)(3) that notice and public comment procedures are unnecessary and that the rule may take effect upon publication.

II. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This final rule is an administrative action to change the address for one BLM State Office. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public.

National Environmental Policy Act

This final rule is a purely administrative regulatory action having no effect upon the public or the environment, it has been determined that the rule is categorically excluded from review under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. This final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule will not have a significant effect on the economy or small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). It should not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act of Act

The BLM has determined that the final rule is not significant under the Unfunded Mandates Reform Act of 1995 because it will not result in the expenditure by State, local, and tribal governments, in the aggregates, or by the private sector, of $100 million or more in any one year.

Further, the final rule will not significantly or uniquely affect small governments. It does not require action by any non-federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et. seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports an address change for the Arizona State Office. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The final rule does not have substantial direct effects on the States, on the relationship between the national governments and the States, or the distribution of power and the responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This final rule is a purely administrative regulatory action having no effects upon the public and will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that the rule does not include policies that have tribal implications. This final rule is a purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updating the BLM, Arizona State Office address included in the Code of Federal Regulations.

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

In accordance with the Executive Order 13211, the BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule is a purely administrative action and has no implications under Executive Order 13211.

Paperwork Reduction Act

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

Author

The principal author of this rule is Diane O. Williams, Regulatory Affairs Group (WO 630).

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure; Archives and records; Public lands.

Dated: October 28, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend section 1821.10 by amending paragraph (a) by revising the location and address of the Bureau of Land Management State Office in Arizona to read as follows:

§ 1821.10 Where are BLM offices located?

(a) * * *

STATE OFFICES AND AREAS OF JURISDICTION

* * * * *

Arizona State Office, One North Central Avenue, Phoenix, Arizona 85004–2203—Arizona.

* * * * *

[FR Doc. 05–22780 Filed 11–16–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 541, 543, and 545

[Docket No. NHTSA–05–21233; Notice 2]

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of the agency's newly expanded parts marking requirements. The Anti Car Theft Act of 1992 required NHTSA to conduct a rulemaking to extend the parts marking requirements of that Standard to all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less regardless of theft rate, unless the Attorney General found that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. The initial final rule extending the parts marking requirement was published in April of 2004. In May 2005, NHTSA responded to petitions for reconsideration of the April 2004 final rule and established a phase in schedule for the new requirements. We also decided to exclude vehicle lines with annual production of not more than 3,500 vehicles from the parts marking requirements because the benefits of marking these vehicle lines would be trivial or of no value.

The agency received a petition for reconsideration of the May 2005 final rule from International Association of Auto Theft Investigators. The petition asked the agency to reconsider the phase-in and small volume exclusion as it applied to large volume vehicle manufacturers. This document denies that petition because it did not provide sufficient information in support of their request to reconsider the May 2005 final rule.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may call Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, (Telephone: 202–366–0846) (Fax: 202–493–2290).

For legal issues, you may call George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION: On April 6, 2004, the agency published a final rule extending the anti-theft parts marking requirements (Part 541) to (1) all below median theft rate passenger cars and multipurpose passenger vehicles (MPVs) that have a gross vehicle weight rating (GVWR) of 6,000 pounds or less, and (2) all below median theft rate light duty trucks with a GVWR of 6,000 pounds or less and major parts that are interchangeable with a majority of the covered major parts of passenger cars or MPVs subject to the parts marking requirements.[1] (69 FR 17960) The Anti Car Theft Act of 1992 required this final rule unless the Attorney General made a finding that the extension would not substantially inhibit chop shop operations and motor vehicle thefts. The final rule is effective September 1, 2006.

On May 19, 2005, the agency published a final rule responding to petitions for reconsideration of the 2004

[1] Above median theft rate LDTs are still subject to the parts marking requirements. Below median theft rate LDTs which do not have major parts that are interchangeable are not subject to the requirements.

final rule.[2] Among other things, the May 2005 final rule excluded vehicle lines with annual production of not more than 3,500 vehicles from parts marking requirements because the benefits of marking these vehicle lines would be trivial or of no value. This exclusion applies to all vehicle manufacturers regardless of overall production volume. We also adopted a phase-in of the new parts marking requirements over a two-year period. Specifically, car lines representing not less than 50% of a manufacturer's production of vehicle lines that were not subject to parts marking requirements before September 1, 2006, must be marked effective September 1, 2006. The remaining vehicle lines must be marked effective September 1, 2007. Vehicle lines already subject to parts marking requirements are unaffected by this phase-in.

[2] See 70 FR 28843, Docket No. NHTSA–2005–21233.

The agency received a petition for reconsideration of the May 2005 final rule, from the International Association of Auto Theft Investigators. The petition asked the agency to reconsider the phase-in and the small volume exemption.

With regard to the phase-in, the petition provided no argument on why the agency should reconsider the phase-in. In deciding to adopt the phase-in, the agency balanced the benefits of parts marking against the practical burdens associated with implementing the expansion of parts marking. The agency decided to adopt the phase-in because the expanded time frame eliminates any argument about the practicability of expanding parts marking. The petitioner stated their objection to the phase-in, but provided no information indicating that the expansion would be practicable without it.

With regard to the small volume exemption, the petitioner argues that this is a ''Small Business Exemption,'' and that allowing large companies to claim such an exemption was not the intent of Congress. The agency's decision to exclude small volume vehicle lines was not based on the size of the manufacturer. Instead, the agency's decision was based on an analysis that the benefits of marking small volume vehicle lines would be *de minimis*. The petitioner provided no explanation as to why this analysis was incorrect.

For these reasons, the agency is denying the International Association of Auto Theft Investigators' petition. In accordance with 49 CFR part 553, this completes the agency review of the petition for reconsideration.

Issued on: November 10, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–22819 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 70, No. 221
Thursday, November 17, 2005

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–80]

Union of Concerned Scientists and San Luis Obispo Mothers for Peace; Partial Grant of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Partial grant.

SUMMARY: The Nuclear Regulatory Commission (NRC) is granting in part, a petition for rulemaking (PRM–50–80) submitted by the Union of Concerned Scientists (UCS) and San Luis Obispo Mothers for Peace (MFP). The petitioners requested two rulemaking actions in PRM–50–80. First, the petitioners requested the regulations establishing conditions of licenses and requirements for evaluating proposed changes, tests, and experiments for nuclear power plants be revised to require licensee evaluation of whether the proposed actions cause protection against radiological sabotage to be decreased and, if so, that the changes, tests, and experiments only be conducted with prior NRC approval. The NRC is contemplating a rulemaking action that would address the petitioners' request and, if issued as a final rule, essentially grant this portion of the petition. Second, the petitioners requested that regulations governing the licensing and operation of nuclear power plants be amended to require licensees to evaluate facilities against specified aerial hazards and make changes to provide reasonable assurance that the ability of the facility to reach and maintain safe shutdown will not be compromised by such aerial hazards. The NRC is deferring resolution of the second issue of the petition at this time. The NRC intends to address this issue when the NRC responds to comments on its proposed Design Basis Threat rule.

The petitioners further requested the Commission to suspend the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) proceeding during the NRC's consideration of PRM–50–80. That request was denied by Commission Memorandum and Order CLI–03–04, dated May 16, 2003.

ADDRESSES: Copies of the petition, the public comments received, and the NRC's letter of partial grant to the petitioner may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Public File Area O1F21, Rockville, Maryland. These documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For further information, contact the PDR reference staff at (800) 397–4209 or (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph L. Birmingham, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2829, e-mail *jlb4@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

The petition was sent to the NRC on April 28, 2003, and the notice of receipt of the petition and request for public comment was published in the **Federal Register** (FR) on June 16, 2003 (68 FR 35585). The public comment period ended on September 2, 2003. Four comments were received opposing the petition. No comments were received supporting the petition.

First Requested Action

The petitioners requested that 10 CFR 50.54(p), ''Conditions of licenses,'' and 10 CFR 50.59, ''Changes, tests, and experiments,'' be revised to require licensee evaluations of whether proposed changes, tests, and experiments cause protection against radiological sabotage to be decreased and, if so, that such activities only be conducted with prior NRC approval. The petitioners stated that the two regulations have minimal overlap and that many changes, tests, and experiments have no effect on security. However, some proposed changes, tests, and experiments, including those that are short-term or temporary, may affect plant security.

The petitioners stated that short-term degraded or off-normal conditions are often determined to be acceptable because of the low probability of an accident initiator during a short period of time. However, the petitioners stated that sabotage is not random and the saboteur or saboteurs may choose to act during the degraded or off-normal conditions. Therefore, the probability of sabotage occurring during degraded or off-normal conditions increases toward 100 percent. The petitioners asserted that it is reasonable to assume an insider acting alone or an insider aided by several outsiders will time the sabotage to coincide with a vulnerable plant configuration. Therefore, the petitioners requested that licensees be required to evaluate changes, tests, and experiments from both a safety and a security perspective. The petitioners suggested that the security review could flag a heightened vulnerability for a given change, but accept it (for temporary situations) based on compensatory measures (armed guards, etc.). The petitioners suggested the result would probably be that many licensee actions could proceed as planned, some could proceed with compensatory measures, a few would require NRC review, and a very small number might be denied.

Second Requested Action

The petitioners requested that 10 CFR part 50 be amended to require that licensees evaluate each facility against specified aerial hazards and make necessary changes to provide reasonable assurance that the ability of the facility to reach and maintain safe shutdown will not be compromised by an accidental or intentional aerial assault. The petitioners asserted that none of the nuclear power plants were designed to withstand suicide attacks from the air and that the fire hazards analysis process used by the NRC following the March 22, 1975, fire at the Browns Ferry reactor in Decatur, Alabama, should be implemented for aerial hazards.

The petitioners claimed that the Federal Aviation Administration (FAA)

no-fly zones established in late 2001 was a concession by the Federal government to the vulnerability of nuclear power plants to air assaults. The petitioners also asserted that the control buildings at nuclear power plants are outside of the robust concrete structures studied by the Nuclear Energy Institute (NEI) in their analyses of nuclear power plant vulnerability to aircraft crashes. The petitioners further asserted that 37 of 81 Operational Safeguards Response Evaluations (OSRE) conducted to the date of the petition identified significant weakness(es), and contended that the control building is the Achilles' heel in the OSRE target sets. The petitioners claimed that an aircraft hitting the control building may destroy the control elements for all four water supplies and much more. The petitioners asserted that the scope of the NRC-required fire hazards analyses are not restricted to containment and that this is a recognition that core damage can result from fires outside containment. The petitioners stated that licensees are required to show in their fire hazards analyses that there is enough equipment outside the control room for safe shutdown, and that these analyses have resulted in equipment and cable relocation. The petitioners further stated that the fire hazards analyses are ''living documents'' that future plant changes must be reviewed against.

The petitioners suggested that the way to ensure adequate protection from aerial threats is to replicate the fire hazards analysis process and that NRC should define the size and nature of the aerial threat that a plant must protect against as part of the design basis threat (DBT). The petitioners suggested the aerial threat should include, at a minimum, general aviation aircraft, because post-9/11 airport security measures generally overlook general aviation. The petitioners suggested the aerial threat include explosives delivered via mortars and other means (e.g., rocket propelled grenades). The petitioners further stated that, if the aerial hazards evaluation determines that all targets within a target set are likely to be disabled, the licensee should have three options:

(1) Add or install other equipment to the target set that is outside of the impact zone to perform the target set's function.

(2) Protect in place at least one of the targets (shield wall, etc.).

(3) Relocate or reroute affected portions of a system to be outside of the impact zone.

The petitioners also suggested the aerial hazards analysis should provide a means to ensure that future changes do not compromise protection and that whether arriving on foot or by air adversaries would not be able to neutralize an entire target set. The petitioners asserted that in 13 of 57 plant OSREs the adversary team did not enter containment in order to destroy every target in the target set, (27 of the OSREs simulated destruction of at least 1 target set). The petitioners further argued that if an aircraft had hit a nuclear power plant on September 11, 2001, then the approach set forth in the petition would have been undertaken as necessary to prevent recurrence. The petitioners suggested that these measures should be implemented to prevent occurrence in the first place.

Public Comment on the Petition

The NRC received four letters of public comment on PRM–50–80. All of the comments opposed the actions requested in the petition. The comments are described below.

The Aircraft Owners and Pilots Association (AOPA) stated that they oppose inclusion of general aviation aircraft in the DBT. AOPA described the actions taken to date by the Federal government and industry in terms of airport and aircraft security and current flight restrictions near nuclear power plants. AOPA also cited a report by Robert M. Jefferson, who concluded that general aviation aircraft are not a significant threat to nuclear power plants. The report is on the AOPA's Web site at *http://www.aopa.org/whatsnew/newsitems/2002/02–2–159_report.pdf.*

Tennessee Valley Authority (TVA), a nuclear power plant licensee, stated that the proposed change to 10 CFR 50.59 is inconsistent with the purpose of the regulation and that the DBT order already required revised physical security plans for the new DBT by April 29, 2004. The same commenter further stated that Sandia National Laboratories, in conjunction with NRC, has been performing vulnerability studies of aircraft impacts and that the NRC will promulgate changes to the regulations if they are needed.

A consortium of nuclear power plants, Strategic Teaming and Resource Sharing (STARS), stated that industry guidance in NEI 96–07, ''Guidelines for 10 CFR 50.59 Implementation,'' for performing 10 CFR 50.59 evaluations specifies that all applicable regulations be considered in those evaluations and that a required dual security review for all changes is unnecessary. STARS stated further that requirements to prevent radiological sabotage already exist in 10 CFR 50.34 (c) and (d), 50.54(p), part 73 and recent security orders. STARS further asserted that nuclear power plants have diverse, divided trains and shutdown capability. STARS asserted that NRC and industry studies of the effects of a large airborne object showed no massive releases of radiation. STARS concluded that an aircraft impact would pose no greater or different vulnerability than has already been analyzed.

NEI, an industry group representing all U.S. commercial nuclear power plants, plant designers, architect/engineering firms, and fuel cycle facilities, opposed the petition. NEI stated that industry guidance in NEI 96–07, ''Guidelines for 10 CFR 50.59 Implementation,'' already requires all applicable regulations to be considered in those evaluations and a required dual security review for all changes is unnecessary. NEI also argued that 10 CFR 50.59 and 50.54(p) are necessarily different in purpose. NEI further asserted that there is no direct correlation between security plan effectiveness and the plant condition. NEI also argued that the Federal Government, not the licensee, is responsible for protection of nuclear power plants from aircraft attacks. NEI further claimed that extensive aircraft impact analyses are not justified and cited an industry study of the risk from an armed terrorist ground attack that concluded there would be noncatastrophic consequences.

Reasons for NRC's Response

The NRC evaluated the advantages and disadvantages of the first action requested by the petition versus the attributes of the NRC Performance Goals. The NRC's conclusions are described below.

First Proposed Action

The NRC acknowledges that the requested rulemaking would help to ensure protection of public health and safety and the environment and help to ensure secure use and management of radioactive materials. The NRC notes that current regulations require nuclear power plant licensees to address the continued safety of the plant with regard to changes, tests, or experiments involving structures, systems, or components as described in the Final Safety Analysis Report (FSAR) (10 CFR 50.59) and also to ''* * * establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage * * *'' (10 CFR 73.55(h)(1)). Further, licensees must ''* * * establish and maintain an onsite physical protection system and security organization which will have as its

objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.'' (10 CFR 73.55(a)), and ''* * * may make no change which would decrease the effectiveness of a security plan * * *'' (10 CFR 50.54(p)(1)). These regulations are focused on evaluation of specific areas of safety and security and do not explicitly require evaluation of the interactive effect of plant changes on the security plan or the effect of changes to the security plan on plant safety. Additionally, the regulations do not require communication amongst operations, maintenance, and security organizations regarding the implementation and timing of plant changes in order to promote awareness of the effects of changing conditions to allow the organizations to make an appropriate assessment of changes and implement any necessary response.

Because existing regulations are focused on ensuring that licensees evaluate changes to specific subject areas, and because guidance has already been developed to help ensure that those evaluations are performed appropriately, the NRC must consider carefully the effect of a revision on the existing regulations. For example, 10 CFR 50.59 is focused on ensuring safe operation of the facility by requiring evaluation of changes, tests, and experiments that affect the facility as described in the FSAR. Industry and NRC have expended a large amount of resources to provide guidance to help ensure that regulatory expectations for this area are clearly described. At this time, regulatory expectations for the implementation of 10 CFR 50.59 are thought to be well understood. Further, operations personnel, performing a 10 CFR 50.59 evaluation, may not be sufficiently knowledgeable of the security plan details in order to make an appropriate evaluation of the effect of changes, tests, and experiments on security. Current regulations do not require such an evaluation for many plant changes made to nonsafety systems, structures, and components. Therefore, it may be appropriate to provide a requirement in 10 CFR part 73 that changes to the facility be assessed for potential adverse interaction on the safety/security interface.

The NRC believes that the rulemaking process, including stakeholder comment, will better identify how the regulations should be modified and what the scope and details of a revision should be.

In summary, the NRC agrees with the petitioners that rulemaking may be appropriate for the first requested action.

NRC Plans for the First Proposed Action

Regarding the first requested action, the NRC's interoffice Safety/Security Interface Advisory Panel (SSIAP) has advised the staff on the most effective and efficient method to integrate this rulemaking with other ongoing safety/security actions to require that licensees evaluate changes to the facility or to the security plan for adverse interactions. Further, in its SRM on June 28, 2005, the Commission directed the staff to include this issue as part of ongoing rulemaking for 10 CFR 73.55, currently due to the Commission on May 31, 2006.

Second Proposed Action

The NRC evaluated the second proposed action and is deferring resolution of the second issue of the petition. The NRC intends to address the request when the NRC responds to comments on its proposed Design Basis Threat rule. That rule was issued for public comment on November 7, 2005.

For these reasons, the Commission is granting the first requested action of PRM–50–80 and is deferring resolution of the second requested action.

Dated at Rockville, Maryland, this 9th day of November, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E5–6365 Filed 11–16–05; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 652 and 655

RIN 3052–AC17

Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Federal Agricultural Mortgage Corporation Disclosure and Reporting Requirements; Risk-Based Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, or we) is proposing to amend regulations governing the Federal Agricultural Mortgage Corporation (Farmer Mac or the Corporation). Analysis of the Farmer Mac risk-based capital stress test (RBCST or the model) in the 3 years since its first official submission as of June 30, 2002, has identified several opportunities to update the model in response to changing financial markets, new business practices and the evolution of the loan portfolio at Farmer Mac, as well as continued development of best-industry practices among leading financial institutions. The proposed rule focuses on improvements to the RBSCT by modifying regulations found at 12 CFR part 652, subpart B. The effect of the proposed rule is intended to be a more accurate reflection of risk in the model in order to improve the model's output—Farmer Mac's regulatory minimum capital level. The proposed rule also makes one clarification relating to Farmer Mac's reporting requirements at 12 CFR 655.50(c).

DATES: You may send us comments by February 15, 2006.

ADDRESSES: Send us your comments by electronic mail to *reg-comm@fca.gov*, through the Pending Regulations section of our Web site at *http://www.fca.gov*, or through the Government-wide Web site *http://www.regulations.gov*. You may also submit your comments in writing to Robert Coleman, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 883–4477.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434; or

Joy Strickland, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of this proposed rule is to revise the risk-based capital (RBC) regulations that apply to Farmer Mac. The substantive issues addressed in this

proposed rule are: Miscellaneous income estimates, operating expense estimates, counterparty risk on non-program investments, the resolution timing for troubled loans and associated carrying costs, the treatment for income related to gain on sale of agricultural mortgage-backed securities (AMBS), the treatment of certain loan data for modeling purposes,[1] and the estimation of credit risk in the Long-Term Standby Purchase Commitment (Standby) portfolio.

The RBC rule contains language that anticipates the need for continuing changes to the model over time in an effort to adapt the model to Farmer Mac's actual operations on an on-going basis to the extent practicable. The Office of Secondary Market Oversight (OSMO) is also interested in updating the model in future rulemakings to respond to opportunities created by the continued evolution in techniques available for modeling risk-based capital requirements.

Further, consistent with the FCA Chairman and Chief Executive Officer's (CEO) letter to Congress on actions taken or to be taken in response to the Government Accountability Office (GAO) report entitled, ''Farmer Mac: Some Progress Made, but Greater Attention to Risk Management, Mission, and Corporate Governance Is Needed'' (Report),[2] the regulatory development process also included consideration of all comments and recommendations in the Report pertaining to the RBCST.

II. Background

Analysis of the Farmer Mac RBCST since its first official submission as of June 30, 2002, has identified several opportunities to update the model in response to changing financial markets, new business practices and from the evolution of the loan portfolio at Farmer Mac, as well as continued development of best-industry practices among leading financial institutions. We have divided the changes into two broad categories that we label ''technical'' and ''substantive.'' Technical changes are those we may implement without rulemaking and that do not require FCA Board action. We incorporated several such technical changes in December 2002, June 2004, and August 2005, and implemented them as Versions 1.1, 1.2, and 1.25 of the RBCST, respectively. These technical changes, and other Call Report-related changes, are detailed later in this preamble. This proposed rule makes substantive changes that require formal rulemaking procedures and FCA Board approval to implement.

III. Objectives

The FCA, through this proposed rule, seeks to update and refine the RBCST. Our goal is to ensure that the RBCST reflects changes in the Corporation's business structure and loan portfolio that have occurred since the model was originally developed by FCA, while complying with the statutory requirements and constraints on the model's design.

IV. Overview

The changes are summarized below.

A. Modify the RBCST's treatment of loans for which Farmer Mac does not collect certain loan origination data required by the model because of the loan product type and related underwriting requirements (*e.g.*, seasoned and fast-track loans). The proposed revision would use loan proxy data to estimate loan level losses rather than applying state-level average loss rates to such loans. The proposed revision also includes the use of data proxies when certain data anomalies are identified or other ambiguous data conditions are present.

B. Revise the treatment of Standby loans for which loan origination data needed by the model are available. Currently, the model treats all Standby loans as if they are seasoned loans for which the loan origination data needed for RBCST purposes are not available. Average loss rates by-state estimated from other loans are applied to Standby loans located in the same state. The proposed rule would improve the loss estimation method applied to Standby loans by applying an approach similar to that applied to the rest of the loan portfolio.

C. Change the method used to estimate future years' miscellaneous income from a fixed rate of 2 basis points of total assets to the 3-year average of the annualized actual miscellaneous income for each quarter as a percent of the sum of: Cash, investments, guaranteed securities, and loans held for investment. This change is consistent with the regulation's goal to reflect Farmer Mac's actual operations, as much as practicable.

D. Revise the variables in the regression formula used to calculate operating expense coefficients to more completely reflect Farmer Mac's cost. Operating expense coefficients are used to estimate future years' operating expenses.

E. Revise the model's estimate of gain on sale of AMBS from a fixed rate of 0.75 percent of new Farmer Mac I program volume to a rolling 3-year weighted average of actual gain levels experienced by Farmer Mac.

F. Change the model's assumption concerning loan loss resolution timing. The proposed revision reflects the stress associated with carrying costs on non-performing loans based on Farmer Mac's actual experience resolving troubled loans.

G. Adjust the model's estimate of income on non-program investments to reflect counterparty risk. We propose the application of discounts or ''haircuts'' to the yields on individual investments, scaled according to their credit ratings. FCA's consideration of such an adjustment was suggested in the October 2003 GAO Report.

H. Publish all prior technical changes, including those implemented in December 2002 (RBCST Version 1.1), June 2004 (RBCST Version 1.2), and August 2005 (RBCST Version 1.25).

I. Make other technical changes including improved formatting and clarity of labeling in certain cells of the RBCST worksheets and deletion of § 652.100 which is no longer relevant as it dealt with the date the original final rule on the RBCST became effective.

V. Issues, Options Considered, and Proposed Revisions

We have identified several items that require regulatory attention to amend or clarify the final rule published on April 12, 2001 (66 FR 19048). Below is a detailed explanation of all changes considered and proposed.

1. Treatment of Loans for Which Origination Data Are Not Collected by Farmer Mac

There is a significant portion of Farmer Mac's portfolio for which loan origination data required by the model are not collected by Farmer Mac under its underwriting requirements. The RBCST was designed to use loan data at origination. While not always necessary for underwriting purposes, loan origination data is important to the functioning of the model.

The RBCST uses a predictive equation to estimate the probability of default (PD) for each loan held or securitized by Farmer Mac as well as those underlying Standby contracts. The predictive equation is based on variables representing data at loan origination for each loan's debt-to-asset ratio, current ratio, loan-to-value ratio (LTV), and debt service coverage ratio, as well as

[1] This includes loan data where certain origination data are not collected by Farmer Mac as well as other data anomalies or ambiguous loan data.

[2] United States General Accounting Office, Farmer Mac: Some Progress Made, but Greater Attention to Risk Management, Mission, and Corporate Governance Is Needed, GAO–04–116 (2003). At the time of the report's publication, the GAO was known as the General Accounting Office.

inflation-adjusted loan size and worst-case rates of decline in farmland values. The PD estimated for each loan is combined with a loss-given-default estimate and loan size to determine expected loss. The loan loss is then adjusted for seasoning to account for a decline in PD as a loan ages. The RBCST then processes losses, together with other factors, to determine Farmer Mac's risk-based capital requirement. This approach to estimating PDs requires data at loan origination for the financial variables associated with each loan.

Currently, the RBCST separates Farmer Mac's portfolio into two groups referred to as ''Cash Window'' loans and Standby loans. Cash Window loans are loans held for investment and loans that underlie guaranteed securities, and Standby loans are loans that underlie Standby contracts. This segmentation was originally made to reflect Farmer Mac's business and loan underwriting practices when FCA developed the RBCST. At that time, Cash Window loans were newly originated full-time farm loans on which origination underwriting data were consistently available. Standby loans, on the other hand, were primarily highly seasoned Farm Credit System loans for which origination underwriting data were not available. Similarly, the business processes that pertain to Cash Window and Standby loans differed. Cash Window loans were generally processed by Farmer Mac on a loan-by-loan basis and held in a loan pool until sufficient volume was attained to permit securitization as an AMBS. Standby loans were largely underwritten on a pool basis and subject to a due diligence review. Therefore, the RBCST's portfolio segmentation was designed to treat Cash Window loans and Standby loans differently to reflect their operational differences. In versions 1.25 and earlier, the RBCST directly applies the estimated loss rates to individual Cash Window loans. For Standby loans, the RBCST indirectly applies these rates to individual loans following the specialized treatment discussed below.

During initial development of the RBCST in 1998, origination financial data were available on a majority (approximately 88 percent) of Farmer Mac's Cash Window loans, excluding pre-1996 loans. Since then, Farmer Mac's loan portfolio has evolved such that several of its loan products do not require collection of origination financial data. For instance, Farmer Mac has established specialized underwriting standards for Fast Track (*i.e.*, reduced documentation loans), seasoned, and part-time farm loans that exclude the collection of certain origination loan data used for RBCST purposes in recognition of acceptable alternative underwriting criteria. Total growth in these loan types, especially seasoned loans, has outpaced other types in the years since the model was first designed. Due to this growth, the proportion of loans with incomplete underwriting data has increased. As a result, the current treatment of applying average state-level loss rates estimated from other loans within the portfolio is applied to a significant proportion of the total loan portfolio. We recognize that collecting origination financial data used for RBCST purposes on all loan products may be impractical. Therefore, we propose modifying the current treatment of such loans to apply loan data proxies that conservatively reflect Farmer Mac's underwriting criteria and practices.

In describing the revisions, we will first discuss revisions for Cash Window loans and address Standby loans in the following section of this preamble as a separate improvement to the RBCST.

Under this proposed rule, the RBCST would substitute conservative proxies when the necessary loan origination data is unavailable. The conservative proxies reflect the higher end of the range of acceptable LTV and debt-to-asset ratios, and the lower end of the range of acceptable debt service coverage (DSC) ratios according to Farmer Mac's underwriting criteria. The proxy values to be applied are as follows: Debt-to-asset ratio of 0.60, LTV ratio of 0.70, and DSC ratio of 1.20.

The conservative proxies relate directly to Farmer Mac's underwriting standards thereby serving as another aspect of the proposed rule that draws on Farmer Mac's actual operations to enhance the RBCST. Using conservative proxy data preserves the theoretical and structural integrity of the RBCST and maintains consistency with statutory requirements for a stressful, worst-case scenario.

In addition, we propose application of the proxy data to data anomalies that occasionally occur in large sets of loan level data. Several conditions under which an anomaly would be identified are described in section 4.1, paragraph d.(3)(A) of the Technical Appendix to this proposed rule along with the proxy data that would be applied in each case.

Other loan data adjustments would be made in response to certain unique situations. These deal with rare instances where an origination date field might be blank, purchase or commitment date fields are blank, or the original loan balance is less than the current scheduled loan balance. For example, if the original loan balance field is blank or is less than the scheduled loan balance, the RBCST will use the scheduled (current) loan balance for modeling purposes. In such cases, when alternative loan balance data are used, the RBCST will substitute the ''cut-off'' date (*i.e.*, the date the loan was guaranteed or placed under a Standby agreement) for the origination date for that loan for purposes of the seasoning adjustment. In addition, the model uses the cut-off date when the loan origination date field is blank for lack of any other data to use in the model's seasoning adjustment. Because it would not be possible to compile an exhaustive list of data anomalies, the proposed rule reserves FCA's authority to require an explanation from Farmer Mac on other data anomalies and to apply the proxy data to such data until the anomaly is addressed by Farmer Mac.

2. Revise the Treatment of Standby Loans

As discussed in the previous section, loans underlying a Standby agreement receive specialized treatment by the RBCST Versions 1.25 and earlier. Rather than modeling loan-specific data, the average state-level loss rates determined from the Cash Window loan portfolio are applied to Standby loans based on the state in which the property is located. The loans are then seasoned based on their age from origination date. We adopted this treatment in response to the characteristics of Standby loans at the time the RBCST was developed. At that time, nearly all Standby loans were seasoned and origination financial data were not readily or consistently available from the originating FCS institution. Because the volume of the Standby program was not high at the time we developed the RBCST, and because the Standby loans were generally highly seasoned, it was deemed appropriate to establish a separate treatment for Standby loans that based losses on loans estimated using the Cash Window portfolio. However, given the availability of the newly proposed data proxies described above, it is now deemed more appropriate to treat Standby loans in a similar manner to Cash Window loans when estimating credit risk. In addition, Farmer Mac's Standby portfolio now includes more unseasoned loans for which loan origination data are available but are not currently used to estimate losses under the model's current treatment of Standby loans.

We propose to remove the specialized treatment of Standby loans and treat these loans in the same manner as Cash Window loans with the exception of seasoned Standby loans. Loans for

which origination data are available would be processed using those data. Standby loans for which origination data are not available or where data anomalies are identified would receive the same proxy data used for Cash Window loans. Seasoned Standby loans where data are available will receive the proxy data in light of Farmer Mac's practice of populating origination data fields with ''cut off'' data for such loans. ''Cut off'' data are data as of the date the loan was taken into Farmer Mac's portfolio. As a result, the RBCST would apply the loss-frequency model and loss-severity factor to all loans both Standby and Cash Window. This change would yield a more complete measure of credit risk of unseasoned Standby loans and compensate for the uncertainty associated with missing data on Standby loans.

3. Revise the Treatment of Miscellaneous Income

Currently, the RBCST estimates Farmer Mac's miscellaneous income over the 10 years of the model's time horizon as 2 basis points of total assets. This estimate was considered adequate because it approximated the historical average over the years prior to the model's development. Moreover, the amounts estimated were not significant. We propose to change the estimate of future years' miscellaneous income to the 3-year weighted average of actual miscellaneous income in each quarter divided by that quarter's actual sum of: Cash, investments, guaranteed securities, and loans held for investment. This change is consistent with the goal to reflect, as much as practicable, Farmer Mac's actual operations on an on-going basis, as it will be updated quarterly with Farmer Mac's most recent actual miscellaneous income experience.

The benefits of this proposed change are that it will:

(1) Build in an on-going adjustment to the estimate based on recent experience;

(2) Be easily understood;

(3) Add transparency to the miscellaneous income estimate; and

(4) Be consistent with the current rule's intent to simulate Farmer Mac's operations to the maximum extent practicable.

4. Revise the Treatment of Gain on Sale of AMBS

The proposed rule revises the methodology used to estimate future years' gains on the sale of AMBS, thus improving the model's ability to reflect Farmer Mac's current operations on an on-going basis. Previously, the model credited Farmer Mac with income of 0.75 percent of new Farmer Mac I program volume as estimated by the backfilling of loan volume in accordance with the steady-state scenario. However, recent trends in Farmer Mac's operations demonstrate that AMBS sales are more sporadic. The revised approach reflects the gain rates most recently experienced in Farmer Mac's operations by establishing a new input in the Data Inputs worksheet for ''Gain Rate on AMBS Sales'' and applying that gain rate factor (expressed as the actual gain as a percentage of the par value of the AMBS sold) to the dollar amount of AMBS sold during the most recent 4 quarters. Applying the 3-year gain rate factor to the most recent 4 quarters of activity appropriately smoothes the variability in Farmer Mac's sales of AMBS for RBCST purposes.

5. Revise the Operating Expense Regression Equation

The RBCST currently uses a regression equation to estimate operating expenses in future years that relates historic Farmer Mac operating expenses to a constructed variable reflecting loan and investment volumes. The goal is to accurately reflect costs associated with operating Farmer Mac as its program balances and investment levels change without being overly influenced by random variations that can reasonably occur in any given quarter. The structural model for estimating operating expenses was developed soon after the 1996 legislation that resulted in Farmer Mac's current business structure. As a result, the historic data can be divided into two time periods—with one time period representing activity prior to their ability to pool whole loans and hold loans on their balance sheet, and a second period with their business activities focused more directly and actively on loan-based activities. The data from the latter period had much higher cost structures than the former. To accommodate the data structure while retaining the longest sample period possible, a specification was adopted that included pre-1996 data with a dummy variable that permitted an intercept shift or, equivalently, as two segments of the regression with a ''jump'' in the fitted line at the point of the changes in cost structure related to the 1996 legislation. Additionally, it seemed reasonable to consider a structure that recognized economies of scale, assuming incremental business additions could be underwritten at lower marginal costs. As a result, a structure was adopted relating the logarithm of the sum of loans and investments to actual operating expenses with a dummy variable separating the pre- and post-1996 data periods.

Considerable data have accumulated since the operating expense regression was developed. Therefore, it is appropriate to develop a more complete representation of Farmer Mac's business activities at this point. We have considered: (a) The appropriate historic data period, (b) specific business segments and activities to include as explanatory variables, (c) the potential for seasonality in the expense structure, (d) the potential automation of the estimation of the coefficients within the RBCST, and (e) the need to utilize existing data structures and accounting conventions to the degree reasonable (*i.e.*, the potential difficulty with reconstructing some historic data series related to changed business segments).

The Agency believes that a more complete characterization of the expense structure of Farmer Mac can be specified by separating the business activities that contribute to variation in annualized expenses into:

(i) On-balance sheet investments,

(ii) On-balance sheet guaranteed securities,

(iii) The sum of off-balance sheet loans in the Farmer Mac I and Farmer Mac II programs, and

(iv) Gross real estate owned (REO).

The use of the multiple regressors obviates the need for the dummy variable. The inclusion of REO captures a possible high-cost segment of their business and provides a direct linkage between problem loans and higher operating costs. To reflect economies of scale, the independent variables are expressed on a logarithmic scale. The proposed specification and attendant revision in the RBCST utilize the following expression:

$$\text{Expenses}_t = \alpha + \beta_1 \ln(\text{OnF}_t) + \beta_2 \ln(\text{OnGS}_t) + \beta_3 \ln(\text{OnI}_t + \text{OffII}_t) + \beta_4 \ln(\text{OnREO}_t)$$

Where ''t'' indicates time period in the model, ''OnF'' represents on-balance sheet investments, ''OnGS'' represents on-balance sheet guaranteed securities, ''OffI'' and ''OffII'' represent off-balance sheet Farmer Mac I and II program loans, respectively, and ''REO'' represents gross real-estate owned. The in-sample fit is improved with this specification relative to the previously required approach for comparable data periods. Tests of the appropriate sample period for estimation are roughly comparable when using either complete available sample period data or data from quarters after the 1996 legislation and the establishment of the RBC

requirement. As under the current RBCST, Farmer Mac must re-estimate the coefficients quarterly and supply the coefficients and worksheet as part of its quarterly submission.

6. Improve Estimates of Carrying Costs of Troubled Loans by Revising Assumptions Regarding Loan Loss Resolution Timing

The RBCST was developed with a loss-severity estimate that assumes it would take Farmer Mac 1 year to work through problem loans from the point of default through final disposition. At the time of development of the RBCST, historical problem loan resolution timing data from Farmer Mac were not available. Farmer Mac data now indicate that problem loans may take longer to resolve than the 1 year assumed in the model's loss-severity rate.[3] If the time interval is longer than the current model's assumption, the capital needs for carrying non-performing assets in the model are likely understated in the current model. Therefore, we propose to reflect costs associated with any additional loan loss resolution time (LLRT) period (*i.e.*, the period beyond the 1-year period assumed in the loss-severity rate) in the model.[4]

With the exception of the 1-year period assumed in the loss-severity rate, the current RBCST under a steady-state scenario requires backfilling of problem loan volume with like assets, without recognizing any additional cost associated with carrying loans as non-earning, but funded, assets. Under the proposed rule, the RBCST will now reflect costs associated with the LLRT period. The change would be incorporated into the RBCST as follows. Off-balance sheet loans associated with losses are assumed to be purchased from the Standby portfolio and fully funded at the short-term cost of funds rate used in the model, and no associated guarantee fee is generated. The short-term cost of funds (adjusted to incorporate interest rate shock effects) is used to estimate this additional funding cost in recognition of Farmer Mac's actual business practices. On-balance sheet loans generating losses are also removed from the interest earnings calculations and continue to generate interest expense at the blended cost of long- and short-term funds (again adjusted to incorporate interest rate shock effects) for the LLRT period. The model would continue to backfill new loans at the point of loan resolution to retain its steady-state specification.

The proposed revisions involve two principal changes from the current RBCST. First, the date of backfill would be moved to a point in time that more accurately reflects Farmer Mac's actual experience. The model would then capture the additional costs of carrying loans in a non-interest earning category on the balance sheet. Second, the guarantee fee income would only be generated on performing loan guarantees and commitments. The LLRT becomes a line item in the Data Inputs worksheet. The initial LLRT will be set by FCA based on Farmer Mac historical data. The Corporation has not had a significant number of problem loans that have gone through the full resolution process from which to determine the LLRT for RBCST purpose. Nevertheless, the Agency has consistently designed the RBCST to reflect Farmer Mac data and its actual experience when available. The proposed treatment reflects the data currently available from Farmer Mac on the resolution of troubled loans. If Farmer Mac establishes a pattern of faster or slower resolution of troubled loans in the future, we will consider adjustments to the LLRT at that time.

The proposed LLRT revisions are forward-looking only. In other words, actual loans that defaulted in year zero and are in their second year of non-performing status in year 1 of the model's 10-year time horizon are not included in the proposed LLRT revision, and therefore no adjustment to restate current balance sheet amounts is required. An approach involving such a restatement was considered but deemed to add an unnecessary degree of complexity to the model. We note that the revision to more accurately reflect the carrying cost of non-performing loans results in less additional stress under a down-rate interest rate shock than under an up-rate shock. This result is logical as it would be less costly to fund non-performing loans when interest rates are relatively low.

One further calculation is necessary to complete the proposed LLRT revision. Implementation of the LLRT revision requires an estimate of loan amortization to estimate the additional carrying cost associated with the LLRT period by applying the appropriate cost of funds to a loan's remaining balance at the time of default. We use the portfolio average principal amortization to make this adjustment (*i.e.*, total portfolio current scheduled principal balance divided by total origination balance). The LLRT scaling factor is calculated in the Credit Loss Module as the ratio of total portfolio current scheduled principal balance divided by total origination balance divided by the loss-severity factor (0.209). This approach results in the calculation of a stressed level of nonperforming loan volume based on the credit losses estimated by the RBCST.

7. Add a Component To Reflect Counterparty Risk

Currently, the RBCST does not include a component to reflect counterparty risk on Farmer Mac's portfolio of investment securities, and derivatives. We propose adopting a system of haircuts to the yields on investment securities, scaled according to credit ratings—with greater haircuts applied to lower credit ratings. The risk-based capital regulations of the Office of Federal Housing Enterprise Oversight (OFHEO) (12 CFR part 1750) established a precedent for the levels of such haircuts. OFHEO defines five levels of credit ratings from ''AAA'' to ''below BBB and unrated.'' They assign each of the nationally recognized statistical rating organizations' (NRSRO) rating categories to one of the four OFHEO general rating categories. With these definitions specified, rate haircuts are applied by OFHEO to the securities in the investment and derivatives portfolios of its regulated enterprises.

In assessing the counterparty risk associated with non-program investments, OFHEO examined Depression-era default rates (1929 to 1931)[5] and a study completed for the National Bureau of Economic Research (NBER) in the 1950's.[6] OFHEO's haircut levels recognize recoveries on defaulted instruments, an adjustment that was also based on Depression-era data. Thus, haircut levels were derived based on default rates multiplied by severity rates. For all counterparties, the default rates used were 5 percent for AAA, 12.5 percent for AA, 20 percent for A, 40 percent for BBB and 100 percent for below BBB or unrated. Severity rates used were 70 percent for nonderivative securities, yielding net haircuts of 3.5 percent, 8.75 percent, 14.0 percent, and 28.0 percent for ratings AAA through

[3] Farmer Mac provided data on historical problem loan resolution timing which were used by FCA to estimate the time interval for problem loan resolution. As additional data become available, FCA may recalculate the LLRT interval.

[4] The LLRT period is equal to the period of time in excess of the portion of carrying costs already assumed in the RBCST's loss-severity rate. The loss-severity rate is assumed to incorporate losses associated with a period of 1 year of carrying defaulted loans and, thus, the LLRT period is equal to the FCA-determined actual period minus one.

[5] Keenan, S., Carty L., Shtogrin I., ''Historical Default Rates of Corporate Bond Issuers, 1920–1997,'' published by Moody's Investor's Services, February 1998.

[6] Hickman, W. Braddock, ''Corporate Bond Quality and Investor Experience,'' A Study by the National Bureau of Economic Research, Princeton University Press, Princeton, 1955.

BBB, respectively. One hundred percent haircuts are applied to the ''BBB or unrated'' category. The haircuts are applied on a weighted-average basis as reductions in the weighted-average yields of non-program investment categories.

We also considered OFHEO's phase-in of the haircuts and believe such a phase-in is appropriate for the RBCST as well. The rationale for the phase-in is based on the assumption that defaults on investments in response to a general downturn in the economy would not be instantaneous but on a more random basis through time. Therefore, the Agency proposes to phase-in the haircuts on a linear basis over the RBCST's 10-year time horizon. Further, we elected not to assign the rating of a parent company to its unrated subsidiary. This treatment is consistent with the OFHEO rule, which defends this policy on the basis that (a) NRSROs will not impute a corporate parent's rating to a derivative or credit enhancement counterparty in the context of a securities transaction, and (b) to extend that rating to the unrated subsidiary would be tantamount to the regulator rating the subsidiary.

We propose to apply these haircuts on a weighted-average basis by investment categories established in the ''Data Inputs'' worksheet of the RBCST, *e.g.*, commercial paper, corporate debt and asset-backed securities, agency mortgaged-backed securities and collateralized mortgage obligations. This proposal requires the Corporation to calculate the weighted-average haircut by investment category to be applied to the weighted-average yields for each investment category and input the haircuts into the ''Data Inputs'' worksheet. The proposed haircuts are set forth in the Table in paragraph e. of section 4.1 in the Technical Appendix.

Stress that impacts Farmer Mac would reasonably be expected to affect its terms of access to the swap market. Therefore, we considered adopting a similar haircut on derivative securities.[7] However, while the OFHEO regulation applies haircuts to derivatives, we do not propose to do so at this time. Our reasoning is based on our preference for a different approach to haircutting derivatives that reflects lost payments from derivative securities in a net-receive position, as well as the additional expense associated with the replacement of derivative positions when the counterparty has defaulted and the market value of the derivative has increased since the date the defaulted derivative contract was executed. Such an increased market value would be to Farmer Mac's benefit when the counterparty does not default, but to its detriment when it does. The Agency will address this risk in future revisions of the RBCST and specifically requests comment on the most appropriate approach to incorporate such ''replacement cost'' risk into the RBCST.

8. Provide Public Notice of Technical Changes to the RBCST

In December 2002, the Agency modified the RBCST with four technical changes. The changes resulted in the release of FARMER MAC RBCST Version 1.1.xls, which was uploaded for public access on the FCA Web site in the same month and first used by Farmer Mac for its December 31, 2002, submission. FARMER MAC RBCST Version 1.2 incorporates an individual change to the calculation of regulatory capital held by Farmer Mac and was implemented in June 2004. FARMER MAC RBCST Version 1.25 completed the changes in Version 1.2 to fully accommodate the format of Farmer Mac's balance sheet after its adoption of FASB Financial Interpretation 45 (FIN 45) in August 2005. The changes are summarized below.

(i) Added two line items in the Data Inputs worksheet for Real Estate Owned (REO), one for ''gross'' REO and the other ''net'' of allowances for losses on REO assets. This change in the RBCST balance sheet was made to adapt the model to the new balance sheet reporting format in Farmer Mac's financial statements. The change also corrects the amount of REO that is captured in assets-subject-to-loss on the Loan and Cashflows worksheet. Gross REO, not net REO, is now added into assets-subject-to-loss.

(ii) Corrected the ''base-case'' interest rate used in measuring interest rate risk on the Risk Measures worksheet. The Act requires that the model apply ''shocks'' to current interest rates at the lesser of 600 basis points or 50 percent of average interest rates on Treasury obligations in order to gauge Farmer Mac's sensitivity to interest rate risk. Previously, the model's base-case was calculated applying the shock to the 12-month average Constant Maturity Treasury rate (CMT) instead of the 3-month average CMT as required by the regulation. The change makes the model more consistent with the language in the original regulation.

(iii) Added the line item for ''Gain/Loss on Available for Sale Assets'' in the balance sheet. The RBCST ignores these gains and losses for purposes of calculating income because they do not represent actual cash flows. However, they must be presented in the balance sheet to maintain balanced financial statements and for accuracy of disclosure. This changes only the presentation of the model's balance sheet and has no impact on the regulatory capital requirement.

(iv) Corrected the method of distributing credit losses over time. The formula to distribute losses on new loan volume previously allocated the impact of those losses over all 10 years of the model's projected time horizon. For example, a small portion of losses on new loan volume in year 5 was recognized in years 1, 2, 3, and 4 of Version 1.0. The change correctly associates losses on each year's estimated new loan originations across the remaining years in the 10-year period.

(v) Recently, Farmer Mac changed the reporting format of its balance sheet in order to adopt the Financial Accounting Standards Board Interpretation No. 45 (FIN 45). The change resulted in the RBCST misstating Farmer Mac's regulatory capital held. To correct this, we inserted a new data element for Farmer Mac to submit in the Data Inputs worksheet of the RBCST, ''Contingent obligation for probable losses under FIN 45.'' The new data input, combined with a new line item in the balance sheet for the contra-asset account ''Allowance for Loan Losses,'' will permit the RBCST to correctly gross up Farmer Mac's generally accepted accounting principles (GAAP) equity to calculate its regulatory capital held as follows:

$$R_{Capital} = Equity_{GAAP} - OCI + R + ALL + C$$

Where:

$R_{Capital}$ = Regulatory Capital Held
$Equity_{GAAP}$ = Equity according to GAAP
OCI = Other Comprehensive Income
R = Reserves for Loan Losses
ALL = Allowance for Loan Losses
C = Contingent obligation for Probable Losses under FIN45

This change was implemented in June 2004 as FARMER MAC RBCST Version 1.2.

(vi) FARMER MAC RBCST Version 1.25 was implemented to complete the modifications necessary as a result of Farmer Mac's reporting format changes after the adoption of FIN 45. It ensures that the income generator references the appropriate fractions of all relevant balance sheet accounts for purposes of projecting income over the model's 10-year time horizon.

[7] The term ''derivative'' refers to over-the-counter financial derivative instruments used by Farmer Mac to hedge interest rate risk and synthetically extend the term structure of its debt to reduce funding costs.

(vii) Currently § 652.85(d) requires the RBCST to be submitted quarterly not later than the last business day of April for the quarter ended March 31, July for the quarter ended June 30, October for the quarter ended September 30, and January for the quarter ended December 31. OSMO recently formally incorporated the RBCST submission into the Farmer Mac Call Report, which is due by the date of Farmer Mac's filing of its quarterly Form 10–Q, or annual Form 10–K, with the Securities and Exchange Commission. Therefore, we propose to revise the rule by changing the RBCST submission deadline as follows. The RBCST submission will be due on the date of the filing of Farmer Mac's SEC Form 10–Q or 10–K, but no later than the 40th day after the quarter's ending March 31, June 30, and September 30, and the 60th day after the quarter ending on December 30. This technical change was implemented in the Call Report submitted for the first quarter of 2004.

9. Stressed-Based Cost of Funds Increment

It is reasonable to assume that a crisis in the agriculture sector that generates worst-case historical loan loss levels would have an impact on Farmer Mac's cost of funds. We considered alternative approaches to reflect the possible impact on funding spreads of significant stress to FAMC. For example, the cost of funds data used in the RBCST could be adjusted to correspond to the maximum spreads over U.S. Treasury securities of comparable maturity that were experienced by the Farm Credit System during the worst-case credit risk conditions of the 1980s. According to findings of Duncan and Singer, the worst-case historical stressful spreads over treasuries for comparable maturity Farm Credit System issuances were 138 basis points for 6-month securities, 130 basis points for 1-year securities, 115 basis points for 3-year securities, and 95 basis points for 5-year securities.[8]

The spreads in the RBCST could reflect these increased levels with an adjustment to account for Farmer Mac's current holdings of non-program investments relative to those held by the FCS institutions at the time of maximum stress.

FCA requests specific comments on an appropriate methodology to add stress to funding spreads in the RBCST. In particular, we request suggestions on how best to incorporate differences in the relative risk in the portfolios of the FCS and Farmer Mac as it relates to expected cost of funds differences between the two entities, including how one might scale the on-going changes in the risk of Farmer Mac's portfolio to moderate or amplify the stressful cost of funds spread.

10. Recognition of Risk on AgVantage Bonds

We considered applying the haircuts on non-program investments to AgVantage bonds because, despite their status as program assets, they exhibit many characteristics of investment securities. The model does not currently recognize risk associated with these assets or the loan collateral associated with them. We rejected that approach because AgVantage bonds are securities representing an interest in a pool of qualified loans. The statute requires losses on such loans to be estimated in a manner similar to the credit risk on other program assets.

AgVantage bonds are secured by either a general pledge of collateral that constitutes a representation and warranty of the availability of unencumbered qualified loan assets, or a specific pledge of qualified loans which, however, may be freely substituted at any time. Submitting loan-level data on AgVantage loan collateral for loss estimation is either not possible for lack of specifically identified loans, or subject to inaccuracy due to specific loans being replaced at any time, or simply impractical in terms of cost. The AgVantage program accounts for a very small portion of total program loan volume, and the proposed rule makes no change to the treatment of AgVantage assets. However, we specifically request comment on the question of how best to modify the RBCST in future rulemakings to consider the risk of AgVantage bonds.

11. Impact of Proposed Changes on Required Capital

We evaluated the impact of the proposed changes to the currently active version of the model, Version 1.25. Our tests indicated that changes related to the data proxies, the treatment of Standby loan portfolio, and the LLRT would have the most significant impact on minimum regulatory capital calculated by the model. The table below provides an indication of the impact of the revisions in the quarter ended June 30, 2005. Lines 1 through 6 present the impacts if only that revision were made to the current version and the column labeled ''Difference'' calculates the impact of that individual change for the quarter ended June 30, 2005, compared to the minimum requirement calculated using the currently active Version 1.25. Line 7 presents the impact of all proposed revisions in Version 2.0. As the table shows, the individual change impacts do not have an additive relationship to the total impact on the model output. This is due to the interrelationship of the changes with one another when they are combined in Version 2.0.

Calculated Regulatory Minimum Capital	6/30/2005	Difference
RBCST Version 1.25 (calculated as of 6/30/2005)	49,605	
RBCST 2.0 Individual Change Impacts:		
(1) CLM Changes: Data Proxies and Standby Treatment	75,665	26,060
(2) Miscellaneous Income Treatment	45,468	(4,137)
(3) Gain on Sale of AMBS	49,605	.....
(4) Investment Haircuts	51,737	2,131
(5) Loan Loss Resolution Timing (LLRT)	76,956	27,350
(6) Operating Expenses	59,063	9,458
(7) Total RBCST Version 2.0 Impact	123,529	73,924

As shown in the table, implementation of the LLRT carrying costs and application of the data proxies result in the greatest impact on the calculated risk-based capital requirements. The impact of using loan data proxies reflects the conservative nature of the proxies and to the modeling of all loans in the portfolio

[8] Duncan, D. and M. Singer, ''The Farm Credit System Crisis and Agency Security Yield-Spread Response'' Agricultural Finance Review, 1992: 30–42.

compared to the current approach of applying state-level loss estimated from certain loans to loan where loan origination data are unavailable. The table also indicates that increases in the LLRT period result in greater capital needs to offset the income and expense effects of carrying nonperforming loan volume. The other proposed changes create a more comprehensive representation of Farmer Mac operations for RBCST purposes, though they are not as significant in their impact.

12. Change to Disclosure Regulations

We are also proposing one change to the disclosure regulations in § 655.50(c). We propose to remove the word ''should'' and replace it with ''must'' to clarify that Farmer Mac must provide FCA with a copy of substantive correspondence it files with the Securities and Exchange Commission.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the rule will not have a significant economic impact on a substantial number of small entities. Farmer Mac has assets and annual income over the amounts that would qualify them as small entities. Therefore, Farmer Mac is not considered a ''small entity'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 652

Agriculture, Banks, Banking, Capital, Investments, Rural areas.

12 CFR Part 655

Accounting, Agriculture, Banks, Banking, Accounting and reporting requirements, Disclosure and reporting requirements, Rural areas.

For the reasons stated in the preamble, parts 652 and 655 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS

1. The authority citation for part 652 continues to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

2. Add subpart B to part 652 to read as follows:

Subpart B—Risk-Based Capital Requirements

Sec.
652.50 Definitions.
652.55 General.
652.60 Corporation board guidelines.
652.65 Risk-based capital stress test.
652.70 Risk-based capital level.
652.75 Your responsibility for determining the risk-based capital level.
652.80 When you must determine the risk-based capital level.
652.85 When to report the risk-based capital level.
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Appendix A—Subpart B of Part 652—Risk-Based Capital Stress Test

§ 652.50 Definitions.

For purposes of this subpart, the following definitions will apply:

Farmer Mac, Corporation, you, and *your* means the Federal Agricultural Mortgage Corporation and its affiliates as defined in subpart A of this part.

Our, us, or *we* means the Farm Credit Administration.

Regulatory capital means the sum of the following as determined in accordance with generally accepted accounting principles:

(1) The par value of outstanding common stock;

(2) The par value of outstanding preferred stock;

(3) Paid-in capital, which is the amount of owner investment in Farmer Mac in excess of the par value of stock;

(4) Retained earnings; and,

(5) Any allowances for losses on loans and guaranteed securities.

Risk-based capital means the amount of regulatory capital sufficient for Farmer Mac to maintain positive capital during a 10-year period of stressful conditions as determined by the risk-based capital stress test described in § 652.65.

§ 652.55 General.

You must hold risk-based capital in an amount determined in accordance with this subpart.

§ 652.60 Corporation board guidelines.

(a) Your board of directors is responsible for ensuring that you maintain total capital at a level that is sufficient to ensure continued financial viability and provide for growth. In addition, your capital must be sufficient to meet statutory and regulatory requirements.

(b) No later than 65 days after the beginning of Farmer Mac's planning year, your board of directors must adopt an operational and strategic business plan for at least the next 3 years. The plan must include:

(1) A mission statement;

(2) A review of the internal and external factors that are likely to affect you during the planning period;

(3) Measurable goals and objectives;

(4) Forecasted income, expense, and balance sheet statements for each year of the plan; and

(5) A capital adequacy plan.

(c) The capital adequacy plan must include capital targets necessary to achieve the minimum, critical and risk-based capital standards specified by the Act and this subpart as well as your capital adequacy goals. The plan must address any projected dividends, equity retirements, or other action that may decrease your capital or its components for which minimum amounts are required by this subpart. You must specify in your plan the circumstances in which stock or equities may be retired. In addition to factors that must be considered in meeting the statutory and regulatory capital standards, your board of directors must also consider at least the following factors in developing the capital adequacy plan:

(1) Capability of management;

(2) Strategies and objectives in your business plan;

(3) Quality of operating policies, procedures, and internal controls;

(4) Quality and quantity of earnings;

(5) Asset quality and the adequacy of the allowance for losses to absorb potential losses in your retained mortgage portfolio, securities guaranteed as to principal and interest, commitments to purchase mortgages or securities, and other program assets or obligations;

(6) Sufficiency of liquidity and the quality of investments; and,

(7) Any other risk-oriented activities, such as funding and interest rate risks, contingent and off-balance sheet liabilities, or other conditions warranting additional capital.

§ 652.65 Risk-based capital stress test.

You will perform the risk-based capital stress test as described in summary form below and as described in detail in Appendix A to this subpart. The risk-based capital stress test spreadsheet is also available electronically at *http://www.fca.gov*. The risk-based capital stress test has five components:

(a) *Data requirements.* You will use the following data to implement the risk-based capital stress test.

(1) You will use Corporation loan-level data to implement the credit risk component of the risk-based capital stress test.

(2) You will use Call Report data as the basis for Corporation data over the 10-year stress period supplemented with your interest rate risk measurements and tax data.

(3) You will use other data, including the 10-year Constant Maturity Treasury (CMT) rate and the applicable Internal Revenue Service corporate income tax schedule, as further described in Appendix A to this subpart.

(b) *Credit risk.* The credit risk part estimates loan losses during a period of sustained economic stress.

(1) For each loan in the Farmer Mac I portfolio, you will determine a default probability by using the logit functions specified in Appendix A to this subpart with each of the following variables:

(i) Borrower's debt-to-asset ratio at loan origination;

(ii) Loan-to-value ratio at origination, which is the loan amount divided by the value of the property;

(iii) Debt-service-coverage ratio at origination, which is the borrower's net income (on- and off-farm) plus depreciation, capital lease payments, and interest, less living expenses and income taxes, divided by the total term debt payments;

(iv) The origination loan balance stated in 1997 dollars based on the consumer price index; and,

(v) The worst-case percentage change in farmland values (23.52 percent).

(2) You will then calculate the loss rate by multiplying the default probability for each loan by the estimated loss-severity rate, which is the average loss of the defaulted loans in the data set (20.9 percent).

(3) You will calculate losses by multiplying the loss rate by the origination loan balances stated in 1997 dollars.

(4) You will adjust the losses for loan seasoning, based on the number of years since loan origination, according to the functions in Appendix A to this subpart.

(5) The losses must be applied in the risk-based capital stress test as specified in Appendix A to this subpart.

(c) *Interest rate risk.* (1) During the first year of the stress period, you will adjust interest rates for two scenarios, an increase in rates and a decrease in rates. You must determine your risk-based capital level based on whichever scenario would require more capital.

(2) You will calculate the interest rate stress based on changes to the quarterly average of the 10-year CMT. The starting rate is the 3-month average of the most recent CMT monthly rate series. To calculate the change in the starting rate, determine the average yield of the preceding 12 monthly 10-year CMT rates. Then increase and decrease the starting rate by:

(i) 50 percent of the 12-month average if the average rate is less than 12 percent; or

(ii) 600 basis points if the 12-month average rate is equal to or higher than 12 percent.

(3) Following the first year of the stress period, interest rates remain at the new level for the remainder of the stress period.

(4) You will apply the interest rate changes scenario as indicated in Appendix A to this subpart.

(5) You may use other interest rate indices in addition to the 10-year CMT subject to our concurrence, but in no event can your risk-based capital level be less than that determined by using only the 10-year CMT.

(d) *Cashflow generator.* (1) You must adjust your financial statements based on the credit risk inputs and interest rate risk inputs described above to generate pro forma financial statements for each year of the 10-year stress test. The cashflow generator produces these financial statements. You may use the cashflow generator spreadsheet that is described in Appendix A to this subpart and available electronically at *http://www.fca.gov*. You may also use any reliable cashflow program that can develop or produce pro forma financial statements using generally accepted accounting principles and widely recognized financial modeling methods, subject to our concurrence. You may disaggregate financial data to any greater degree than that specified in Appendix A to this subpart, subject to our concurrence.

(2) You must use model assumptions to generate financial statements over the 10-year stress period. The major assumption is that cashflows generated by the risk-based capital stress test are based on a steady-state scenario. To implement a steady-state scenario, when on- and off-balance sheet assets and liabilities amortize or are paid down, you must replace them with similar assets and liabilities. Replace amortized assets from discontinued loan programs with current loan programs. In general, keep assets with small balances in constant proportions to key program assets.

(3) You must simulate annual pro forma balance sheets and income statements in the risk-based capital stress test using Farmer Mac's starting position, the credit risk and interest rate risk components, resulting cashflow outputs, current operating strategies and policies, and other inputs as shown in Appendix A to this subpart and the electronic spreadsheet available at *http://www.fca.gov.*

(e) *Calculation of capital requirement.* The calculations that you must use to solve for the starting regulatory capital amount are shown in Appendix A to this subpart and in the electronic spreadsheet available at *http://www.fca.gov.*

§ 652.70 Risk-based capital level.

The risk-based capital level is the sum of the following amounts:

(a) *Credit and interest rate risk.* The amount of risk-based capital determined by the risk-based capital test under § 652.65.

(b) *Management and operations risk.* Thirty (30) percent of the amount of risk-based capital determined by the risk-based capital test in § 652.65.

§ 652.75 Your responsibility for determining the risk-based capital level.

(a) You must determine your risk-based capital level using the procedures in this subpart, Appendix A to this subpart, and any other supplemental instructions provided by us. You will report your determination to us as prescribed in § 652.90. At any time, however, we may determine your risk-based capital level using the procedures in § 652.65 and Appendix A to this subpart, and you must hold risk-based capital in the amount we determine is appropriate.

(b) You must at all times comply with the risk-based capital levels established by the risk-based capital stress test and must be able to determine your risk-based capital level at any time.

(c) If at any time the risk-based capital level you determine is less than the minimum capital requirements set forth in section 8.33 of the Act, you must maintain the statutory minimum capital level.

§ 652.80 When you must determine the risk-based capital level.

(a) You must determine your risk-based capital level at least quarterly, or whenever changing circumstances occur that have a significant effect on capital, such as exposure to a high volume of, or particularly severe, problem loans or a period of rapid growth.

(b) In addition to the requirements of paragraph (a) of this section, we may require you to determine your risk-based capital level at any time.

(c) If you anticipate entering into any new business activity that could have a significant effect on capital, you must determine a pro forma risk-based capital level, which must include the new business activity, and report this pro forma determination to the Director,

Office of Secondary Market Oversight, at least 10-business days prior to implementation of the new business program.

§ 652.85 When to report the risk-based capital level.

(a) You must file a risk-based capital report with us each time you determine your risk-based capital level as required by § 652.80.

(b) You must also report to us at once if you identify in the interim between quarterly or more frequent reports to us that you are not in compliance with the risk-based capital level required by § 652.70.

(c) If you make any changes to the data used to calculate your risk-based capital requirement that cause a material adjustment to the risk-based capital level you reported to us, you must file an amended risk-based capital report with us within 5-business days after the date of such changes;

(d) You must submit your quarterly risk-based capital report for the last day of the preceding quarter not later than the last business day of April, July, October, and January of each year.

§ 652.90 How to report your risk-based capital determination.

(a) Your risk-based capital report must contain at least the following information:

(1) All data integral for determining the risk-based capital level, including any business policy decisions or other assumptions made in implementing the risk-based capital test;

(2) Other information necessary to determine compliance with the procedures for determining risk-based capital as specified in Appendix A to this subpart; and,

(3) Any other information we may require in written instructions to you.

(b) You must submit each risk-based capital report in such format or medium, as we require.

§ 652.95 Failure to meet capital requirements.

(a) *Determination and notice.* At any time, we may determine that you are not meeting your risk-based capital level calculated according to § 652.65, your minimum capital requirements specified in section 8.33 of the Act, or your critical capital requirements specified in section 8.34 of the Act. We will notify you in writing of this fact and the date by which you should be in compliance (if applicable).

(b) *Submission of capital restoration plan.* Our determination that you are not meeting your required capital levels may require you to develop and submit to us, within a specified time period, an acceptable plan to reach the appropriate capital level(s) by the date required.

§ 652.100 Audit of the risk-based capital stress test.

You must have a qualified, independent external auditor review your implementation of the risk-based capital stress test every 3 years and submit a copy of the auditor's opinion to us.

Appendix A—Subpart B of Part 652—Risk-Based Capital Stress Test

1.0 Introduction.
2.0 Credit Risk.
2.1 Loss-Frequency and Loss-Severity Models.
2.2 Loan-Seasoning Adjustment.
2.3 Example Calculation of Dollar Loss on One Loan.
2.4 Calculation of Loss Rates for Use in the Stress Test.
3.0 Interest Rate Risk.
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4.0 Elements Used in Generating Cashflows.
4.1 Data Inputs.
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4.4 Loan and Cashflow Accounts.
4.5 Income Statements.
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4.7 Capital.
5.0 Capital Calculations.
5.1 Method of Calculation.

1.0 Introduction

a. Appendix A provides details about the risk-based capital stress test (stress test) for Farmer Mac. The stress test calculates the risk-based capital level required by statute under stipulated conditions of credit risk and interest rate risk. The stress test uses loan-level data from Farmer Mac's agricultural mortgage portfolio or proxy data as described in section 4.1d.(3) below, as well as quarterly Call Report and related information to generate pro forma financial statements and calculate a risk-based capital requirement. The stress test also uses historic agricultural real estate mortgage performance data, relevant economic variables, and other inputs in its calculations of Farmer Mac's capital needs over a 10-year period.

b. Appendix A establishes the requirements for all components of the stress test. The key components of the stress test are: Specifications of credit risk, interest rate risk, the cashflow generator, and the capital calculation. Linkages among the components ensure that the measures of credit and interest rate risk pass into the cashflow generator. The linkages also transfer cashflows through the financial statements to represent values of assets, liabilities, and equity capital. The 10-year projection is designed to reflect a steady state in the scope and composition of Farmer Mac's assets.

2.0 Credit Risk

Loan loss rates are determined by applying loss-frequency and loss-severity equations to Farmer Mac loan-level data. From these equations, you must calculate loan losses under stressful economic conditions assuming Farmer Mac's portfolio remains at a ''steady state.'' Steady state assumes the underlying characteristics and risks of Farmer Mac's portfolio remain constant over the 10 years of the stress test. Loss rates are computed from estimated dollar losses for use in the stress test. The loan volume subject to loss throughout the stress test is then multiplied by the loss rate. Lastly, the stress test allocates losses to each of the 10 years assuming a time pattern for loss occurrence as discussed in section 4.3, ''Risk Measures.''

2.1 Loss-Frequency and Loss-Severity Models

a. Credit risks are modeled in the stress test using historical time series loan-level data to measure the frequency and severity of losses on agricultural mortgage loans. The model relates loss frequency and severity to loan-level characteristics and economic conditions through appropriately specified regression equations to account explicitly for the effects of these characteristics on loan losses. Loan losses for Farmer Mac are estimated from the resulting loss-frequency equation combined with the loss-severity factor by substituting the respective values of Farmer Mac's loan-level data or proxy data as described in section 4.1d.(3) below, and applying stressful economic inputs.

b. The loss-frequency equation and loss-severity factor were estimated from historical agricultural real estate mortgage loan data from the Farm Credit Bank of Texas (FCBT). Due to Farmer Mac's relatively short history, its own loan-level data are insufficiently developed for use in estimating the default frequency equation and loss-severity factor. In the future, however, expansions in both the scope and historic length of Farmer Mac's lending operations may support the use of its data in estimating the relationships.

c. To estimate the equations, the data used included FCBT loans, which satisfied three of the four underwriting standards Farmer Mac currently uses (estimation data). The four standards specify: (1) The debt-to-assets ratio (D/A) must be less than 0.50, (2) the loan-to-value ratio (LTV) must be less than 0.70, (3) the debt-service-coverage ratio (DSCR) must exceed 1.25, (4) and the current ratio (current assets divided by current liabilities) must exceed 1.0. Furthermore, the D/A and LTV ratios were restricted to be less than or equal to 0.85.

d. Several limitations in the FCBT loan-level data affect construction of the loss-frequency equation. The data contained loans that were originated between 1979 and 1992, but there were virtually no losses during the early years of the sample period. As a result, losses attributable to specific loans are only available from 1986 through 1992. In addition, no prepayment information was available in the data.

e. The FCBT data used for estimation also included as performing loans, those loans that were re-amortized, paid in full, or merged with a new loan. Including these loans may lead to an understatement of loss-frequency probabilities if some of the re-amortized, paid, or merged loans experience default or incur losses. In contrast, when the

loans that are re-amortized, paid in full, or merged are excluded from the analysis, the loss-frequency rates are overstated if a higher proportion of loans that are re-amortized, paid in full, or combined (merged) into a new loan are non-default loans compared to live loans.[1]

f. The structure of the historical FCBT data supports estimation of loss frequency based on origination information and economic conditions. Under an origination year approach, each observation is used only once in estimating loan default. The underwriting variables at origination and economic factors occurring over the life of the loan are then used to estimate loan-loss frequency.

g. The final loss-frequency equation is based on origination year data and represents a lifetime loss-frequency model. The final equation for loss frequency is:

$$p = 1/(1 + \exp(-(BX))$$

Where:

$$BX = (-12.62738) + 1.91259 \cdot X_1 + (-0.33830) \cdot X_2/(1 + 0.0413299)^{Periods} + (-0.19596) \cdot X_3 + 4.55390 \cdot (1 - \exp((-0.00538178) \cdot X_4) + 2.49482 \cdot X_5$$

Where:

- p is the probability that a loan defaults and has positive losses (Pr (Y=1|x));
- X_1 is the LTV ratio at loan origination raised to the power 5.3914596; [2]
- X_2 is the largest annual percentage decline in FCBT farmland values during the life of the loan dampened with a factor of 0.0413299 per year; [3]
- X_3 is the DSCR at loan origination
- X_4 is 1 minus the exponential of the product of negative 0.00538178 and the original loan balance in 1997 dollars expressed in thousands; and
- X_5 is the D/A ratio at loan origination.

h. The estimated logit coefficients and p-values are: [4]

	Coefficients	p-value
Intercept	−12.62738	<0.0001
X_1: LTV variable	1.91259	0.0001
X_2: Max land value decline variable	0.33830	<0.0001
X_3: DSCR	−0.19596	0.0002
X_4: Loan size variable	4.55390	<0.0001
X_5: D/A ratio	2.49482	<0.0000

i. The low p-values on each coefficient indicate a highly significant relationship between the probability ratio of loan-loss frequency and the respective independent variables. Other goodness-of-fit indicators are:

Hosmer and Lemeshow goodness-of-fit p-value—0.1718
Max-rescaled R^2—0.2015
Concordant—85.2%
Disconcordant—12.0%
Tied—2.8%

j. These variables have logical relationships to the incidence of loan default and loss, as evidenced by the findings of numerous credit-scoring studies in agricultural finance.[5] Each of the variable coefficients has directional relationships that appropriately capture credit risk from underwriting variables and, therefore, the incidence of loan-loss frequency. The frequency of loan loss was found to differ significantly across all of the loan characteristics and lending conditions. Farmland values represent an appropriate variable for capturing the effects of exogenous economic factors. It is commonly accepted that farmland values at any point in time reflect the discounted present value of expected returns to the land.[6] Thus, changes in land values, as expressed in the loss-frequency equation, represent the combined effects of the level and growth rates of farm income, interest rates, and inflationary expectations—each of which is accounted for in the discounted, present value process.

k. When applying the equation to Farmer Mac's portfolio, you must get the input values for X_1, X_3, X_4, and X_5 for each loan in Farmer Mac's portfolio on the date at which the stress test is conducted, using either submitted data or proxy data as described in section 4.1 d.(3) below. For the variable X_2, the stressful input value from the benchmark loss experience is −23.52 percent. You must apply this input to all Farmer Mac loans subject to loss to calculate loss frequency under stressful economic conditions.[7] The maximum land value decline from the benchmark loss experience is the simple average of annual land value changes for Iowa, Illinois, and Minnesota for the years 1984 and 1985.[8]

l. Forecasting with data outside the range of the estimation data requires special treatment for implementation. While the estimation data embody Farmer Mac values for various loan characteristics, the maximum farmland price decline experienced in Texas was −16.69 percent, a value below the benchmark experience of −23.52 percent. To control for this effect, you must apply a procedure that restricts the slope of all the independent variables to that observed at the maximum land value decline observed in the estimation data. Essentially, you must approximate the slope of the loss-frequency equation at the point −16.69 percent in order to adjust the probability of loan default and loss occurrence for data beyond the range in the estimating data. The adjustment procedure is shown in step 4 of section 2.3 entitled, ''Example Calculation of Dollar Loss on One Loan.''

m. Loss severity was not found to vary systematically and was considered constant across the tested loan characteristics and lending conditions. Thus, the simple weighted average by loss volume of 20.9 percent is used in the stress test.[9] You must

[1] Excluding loans with defaults, 11,527 loans were active and 7,515 loans were paid in full, re-amortized or merged as of 1992. A t-test [2] of the differences in the means for the group of defaulted loans and active loans indicated that active loans had significantly higher D/A and LTV ratios, and lower current ratios than defaulted loans where loss occurred. These results indicate that, on average, active loans have potentially higher risk than loans that were re-amortized, paid in full, or merged.

[2] Loss probability is likely to be more sensitive to changes in LTV at higher values of LTV. The power function provides a continuous relationship between LTV and defaults.

[3] The dampening function reflects the declining effect that the maximum land value decline has on the probability of default when it occurs later in a loan's life.

[4] The nonlinear parameters for the variable transformations were simultaneously estimated using SAS version 8e NLIN procedure. The NLIN procedure produces estimates of the parameters of a nonlinear transformation for LTV, dampening factor, and loan-size variables. To implement the NLIN procedure, the loss-frequency equation and its variables are declared and initial parameter values supplied. The NLIN procedure is an iterative process that uses the initial parameter values as the starting values for the first iteration and continues to iterate until acceptable parameters are solved. The initial values for the power function and dampening function are based on the proposed rule. The procedure for the initial values for the size variable parameter is provided in an Excel spreadsheet posted at *http://www.fca.gov.*

The Gauss-Newton method is the selected iterative solving process. As described in the preamble, the loss-frequency function for the nonlinear model is the negative of the log-likelihood function, thus producing maximum likelihood estimates. In order to obtain statistical properties for the loss-frequency equation and verify the logistic coefficients, the estimates for the nonlinear transformations are applied to the FCBT data and the loss-frequency model is re-estimated using the SAS Logistic procedure. The SAS procedures, output reports and Excel spreadsheet used to estimate the parameters of the loss-frequency equation are located on the Web site *http://www.fca.gov.*

[5] Splett, N.S., P. J. Barry, B. Dixon, and P. Ellinger. ''A Joint Experience and Statistical Approach to Credit Scoring,'' *Agricultural Finance Review,* 54(1994):39–54.

[6] Barry, P. J., P. N. Ellinger, J. A. Hopkin, and C. B. Baker. *Financial Management in Agriculture,* 5th ed., Interstate Publishers, 1995.

[7] On- and off-balance sheet Farmer Mac I agricultural mortgage program assets booked after the 1996 Act amendments are subject to the loss calculation.

[8] While the worst-case losses, based on origination year, occurred during 1983 and 1984, this benchmark was determined using annual land value changes that occurred 2 years later.

[9] We calculated the weighted-average loss severity from the estimation data.

multiply loss severity with the probability estimate computed from the loss-frequency equation to determine the loss rate for a loan.

n. Using original loan balance results in estimated probabilities of loss frequency over the entire life of a loan. To account for loan seasoning, you must reduce the loan-loss exposure by the cumulative probability of loss already experienced by each loan as discussed in section 2.2 entitled, ''Loan-Seasoning Adjustment.'' This subtraction is based on loan age and reduces the loss estimated by the loss-frequency and loss-severity equations. The result is an age-adjusted lifetime dollar loss that can be used in subsequent calculations of loss rates as discussed in section 2.4, ''Calculation of Loss Rates for Use in the Stress Test.''

2.2 Loan-Seasoning Adjustment.

a. You must use the seasoning function supplied by FCA to adjust the calculated probability of loss for each Farmer Mac loan for the cumulative loss exposure already experienced based on the age of each loan. The seasoning function is based on the same data used to determine the loss-frequency equation and an assumed average life of 14 years for agricultural mortgages. If we determine that the relationship between the loss experience in Farmer Mac's portfolio over time and the seasoning function can be improved, we may augment or replace the seasoning function.

b. The seasoning function is parameterized as a beta distribution with parameters of p = 4.288 and q = 5.3185.[10] How the loan-seasoning distribution is used is shown in Step 7 of section 2.3, ''Example Calculation of Dollar Loss on One Loan.''

2.3 Example Calculation of Dollar Loss on One Loan.

Here is an example of the calculation of the dollar losses for an individual loan with the following characteristics and input values:[11]

Loan Origination Year	1996
Loan Origination Balance	$1,250,000
LTV at Origination	0.5
D/A at Origination	0.5
DSCR at Origination	1.3984
Maximum Percentage Land Price Decline (MAX)	−23.52

Step 1: Convert 1996 Origination Value to 1997 dollar value (LOAN) based on the consumer price index and transform as follows:

$1,278,500 = $1,250,000 · 1.0228

$0.998972 = 1 - \exp((-.00538178) \cdot \$1,278,500 / 1000)$

Step 2: Calculate the default probabilities using −16.64 percent and −16.74 percent land value declines as follows:[12]

Where,

$Z_1 = (-12.62738) + 1.91259 \cdot LTV^{5.3914596} - 0.33830 \cdot (-16.6439443) - 0.19596 \cdot DSCR + 4.55390 \cdot 0.998972 + 2.49482 \cdot DA = (-1.428509)$

$\text{Default Loss Frequency at } (-16.64\%) = 1 / 1 + \exp^{-(-1.428509)} = 0.19333111$

And

$Z_1 = (-12.62738) + 1.91259 \cdot LTV^{5.3914596} - 0.33830 \cdot (-16.7439443) - 0.19596 \cdot DSCR + 4.55390 \cdot 0.998972 + 2.49482 \cdot DA = (-1.394679)$

$\text{Loss Frequency Probability at } (-16.74\%) = 1 / 1 + \exp^{-(-1.394679)} = 0.19866189$

Step 3: Calculate the slope adjustment. You must calculate slope by subtracting the difference between ''Loss-Frequency Probability at −16.64 percent'' and ''Loss-Frequency Probability at −16.74 percent'' and dividing by −0.1 (the difference between −16.64 percent and 16.74 percent as follows:

$0.05330776 = (0.19333111 - 0.19866189) / -0.1$

Step 4: Make the linear adjustment. You make the adjustment by increasing the loss-frequency probability where the dampened stressed farmland value input is less than −16.69 percent to reflect the stressed farmland value input, appropriately discounted. As discussed previously, the stressed land value input is discounted to reflect the declining effect that the maximum land value decline has on the probability of default when it occurs later in a loan's life.[13] The linear adjustment is the difference between −16.69 percent land value decline and the adjusted stressed maximum land value decline input of −23.52 multiplied by the slope estimated in Step 3 as follows:

$\text{Loss Frequency at } -16.69 \text{ percent} = Z_1 = (-12.62738) + (1.91259)\,(LTV^{5.3914596}) - (0.33830)\,(-16.6939443) - (0.19596)\,(DSCR) + (4.55390)\,(0.998972) + (2.49482)\,(DA) = -1.411594$

And

$1 / 1 + \exp^{(-1.411594)} = 0.19598279$

$\text{Dampened Maximum Land Price Decline} = (-20.00248544) = (-23.52)\,(1.0413299)^{-4}$

$\text{Slope Adjustment} = 0.17637092 = 0.053312247 \cdot (-16.6939443 - (-20.00248544))$

$\text{Loan Default Probability} = 0.37235371 = 0.19598279 + 0.17637092$

Step 5: Multiply loan default probability times the average severity of 0.209 as follows:

$0.077821926 = 0.37235371 \cdot 0.209$

Step 6: Multiply the loss rate times the origination loan balance as follows:

$97,277 = $1,250,000 · 0.077821926

Step 7: Adjust the origination based dollar losses for 4 years of loan seasoning as follows:

$\$81,987 = \$97,277 - \$97,277 \cdot (0.157178762)$[14]

2.4 Calculation of Loss Rates for Use in the Stress Test

a. You must compute the loss rates by state as the dollar weighted average seasoned loss rates from the Cash Window and Standby loan portfolios by state. The spreadsheet entitled, ''Credit Loss Module.XLS'' can be used for these calculations. This spreadsheet is available for download on our Web site, *http://www.fca.gov,* or will be provided upon request. The blended loss rates for each state are copied from the ''Credit Loss Module'' to the stress test spreadsheet for determining Farmer Mac's regulatory capital requirement.

b. The stress test use of the blended loss rates is further discussed in section 4.3, ''Risk Measures.''

3.0 Interest Rate Risk

The stress test explicitly accounts for Farmer Mac's vulnerability to interest rate risk from the movement in interest rates specified in the statute. The stress test considers Farmer Mac's interest rate risk position through the current structure of its balance sheet, reported interest rate risk shock-test results,[15] and other financial activities. The stress test calculates the effect of interest rate risk exposure through market value changes of interest-bearing assets, liabilities, and off-balance sheet transactions, and thereby the effects to equity capital. The stress test also captures this exposure through the cashflows on rate-sensitive assets and liabilities. We discuss how to calculate the dollar impact of interest rate risk in section 4.6, ''Balance Sheets.''

3.1 Process for Calculating the Interest Rate Movement

a. The stress test uses the 10-year Constant Maturity Treasury (10-year CMT) released by the Federal Reserve in HR. 15, ''Selected Interest Rates.'' The stress test uses the 10-year CMT to generate earnings yields on assets, expense rates on liabilities, and changes in the market value of assets and liabilities. For stress test purposes, the starting rate for the 10-year CMT is the 3-month average of the most recent monthly rate series published by the Federal Reserve. The 3-month average is calculated by summing the latest monthly series of the 10-year CMT and dividing by three. For instance, you would calculate the initial rate on June 30, 1999, as:

Month end	10-year CMT monthly series
04/1999	5.18
05/1999	5.54

[10] We estimated the loan-seasoning distribution from portfolio aggregate charge-off rates from the estimation data. To do so, we arrayed all defaulting loans where loss occurred according to the time from origination to default. Then, a beta distribution, B(p, q), was fit to the estimation data scaled to the maximum time a loan survived (14 years).

[11] In the examples presented we rounded the numbers, but the example calculation is based on a larger number of significant digits. The stress test uses additional digits carried at the default precision of the software.

[12] This process facilitates the approximation of slope needed to adjust the loss probabilities for land value declines greater than observed in the estimation data.

[13] The dampened period is the number of years from the beginning of the origination year to the current year (*i.e.,* January 1, 1996 to January 1, 2000 is 4 years).

[14] The age adjustment of 0.157178762 is determined from the beta distribution for a 4-year-old loan.

[15] See paragraph c. of section 4.1 entitled, ''Data Inputs,'' for a description of the interest rate risk shock-reporting requirement.

Month end	10-year CMT monthly series
06/1999	5.90
Average	5.54

b. The amount by which the stress test shocks the initial rate up and down is determined by calculating the 12-month average of the 10-year CMT monthly series. If the resulting average is less than 12 percent, the stress test shocks the initial rate by an amount determined by multiplying the 12-month average rate by 50 percent. However, if the average is greater than or equal to 12 percent, the stress test shocks the initial rate by 600 basis points. For example, determine the amount by which to increase and decrease the initial rate for June 30, 1999, as follows:

Month end	10-year CMT monthly series
07/1998	5.46
08/1998	5.34
09/1998	4.81
10/1998	4.53
11/1998	4.83
12/1998	4.65
01/1999	4.72
02/1999	5.00
03/1999	5.23
04/1999	5.18
05/1999	5.54
06/1999	5.90
12-Month Average	5.10

Calculation of Shock Amount
12-Month Average Less than 12%: Yes
12-Month Average: 5.10
Multiply the 12-Month Average by: 50%
Shock in basis points equals: 255

c. You must run the stress test for two separate changes in interest rates: (i) An immediate increase in the initial rate by the shock amount; and (ii) immediate decrease in the initial rate by the shock amount. The stress test then holds the changed interest rate constant for the remainder of the 10-year stress period. For example, at June 30, 1999, the stress test would be run for an immediate and sustained (for 10 years) upward movement in interest rates to 8.09 percent (5.54 percent plus 255 basis points) and also for an immediate and sustained (for 10 years) downward movement in interest rates to 2.99 percent (5.54 percent minus 255 basis points). The movement in interest rates that results in the greatest need for capital is then used to determine Farmer Mac's risk-based capital requirement.

4.0 Elements Used in Generating Cashflows

a. This section describes the elements that are required for implementation of the stress test and assessment of Farmer Mac capital performance through time. An Excel spreadsheet named FAMC RBCST, available at *http://www.fca.gov,* contains the stress test, including the cashflow generator. The spreadsheet contains the following seven worksheets:

(1) Data Input;
(2) Assumptions and Relationships;
(3) Risk Measures (credit risk and interest rate risk);
(4) Loan and Cash Flow Accounts;
(5) Income Statements;
(6) Balance Sheets; and
(7) Capital.

b. Each of the components is described in further detail below with references where appropriate to the specific worksheets within the Excel spreadsheet. The stress test may be generally described as a set of linked financial statements that evolve over a period of 10 years using generally accepted accounting conventions and specified sets of stressed inputs. The stress test uses the initial financial condition of Farmer Mac, including earnings and funding relationships, and the credit and interest rate stressed inputs to calculate Farmer Mac's capital performance through time. The stress test then subjects the initial financial conditions to the first period set of credit and interest rate risk stresses, generates cashflows by asset and liability category, performs necessary accounting postings into relevant accounts, and generates an income statement associated with the first interval of time. The stress test then uses the income statement to update the balance sheet for the end of period 1 (beginning of period 2). All necessary capital calculations for that point in time are then performed.

c. The beginning of the period 2 balance sheet then serves as the departure point for the second income cycle. The second period's cashflows and resulting income statement are generated in similar fashion as the first period's except all inputs (*i.e.,* the periodic loan losses, portfolio balance by category, and liability balances) are updated appropriately to reflect conditions at that point in time. The process evolves forward for a period of 10 years with each pair of balance sheets linked by an intervening set of cashflow and income statements. In this and the following sections, additional details are provided about the specification of the income-generating model to be used by Farmer Mac in calculating the risk-based capital requirement.

4.1 Data Inputs

The stress test requires the initial financial statement conditions and income generating relationships for Farmer Mac. The worksheet named ''Data Inputs'' contains the complete data inputs and the data form used in the stress test. The stress test uses these data and various assumptions to calculate pro forma financial statements. For stress test purposes, Farmer Mac is required to supply:

a. *Call Report Schedules RC: Balance Sheet and RI: Income Statement.* These schedules form the starting financial position for the stress test. In addition, the stress test calculates basic financial relationships and assumptions used in generating pro forma annual financial statements over the 10-year stress period. Financial relationships and assumptions are in section 4.2, ''Assumptions and Relationships.''

b. *Cashflow Data for Asset and Liability Account Categories.* The necessary cashflow data for the spreadsheet-based stress test are book value, weighted average yield, weighted average maturity, conditional prepayment rate, weighted average amortization, and weighted average guarantee fees. The spreadsheet uses this cashflow information to generate starting and ending account balances, interest earnings, guarantee fees, and interest expense. Each asset and liability account category identified in this data requirement is discussed in section 4.2, ''Assumptions and Relationships.''

c. *Interest Rate Risk Measurement Results.* The stress test uses the results from Farmer Mac's interest rate risk model to represent changes in the market value of assets, liabilities, and off-balance sheet positions during upward and downward instantaneous shocks in interest rates of 300, 250, 200, 150, and 100 basis points. The stress test uses these data to calculate a schedule of estimated effective durations representing the market value effects from a change in interest rates. The stress test uses a linear interpolation of the duration schedule to relate a change in interest rates to a change in the market value of equity. This calculation is described in section 4.4 entitled, ''Loan and Cashflow Accounts,'' and is illustrated in the referenced worksheet of the stress test.

d. *Loan-Level Data for All Farmer Mac I Program Assets.*

(1) The stress test requires loan-level data for all Farmer Mac I program assets to determine lifetime age-adjusted loss rates. The specific loan data fields required for running the credit risk component are:

FARMER MAC I PROGRAM LOAN DATA FIELDS
Loan Number.
Ending Scheduled Balance.
Group.
Pre/Post Act.
Property State.
Product Type.
Origination Date.
Loan Cutoff Date.
Original Loan Balance.
Original Scheduled P&I.
Original Appraised Value.
Loan-to-Value Ratio.
Debt-to-Assets Ratio.
Current Assets.
Current Liabilities.
Total Assets.
Total Liabilities.
Gross Farm Revenue.
Net Farm Income.
Depreciation.
Interest on Capital Debt.
Capital Lease Payments.
Living Expenses.
Income & FICA Taxes.
Net Off-Farm Income.
Total Debt Service.
Guarantee/Commitment Fee.
Seasoned Loan Flag.

(2) From the loan-level data, you must identify the geographic distribution by state of Farmer Mac's loan portfolio and enter the

current loan balance for each state in the ''Data Inputs'' worksheet. The lifetime age-adjustment of origination year loss rates was discussed in section 2.0, ''Credit Risk.'' The lifetime age-adjusted loss rates are entered in the ''Risk Measures'' worksheet of the stress test. The stress test application of the loss rates is discussed in section 4.3, ''Risk Measures.''

(3) Under certain circumstances, described below, you must substitute the following data proxies for the variables LTV, DSCR, and D/A: LTV = 0.70, DSCR = 1.20, and D/A = 0.60. The substitution must be done whenever any of these data are missing, *i.e.*, cells are blank, or one or more of the conditions in the following table is true.

Condition:	Apply:
1. Total Assets = 0	Proxy D/A.
2. Total Liabilities = 0	Proxy D/A.
3. Total assets less total liabilities <0	Proxy D/A.
4. Total debt service = 0 or not calculable	Proxy DSCR.
5. Net farm income = 0	Proxy DSCR.
6. LTV ratio = 0	Proxy LTV.
7. Total assets less than original appraised value	Proxy LTV, D/A.
8. Total liabilities less than the original loan amount	Proxy D/A.
9. Total debt service is less than original scheduled principal and interest payment	Proxy DSCR.
10. Depreciation, interest on capital debt, capital lease payments, or living expenses are reported as less than zero.	Proxy DSCR.
11. Original Scheduled Principal and Interest is greater than Total Debt Service	Proxy DSCR.
12. Calculated LTV (original loan amount divided by original appraised value) does not equal the submitted greater of LTV ratio.	The greater of the two LTV ratios.
13. Any of the fields referenced in ''1.'' through ''12.'' above are blank or contain spaces, periods, zeros, negative amounts, or fonts formatted to any setting ratios other than numbers.	Proxy all realted ratios.

In addition, the following loan data adjustments must be made in response to the situations listed below:

Situation:	Data adjustment:
Original loan balance is less than scheduled loan balance	Substitute scheduled balance for origination.
Purchase (commitment) date (a.k.a. ''cutoff'' date) field and Origination date field are both blank	Insert the quarter end ''as of'' date of the RBCST submission.
Origination date field is blank	Model based on Cutoff date.
Seasoned Standby loans that include loan data	Proxy data applied.[16]

Further, because it would not be possible to compile an exhaustive list of loan data anomalies, FCA reserves the authority to require an explanation on other data anomalies it identifies and to apply the loan data proxies on such cases until the anomaly is adequately addressed by the Corporation.

e. *Weighted Haircuts for Non-Program Investments.* For non-program investments, the stress test adjusts the weighted average yield data referenced in section 4.1b. to reflect counterparty risk. Non-program investments are defined in 12 CFR 652.5. The haircuts are applied by credit rating category. For this purpose, FCA credit rating categories are mapped to the Nationally Recognized Statistical Rating Organizations (NRSRO) ratings categories as set forth in the following table.

RATING AGENCIES MAPPINGS TO FCA RATINGS CATEGORIES

FCA Ratings Category	AAA	AA	A	BBB	Below BBB and Unrated.
Standard & Poor's Long-Term	AAA	AA	A	BBB	Below BBB and Unrated.
Fitch Long-Term	AAA	AA	A	BBB	Below BBB and Unrated.
Moody's Long-Term	Aaa	Aa	A	Baa	Below Baa and Unrated.
Standard & Poor's Short-Term	A–1+	A–1	A–2	A–3	SP–3, B, or Below and Unrated.
	SP–1+	SP–1	SP–2		
Fitch Short-Term	F–1+	F–1	F–2	F–3	Below F–3 and Unrated.
Moody's Short-Term[17]		Prime-1	Prime-2	Prime-3	Not Prime, SG and Unrated.
		MIG1	MIG2	MIG3	
		VMIG1	VMIG2	VMIG3	
Fitch Individual Bank Ratings	A	B	C	D	E
		A/B	B/C	C/D	D/E
Moody's Bank Financial Strength Rating	A	B	C	D	E

[16] Application of proxy data recognizes that underwriting data on seasoned standby loans are not reviewed by Farmer Mac in favor of other criteria and frequently not origination data.

[17] Any rating that appears in more than one category column is assigned to the lower FCA rating category.

The Corporation must calculate the haircut to be applied to each investment based on the lowest credit rating the investment received from NRSRO using the haircuts levels in the following table.

FARMER MAC RBCST MAXIMUM HAIRCUT BY FCA RATINGS CATEGORY

FCA ratings category	Non-derivative contract counterparties or instruments (percent)
Cash	0
AAA	3.50
AA	8.75
A	14.00
BBB	28.00
Below BBB and Unrated	100.00

Individual investment haircuts must then be aggregated into weighted average haircuts by investment category and provided in the ''Data Inputs'' worksheet. The spreadsheet uses this information to account for counterparty insolvency through reduced interest earnings on these categories of investment according to a 10-year linear phase-in. Each asset account category identified in this data requirement is discussed in section 4.2, ''Assumptions and Relationships.''

f. *Other Data Requirements.* Other data elements are taxes paid over the previous 2 years, the corporate tax schedule, selected line items from Schedule RS–C of the Call Report, and 10-year CMT information as discussed in section 3.1 entitled, ''Process for Calculating the Interest Rate Movement.'' The stress test uses the corporate tax schedule and previous taxes paid to determine the appropriate amount of taxes, including available loss carry-backs and loss carry-forwards. Three line items found in sections Part II.2.a. and 2.b. of Call Report Schedule RS–C Capital Calculation must also be entered in the ''Data Inputs'' sheet. The two line items found in Part II.2.a. contain the dollar volume off-balance sheet assets relating to the Farmer Mac I and II programs. The off-balance sheet program asset dollar volumes are used to calculate the operating expense regression on a quarterly basis. The single-line item found in Part II.2.b. provides the amount of other off-balance sheet obligations and is presented in the balance sheet section of the stress test for purposes of completeness. The 10-year CMT quarterly average of the monthly series and the 12-month average of the monthly series must be entered in the ''Data Inputs'' sheet. These two data elements are used to determine the starting interest rate and the level of the interest rate shock applied in the stress test.

4.2 Assumptions and Relationships

a. The stress test assumptions are summarized on the worksheet called ''Assumptions and Relationships.'' Some of the entries on this page are direct user entries. Other entries are relationships generated from data supplied by Farmer Mac or other sources as discussed in section 4.1, ''Data Inputs.'' After current financial data are entered, the user selects the date for running the stress test. This action causes the stress test to identify and select the appropriate data from the ''Data Inputs'' worksheet. The next section highlights the degree of disaggregation needed to maintain reasonably representative financial characterizations of Farmer Mac in the stress test. Several specific assumptions are established about the future relationships of account balances and how they evolve.

b. From the data and assumptions, the stress test computes pro forma financial statements for 10 years. The stress test must be run as a ''steady state'' with regard to program balances, and where possible, will use information gleaned from recent financial statements and other data supplied by Farmer Mac to establish earnings and cost relationships on major program assets that are applied forward in time. As documented in the stress test, entries of ''1'' imply no growth and/or no change in account balances or proportions relative to initial conditions with the exception of pre-1996 loan volume being transferred to post-1996 loan volume. The interest rate risk and credit loss components are applied to the stress test through time. The individual sections of that worksheet are:

(1) *Elements related to cashflows, earnings rates, and disposition of discontinued program assets.*

(A) The stress test accounts for earnings rates by asset class and cost rates on funding. The stress test aggregates investments into the categories of: Cash and money market securities; commercial paper; certificates of deposit; agency mortgage-backed securities and collateralized mortgage obligations; and other investments. With FCA's concurrence, Farmer Mac is permitted to further disaggregate these categories. Similarly, we may require new categories for future activities to be added to the stress test. Loan items requiring separate accounts include the following:

(i) Farmer Mac I program assets post-1996 Act;

(ii) Farmer Mac I program assets post-1996 Act Swap balances;

(iii) Farmer Mac I program assets pre-1996 Act;

(iv) Farmer Mac I AgVantage securities;

(v) Loans held for securitization; and

(vi) Farmer Mac II program assets.

(B) The stress test also uses data elements related to amortization and prepayment experience to calculate and process the implied rates at which asset and liability balances terminate or ''roll off'' through time. Further, for each category, the stress test has the capacity to track account balances that are expected to change through time for each of the above categories. For purposes of the stress test, all assets are assumed to maintain a ''steady state'' with the implication that any principal balances retired or prepaid are replaced with new balances. The exceptions are that expiring pre-1996 Act program assets are replaced with post-1996 Act program assets.

(2) *Elements related to other balance sheet assumptions through time.* As well as interest earning assets, the other categories of the balance sheet that are modeled through time include interest receivable, guarantee fees receivable, prepaid expenses, accrued interest payable, accounts payable, accrued expenses, reserves for losses (loans held and guaranteed securities), and other off-balance sheet obligations. The stress test is consistent with Farmer Mac's existing reporting categories and practices. If reporting practices change substantially, the above list will be adjusted accordingly. The stress test has the capacity to have the balances in each of these accounts determined based upon existing relationships to other earning accounts, to keep their balances either in constant proportions of loan or security accounts, or to evolve according to a user-selected rule. For purposes of the stress test, these accounts are to remain constant relative to the proportions of their associated balance sheet accounts that generated the accrued balances.

(3) *Elements related to income and expense assumptions.* Several other parameters that are required to generate pro forma financial statements may not be easily captured from historic data or may have characteristics that suggest that they be individually supplied. These parameters are the gain on agricultural mortgage-backed securities (AMBS) sales, miscellaneous income, operating expenses, reserve requirement, guarantee fees and loan loss resolution timing.

(A) The stress test applies the actual weighted average gain rate on sales of AMBS over the most recent 3 years to the dollar amount of AMBS sold during the most recent four quarters in order to estimate gain on sale of AMBS over the stress period.

(B) The stress test assumes miscellaneous income at a level equal to the average of the most recent 3-year's actual miscellaneous income as a percent of the sum of; cash, investments, guaranteed securities, and loans held for investment.

(C) The stress test assumes that short-term cost of funds is incurred in relation to the amount of defaulting loans purchased from off-balance sheet pools. The remaining UPB on this loan volume is the origination amount reduced by the proportion of the total portfolio that has amortized as of the end of the most recent quarter. This volume is assumed to be funded at the short-term cost of funds and this expense continues for a period equal to the loan loss resolution timing period (LLRT) period minus 1. We will calculate the LLRT period from Farmer Mac data. In addition, during the LLRT period, all guarantee income associated with the loan volume ceases.

(D) The stress test generates no interest income on the estimated volume of defaulted on-balance sheet loan volume required to be carried during the LLRT period, but continues to accrue funding costs during the remainder of the LLRT period.

(E) The Agency will consider revising the LLRT period in response to changes in the Corporation's actual experience.

(F) Operating costs are determined in the model through application of the revised

[17] Any rating that appears in more than one category column is assigned to the lower FCA rating category.

operating expense equation which may be restated as:

$$\text{Expenses} = \alpha + \beta_1 \ln(\text{OnF}_t) + \beta_2 \ln(\text{OnGS}_t) + \beta_3 \ln(\text{OffI}_t + \text{OffII}_t) + \beta_4 \ln(\text{REO}_t)$$

Where t indicates time period in the model, OnF represents on-balance sheet investments, OnGS represents on-balance sheet guaranteed securities, OffI and OffII represent off balance sheet Farmer Mac I and II program loans, respectively, REO represents gross real-estate owned and the β_i coefficients are taken from the operating expense regression equation which is to be re-estimated quarterly by Farmer Mac, and the resulting coefficients entered into the ''Assumptions and Relationships'' worksheet. As additional data accumulate, the specification will be re-examined and modified if we deem changing the specification results in a more appropriate representation of operating expenses.

(G) To run the stress test, the operating expense regression equation must be re-estimated using data from Farmer Mac's inception to the most recent quarterly financial information and the resulting coefficient entered into the ''Assumptions and Relationships''worksheet.

(H) The reserve requirement as a fraction of loan assets can also be specified. However, the stress test is run with the reserve requirement set to zero. Setting the parameter to zero causes the stress test to calculate a risk-based capital level that is comparable to regulatory capital, which includes reserves. Thus, the risk-based capital requirement contains the regulatory capital required, including reserves. The amount of total capital that is allocated to the reserve account is determined by GAAP. The guarantee rates applied in the stress test are: post-1996 Farmer Mac I assets (50 basis points, current weighted average of 42 basis points); pre-1996 Farmer Mac I assets (25 basis points); and Farmer Mac II assets (25 basis points).

(4) *Elements related to earnings rates and funding costs.*

(A) The stress test can accommodate numerous specifications of earnings and funding costs. In general, both relationships are tied to the 10-year CMT interest rate. Specifically, each investment account, each loan item, and each liability account can be specified as fixed rate, or fixed spread to the 10-year CMT with initial rates determined by actual data. The stress test calculates specific spreads (weighted average yield less initial 10-year CMT) by category from the weighted average yield data supplied by Farmer Mac as described earlier. For example, the fixed spread for Farmer Mac I program post-1996 Act mortgages is calculated as follows:

Fixed Spread = Weighted Average Yield less 10-year CMT

$$0.014 = 0.0694 - 0.0554$$

(B) The resulting fixed spread of 1.40 percent is then added to the 10-year CMT when it is shocked to determine the new yield. For instance, if the 10-year CMT is shocked upward by 300 basis points, the yield on Farmer Mac I program post-1996 Act loans would change as follows:

Yield = Fixed Spread + 10-year CMT

$$.0994 = .014 + .0854$$

(C) The adjusted yield is then used for income calculations when generating pro forma financial statements. All fixed-spread asset and liability classes are computed in an identical manner using starting yields provided as data inputs from Farmer Mac. The fixed-yield option holds the starting yield data constant for the entire 10-year stress test period. You must run the stress test using the fixed-spread option for all accounts except for discontinued program activities, such as Farmer Mac I program loans made before the 1996 Act. For discontinued loans, the fixed-rate specification must be used if the loans are primarily fixed-rate mortgages.

(5) *Elements related to interest rate shock test.* As described earlier, the interest rate shock test is implemented as a single set of forward interest rates. The stress test applies the up-rate scenario and down-rate scenario separately. The stress test also uses the results of Farmer Mac's shock test, as described in paragraph c. of section 4.1, ''Data Inputs,'' to calculate the impact on equity from a stressful change in interest rates as discussed in section 3.0 titled, ''Interest Rate Risk.'' The stress test uses a schedule relating a change in interest rates to a change in the market value of equity. For instance, if interest rates are shocked upward so that the percentage change is 262 basis points, the linearly interpolated effective estimated duration of equity is -6.7405 years given Farmer Mac's interest rate measurement results at 250 and 300 basis points of -6.7316 and -6.7688 years, respectively found on the effective duration schedule. The stress test uses the linearly interpolated estimated effective duration for equity to calculate the market value change by multiplying duration by the base value of equity before any rate change from Farmer Mac's interest rate risk measurement results with the percentage change in interest rates.

4.3 Risk Measures

a. This section describes the elements of the stress test in the worksheet named ''Risk Measures'' that reflect the interest rate shock and credit loss requirements of the stress test.

b. As described in section 3.1, the stress test applies the statutory interest rate shock to the initial 10-year CMT rate. It then generates a series of fixed annual interest rates for the 10-year stress period that serve as indices for earnings yields and cost of funds rates used in the stress test. (See the ''Risk Measures'' worksheet for the resulting interest rate series used in the stress test.)

c. The Credit Loss Module's state-level loss rates, as described in section 2.4 entitled, ''Calculation of Loss Rates for Use in the Stress Test,'' are entered into the ''Risk Measures'' worksheet and applied to the loan balances that exist in each state. The distribution of loan balances by state is used to allocate new loans that replace loan products that roll off the balance sheet through time. The loss rates are applied both to the initial volume and to new loan volume that replaces expiring loans. The total life of loan losses that are expected at origination are then allocated through time based on a set of user entries describing the time-path of losses.

d. The loss rates estimated in the credit risk component of the stress test are based on an origination year concept, adjusted for loan seasoning. All losses arising from loans originated in a particular year are expressed as lifetime age-adjusted losses irrespective of when the losses actually occur. The fraction of the origination year loss rates that must be used to allocate losses through time are 43 percent to year 1, 17 percent to year 2, 11.66 percent to year 3, and 4.03 percent for the remaining years. The total allocated losses in any year are expressed as a percent of loan volume in that year to reflect the conversion to exposure year.

4.4 Loan and Cashflow Accounts

The worksheet labeled ''Loan and Cashflow Data'' contains the categorized loan data and cashflow accounting relationships that are used in the stress test to generate projections of Farmer Mac's performance and condition. As can be seen in the worksheet, the steady-state formulation results in account balances that remain constant except for the effects of discontinued programs and the LLRT adjustment. For assets with maturities under 1 year, the results are reported for convenience as though they matured only one time per year with the additional convention that the earnings/cost rates are annualized. For the pre-1996 Act assets, maturing balances are added back to post-1996 Act account balances. The liability accounts are used to satisfy the accounting identity, which requires assets to equal liabilities plus owner equity. In addition to the replacement of maturities under a steady state, liabilities are increased to reflect net losses or decreased to reflect resulting net gains. Adjustments must be made to the long- and short-term debt accounts to maintain the same relative proportions as existed at the beginning period from which the stress test is run with the exception of changes associated with the funding of defaulted loans during the LLRT period. The primary receivable and payable accounts are also maintained on this worksheet, as is a summary balance of the volume of loans subject to credit losses.

4.5 Income Statements

a. Information related to income performance through time is contained on the worksheet named ''Income Statements.'' Information from the first period balance sheet is used in conjunction with the earnings and cost-spread relationships from Farmer Mac supplied data to generate the first period's income statement. The same set of accounts is maintained in this worksheet as ''Loan and Cashflow Accounts'' for consistency in reporting each annual period of the 10-year stress period of the test with the exception of the line item labeled ''Interest reversals to carry loan losses'' which incorporates the LLRT adjustment to earnings from the ''Risk Measures'' worksheet. Loans that defaulted do not earn interest or guarantee and commitment fees during LLRT period. The income from each interest-bearing account is calculated, as are costs of interest-bearing liabilities. In each case, these entries are the associated interest rate for that period multiplied by the account balances.

b. The credit losses described in section 2.0, ''Credit Risk,'' are transmitted through the provision account as is any change needed to re-establish the target reserve balance. For determining risk-based capital, the reserve target is set to zero as previously indicated in section 4.2. Under the income tax section, it must first be determined whether it is appropriate to carry forward tax losses or recapture tax credits. The tax section then establishes the appropriate income tax liability that permits the calculation of final net income (loss), which is credited (debited) to the retained earnings account.

4.6 Balance Sheets

a. The worksheet named ''Balance Sheets'' is used to construct pro forma balance sheets from which the capital calculations can be performed. As can be seen in the Excel spreadsheet, the worksheet is organized to correspond to Farmer Mac's normal reporting practices. Asset accounts are built from the initial financial statement conditions, and loan and cashflow accounts. Liability accounts including the reserve account are likewise built from the previous period's results to balance the asset and equity positions. The equity section uses initial conditions and standard accounts to monitor equity through time. The equity section maintains separate categories for increments to paid-in-capital and retained earnings and for mark-to-market effects of changes in account values. The process described below in the ''Capital'' worksheet uses the initial retained earnings and paid-in-capital account to test for the change in initial capital that permits conformance to the statutory requirements. Therefore, these accounts must be maintained separately for test solution purposes.

b. The market valuation changes due to interest rate movements must be computed utilizing the linearly interpolated schedule of estimated equity effects due to changes in interest rates, contained in the ''Assumptions & Relationships'' worksheet. The stress test calculates the dollar change in the market value of equity by multiplying the base value of equity before any rate change from Farmer Mac's interest rate risk measurement results, the linearly interpolated estimated effective duration of equity, and the percentage change in interest rates. In addition, the earnings effect of the measured dollar change in the market value of equity is estimated by multiplying the dollar change by the blended cost of funds rate found on the ''Assumptions & Relationships'' worksheet. Next, divide by 2 the computed earnings effect to approximate the impact as a theoretical shock in the interest rates that occurs at the mid-point of the income cycle from period t_0 to period t_1. The measured dollar change in the market value of equity and related earnings effect are then adjusted to reflect any tax-related benefits. Tax adjustments are determined by including the measured dollar change in the market value of equity and the earnings effect in the tax calculations found in the ''Income Statements'' worksheet. This approach ensures that the value of equity reflects the economic loss or gain in value of Farmer Mac's capital position from a change in interest rates and reflects any immediate tax benefits that Farmer Mac could realize. Any tax benefits in the module are posted through the income statement by adjusting the net taxes due before calculating final net income. Final net income is posted to accumulated unretained earnings in the shareholders' equity portion of the balance sheet. The tax section is also described in section 4.5 entitled, ''Income Statements.''

c. After one cycle of income has been calculated, the balance sheet as of the end of the income period is then generated. The ''Balance Sheet'' worksheet shows the periodic pro forma balance sheets in a format convenient to track capital shifts through time.

d. The stress test considers Farmer Mac's balance sheet as subject to interest rate risk and, therefore, the capital position reflects mark-to-market changes in the value of equity. This approach ensures that the stress test captures interest rate risk in a meaningful way by addressing explicitly the loss or gain in value resulting from the change in interest rates required by the statute.

4.7 Capital

The ''Capital'' worksheet contains the results of the required capital calculations as described below, and provides a method to calculate the level of initial capital that would permit Farmer Mac to maintain positive capital throughout the 10-year stress test period.

5.0 Capital Calculation

a. The stress test computes regulatory capital as the sum of the following:

(1) The par value of outstanding common stock;

(2) The par value of outstanding preferred stock;

(3) Paid-in capital;

(4) Retained earnings; and

(5) Reserve for loan and guarantee losses.

b. Inclusion of the reserve account in regulatory capital is an important difference compared to minimum capital as defined by the statute. Therefore, the calculation of reserves in the stress test is also important because reserves are reduced by loan and guarantee losses. The reserve account is linked to the income statement through the provision for loan-loss expense (provision). Provision expense reflects the amount of current income necessary to rebuild the reserve account to acceptable levels after loan losses reduce the account or as a result of increases in the level of risky mortgage positions, both on- and off-balance sheet. Provision reversals represent reductions in the reserve levels due to reduced risk of loan losses or loan volume of risky mortgage positions. The liabilities section of the ''Balance Sheets'' worksheet also includes separate line items to disaggregate the Guarantee and commitment obligation related to the Financial Accounting Standards Board Interpretation No. 45 (FIN 45) Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others. This item is disaggregated to permit accurate calculation of regulatory capital post-adoption of FIN 45. When calculating the stress test, the reserve is maintained at zero to result in a risk-based capital requirement that includes reserves, thereby making the requirement comparable to the statutory definition of regulatory capital. By setting the reserve requirement to zero, the capital position includes all financial resources Farmer Mac has at its disposal to withstand risk.

5.1 Method of Calculation

a. Risk-based capital is calculated in the stress test as the minimum initial capital that would permit Farmer Mac to remain solvent for the ensuing 10 years. To this amount, an additional 30 percent is added to account for managerial and operational risks not reflected in the specific components of the stress test.

b. The relationship between the solvency constraint (*i.e.*, future capital position not less than zero) and the risk-based capital requirement reflects the appropriate earnings and funding cost rates that may vary through time based on initial conditions. Therefore, the minimum capital at a future point in time cannot be directly used to determine the risk-based capital requirement. To calculate the risk-based capital requirement, the stress test includes a section to solve for the minimum initial capital value that results in a minimum capital level over the 10 years of zero at the point in time that it would actually occur. In solving for initial capital, it is assumed that reductions or additions to the initial capital accounts are made in the retained earnings accounts, and balanced in the debt accounts at terms proportionate to initial balances (same relative proportion of long- and short-term debt at existing initial rates). Because the initial capital position affects the earnings, and hence capital positions and appropriate discount rates through time, the initial and future capital are simultaneously determined and must be solved iteratively. The resulting minimum initial capital from the stress test is then reported on the ''Capital'' worksheet of the stress test. The ''Capital'' worksheet includes an element that uses Excel's ''solver'' or ''goal seek'' capability to calculate the minimum initial capital that, when added (subtracted) from initial capital and replaced with debt, results in a minimum capital balance over the following 10 years of zero.

PART 655—FEDERAL AGRICULTURAL MORTGAGE CORPORATION DISCLOSURE AND REPORTING REQUIREMENTS

3. The authority citation for part 655 continues to read as follows:

Authority: Sec. 8.11 of the Farm Credit Act (12 U.S.C. 2279aa–11).

Subpart B—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 655.50 [Amended]

4. Section 655.50 is amended by removing the word ''should'' and adding in its place, the word ''must'' in the second sentence of paragraph (c).

Dated: November 10, 2005.

Jeanette Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–22730 Filed 11–16–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22856; Airspace Docket No. 05–AAL–36]

Proposed Establishment of Class E Airspace; Toksook Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Toksook Bay, AK. A new Standard Instrument Approach Procedure (SIAP) is being published for the Toksook Bay Airport. Adoption of this proposal would result in establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Toksook Bay, AK.

DATES: Comments must be received on or before January 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22856/ Airspace Docket No. 05–AAL–36, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22856/Airspace Docket No. 05–AAL–36.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would create new Class E airspace at Toksook Bay, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Toksook Bay, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP for the Toksook Bay Airport. The new approach is the Area Navigation Global Positioning System Runway RWY 34, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Toksook Bay Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing the new instrument procedure at the Toksook Bay Airport. Airspace from 1,200 ft. AGL and more than 12 miles from the shoreline will be excluded from this action. That controlled airspace outside 12 miles from the shoreline within 35 miles of the airport will be created in coordination with the FAA's Airspace and Rules, Office of System Operations Airspace and AIM, by modifying existing Offshore Airspace Area; Norton Sound Low Control Area, in accordance with FAA Order 7400.2.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing a new instrument procedure at Toksook Bay Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Toksook Bay, AK [New]

Toksook Bay Airport, AK
(Lat. 60°32′01″ N., long. 165°06′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Toksook Bay Airport and that airspace extending upward from 1,200 feet above the surface within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., excluding that airspace more than 12 miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22775 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22853; Airspace Docket No. 05–AAL–34]

Proposed Revision of Class E Airspace; Holy Cross, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at Holy Cross, AK. Two new Standard Instrument Approach Procedures (SIAPs) and a revised Departure Procedure (DP) are being published for the Holy Cross Airport. Adoption of this proposal would result in revised Class E airspace upward from 700 feet (ft.) above the surface at Holy Cross, AK.

DATES: Comments must be received on or before January 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22854/ Airspace Docket No. 05–AAL–34, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22854/Airspace Docket No. 05–AAL–34.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a

request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at Holy Cross, AK. The intended effect of this proposal is to modify Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Holy Cross, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs and revised the DP for the Holy Cross Airport. The new approaches are: (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 01, original; (2) RNAV (GPS) RWY 19, original. The unnamed revised DP is published in the front of the U.S. Terminal Procedures Alaska Vol 1. Modified Class E controlled airspace extending upward from 700 ft. above the surface within the Holy Cross Airport area would be established by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Holy Cross Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to modify the Class E airspace sufficiently to contain aircraft executing instrument procedures at Holy Cross Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Holy Cross, AK [Revised]

Holy Cross Airport, AK
(Lat. 62°11′18″ N., long. 159°46′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Holy Cross Airport.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22774 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22855; Airspace Docket No. 05–AAL–35]

Proposed Establishment of Class E Airspace; Chignik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Chignik, AK. A new Standard Instrument Approach Procedure (SIAP) is being published for the Chignik Airport. Adoption of this proposal would result in creation of new Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Chignik, AK.

DATES: Comments must be received on or before January 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22855/ Airspace Docket No. 05–AAL–35, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety,

Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22855/Airspace Docket No. 05-AAL–35.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would create new Class E airspace at Chignik, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Chignik, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP for the Chignik Airport. The new approach is the Area Navigation Global Positioning System Runway RWY 01, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Chignik Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing the new instrument procedure at the Chignik Airport. Airspace from 1,200 ft. AGL and more than 12 Nautical Miles (NM) from the shoreline will be excluded from this action. That controlled airspace outside 12 NM from the shoreline within 72.8 NM of the airport will be created in coordination with HQ FAA ATA–400 by modifying existing Offshore Airspace Areas; Woody Island Low Control Area and Control Area 1234L, in accordance with FAA Order 7400.2.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing a new instrument procedure at Chignik Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Chignik, AK [New]

Chignik Airport, AK
(Lat. 56°18′41″ N., long. 158°22′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Chignik Airport and that airspace extending upward from 1,200 feet above the surface within a 72.8-mile radius of the Chignik Airport, excluding that airspace more than 12 nautical miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22773 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22111; Airspace Docket No. 05–AAL–14]

Proposed Establishment of Class E Airspace; Koyuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Koyuk, AK. Two revised procedures and one new Standard Instrument Approach Procedure (SIAP) are being published for the Koyuk Airport. Additional Class E Airspace is needed to contain aircraft executing instrument approaches at Koyuk Airport. Additionally, one small section of Class G airspace surrounded by Class E airspace will be converted to Class E airspace by this action. Adoption of this proposal would result in creation of additional Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Koyuk, AK.

DATES: Comments must be received on or before January 3, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22111/Airspace Docket No. 05–AAL–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22111/Airspace Docket No. 05–AAL–14.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise existing Class E airspace at Koyuk, AK. The intended effect of this proposal is to create additional Class E airspace upward from 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Koyuk, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed one new SIAP and revised two SIAPs for the Koyuk Airport. The new approach is (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 01, original. The two revised approaches are (1) Non Directional Beacon (NDB) Distance Measuring Equipment (DME) RWY 02, amendment (Amdt) 1, and (2) NDB RWY 01, Amdt 1. Additionally, one small area of Class G airspace surrounded by Class E airspace will be converted to Class E airspace. This action will simplify the airspace in this area. The Class E controlled airspace extending upward from 1,200 ft. above the surface within the Koyuk Airport area would be revised by this action. The proposed airspace is sufficient to contain aircraft executing the new and revised instrument procedures at the Koyuk Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient in size to contain aircraft executing instrument procedures at Koyuk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Koyuk, AK [Revised]

Koyuk Airport, AK
(Lat. 64°56′22″ N., long. 161°09′15″ W.)
Koyuk NDB, AK
(Lat. 64°55′55″ N., long. 161°08′52″ W.)
Norton Bay NDB, AK
(Lat. 64°41′46″ N., long. 162°03′47″ W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Koyuk Airport and 4 miles west and 8 miles east of the Koyuk NDB 210° bearing extending from the 9-mile radius to 17 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 5 miles west and 11 miles east of the Koyuk NDB 210° bearing extending from the NDB to 30 miles southwest of the NDB and 4.5 miles either side of the line between the Norton Bay NDB and the Koyuk NDB, and the area within 20 miles of the Koyuk Airport extending clockwise from the Koyuk NDB 140° bearing to the 187° bearing, and the area within 25 miles of the Koyuk Airport extending clockwise from the Koyuk NDB 220° bearing to the 230° bearing.

* * * * *

Issued in Anchorage, AK, on November 8, 2005.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 05–22772 Filed 11–16–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5420

[WO–270–1820–00–24 1A]

RIN 1004–AD70

Preparation for Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations on preparation for timber sales to allow third party scaling on density management sales with an upper limit on the quadratic mean diameter at breast height (DBH) of the trees to be harvested of 20 inches. Third party scaling would be limited to the situations described in the amended provision, that is, if a timber disaster has occurred and a critical resource loss is imminent, and tree cruising and BLM scaling are inadequate to permit orderly disposal of the damaged timber, or if BLM is carrying out density management timber sales subject to the size limits stated above. Thus, third party scaling would generally not be used for sales of higher-value and/or larger diameter timber. BLM is amending the regulations in order to improve the efficiency of density management timber sales where the timber to be harvested may be designated by prescription (a written prescription included in the timber sale contract). The regulations will no longer require that BLM perform all scaling except in the event that a timber disaster is threatening imminent critical resource loss, and scaling by BLM would be inadequate to permit orderly disposal of the damaged timber. In the case of density management timber sales when the quadratic mean DBH of trees to be cut and removed is equal to or less than 20 inches, the regulations will only allow third party scaling by scalers or scaling bureaus under contract to BLM.

DATES: Comments must be received, postmarked, or electronically dated on or before January 17, 2006. BLM will not necessarily consider any comments received, postmarked, or electronically dated after the above date in making its decision on the final rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD70.

Personal or messenger delivery: 1620 L Street NW., Suite 401, Washington,

DC 20036. Internet e-mail: *comments_washington@blm.gov.*

Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical questions about the rule, contact Lyndon Werner at (503) 808–6071 or Scott Lieurance at (202) 452–0316. For procedural questions about the rulemaking process, contact Ted Hudson at (202) 452–5042. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. *Public Comment Procedures*
II. *Background*
III. *Discussion of Proposed Rule*
IV. *Procedural Matters*

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: *http://www.blm.gov.* You may also comment via the Internet to: *Comments_Washington@blm.gov.* Please also include ''Attention: 1004-AD70'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Federal eRulemaking Portal: *http://www.regulations.gov.*

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 1620 L Street, NW., Room 401, Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

BLM Districts have been testing different methods of selling timber, such as Designation-by-Prescription (DxP), attempting to gain efficiencies, especially with a program comprised of substantially more density management and small logs than was historically the case. This testing has revealed that the gain in efficiency by using such methods is lost due to the regulatory requirement that BLM personnel conduct all the scaling if a DxP sale is scale as opposed to lump-sum. Otherwise, scale DxP sales can be more efficient in certain situations (small diameter density management).

43 CFR 5422.1 states: ''[a]s the general practice, the Bureau will sell timber on a tree cruise basis,'' which means lump-sum sales. Section 5422.2(a) states: ''[s]caling by the Bureau will be used from time to time for administrative reasons.'' Lump-sum is the default, and there must be an interest-of-the-Government reason to conduct a scale sale.

43 CFR 5422.2(b) allows third-party scaling when all of three conditions are met:

(1) A timber disaster has occurred;

(2) A critical resource loss is imminent; and

(3) Lump-sum timber measurement practices are inadequate to permit orderly disposal of the damaged timber.

Regular commercial density management sales obviously do not meet these conditions. The definition of third-party scaling found in 43 CFR 5400.0–5 is ''the measurement of logs by a scaling organization, other than a Government agency, approved by the Bureau.'' This includes the non-governmental Scaling Bureaus that normally contract with purchasers to scale in mill yards. BLM does contract with these Scaling Bureaus to scale for administrative check scales.

Historically, BLM timber sales, particularly in western Oregon, were clearcuts of high-value large timber. Log accountability was the principal reason for the aforementioned regulations limiting scale sales and third-party scaling. These provisions are intended to minimize the potential for log theft.

Today's sale program, however, has a considerable component of density management sales in lower-value, smaller-log situations that meet one or more of the following objectives: Growth enhancement, habitat restoration, or fuels/fire hazard reduction. Density management sales are timber sales intended to accomplish these objectives by removing smaller trees and understory that may inhibit growth or forest health or contribute to fuel buildup. In addition, density management sales intended to enhance wildlife habitat may remove some dominant and co-dominant trees in the forest stand to enhance biological diversity. Smaller logs cannot be efficiently and effectively truck scaled. Scaling in the mill yards as trucks are unloaded is faster and more accurate.

BLM does not intend a major shift to scale sales for density management. Rather, we seek to have a multifaceted ''tool kit'' of sale method options in order to maintain as cost effective a program as possible. It is not in the best interest of the Government to scale all density management sales. In certain cases, the costs of administering a lump-sum sale are less than costs of conducting scaling, making the lump-sum sale the preferred in-the-interest-of-the-Government option.

III. Discussion of Proposed Rule

The proposed rule would add one sentence to section 5422.2 on scale sales: ''BLM may also order third party scaling, only by scalers or scaling bureaus under contract to BLM, for the scaling of density management timber sales when the quadratic mean diameter of the trees to be cut and removed is equal to or less than 20 inches.'' (The quadratic mean diameter is a measure used by foresters as an index of the size of trees in a stand. According to the Dictionary of Forestry, the quadratic mean diameter is the diameter of the tree corresponding to the tree of mean basal area. Basal area is the cross-sectional area of a tree measured at breast height. The basal area of a tree with DBH equal to the quadratic mean diameter is equal to the mean basal area of the stand.) This will enable us to conduct density management sales while taking advantage of the improved economies that third party scaling may provide, such as by allowing scaling in the mill yards as trucks are unloaded, which is faster and more accurate.

For the sake of clarity, we also propose to divide section 5422.2(b) into

three paragraphs, the second of which would comprise this new provision. Paragraph (b)(1) would consist of the first sentence of existing paragraph (b), which covers the disaster situation in which third party scaling is allowed, and paragraph (b)(3) would consist of the second sentence of existing paragraph (b), which requires that third party scaling must follow BLM standards in use for timber depletion computations, so that we can make sure that sales conform with sustained yield principles. Redesignated paragraph (b)(1) would also be amended editorially to read in active voice. Neither paragraph (b)(1) nor (b)(3) would contain substantive changes.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action and is not subject to review by Office of Management and Budget under Executive Order 12866. The proposed rule will not have an effect of $100 million or more on the economy. The average cost of contract scaling is approximately $1.50 per thousand board feet. The approximate average annual number of sales contracts over the past several years that would qualify for third party scaling under the proposed rule has been ten sales. The new provision would enable BLM to prepare and administer certain contracts (that otherwise qualify to be sold as a scale sale) more efficiently, saving approximately $90,000 per year. These savings are not directly passed onto purchasers. There may be a slight saving to a purchaser of a scale sale over a lump sum sale due to their not having to conduct pre-sale measures of the sale volume to the same intensity.

For the same reasons, the proposed rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule would impose no requirements on any governmental entities.

The proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The approach in the proposed rule is similar to that of the Forest Service in using third-party scaling.

The proposed rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, having no effect on any of these matters; nor do they raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?

2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?

3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading, for example ''§ 5422.2 Scale sales.'')

5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has determined that this proposed rule authorizing certain timber cuts to be scaled by BLM-approved third parties is a regulation of an administrative and financial nature. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), *Chapter 2, Appendix 1.* In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in *516 DM, Chapter 2, Appendix 2.* Pursuant to Council on Environmental Quality regulations *(40 CFR 1508.4)* and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed rule would likely provide additional business opportunities to scalers and scaling bureaus, which are mostly if not all small entities. The average cost of contract scaling is approximately $1.50 per thousand board feet. The approximate average annual number of sales contracts over the past several years that would qualify for third party scaling under the proposed rule has been ten sales. The new provision would enable BLM to prepare and administer certain contracts (that otherwise qualify to be sold as a scale sale) more efficiently, saving approximately $90,000 per year. These savings are not directly passed onto the purchasers. There may be a slight saving to a purchaser of a scale sale over a lump sum sale due to their not having to conduct pre-sale measures of the sale volume to the same intensity. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would 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. It would merely allow BLM to contract out a management step in timber volume measurement for some types of timber sales to non-governmental entities that can operate more efficiently than the Bureau.

Unfunded Mandates Reform Act

These proposed regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal

governments. The rule would impose no requirements on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that the change proposed in this rule would not have effects approaching $100 million per year on the private sector. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule is not a government action capable of interfering with constitutionally protected property rights. The rule would allow BLM to contract out one step in the timber volume measurement process, and would not provide for the taking or reduction in value of, or any other effect on any private property. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule 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. It would not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this proposed rule does not include policies that have Tribal implications. There are no substantial direct effects 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. There will be some small economic benefit to scalers and scaling bureaus, and therefore to any American Indians that may be employed by or otherwise financially connected to such entities. There are, however, no policy implications that require consultation with Indian Tribes.

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

In accordance with Executive Order 13211, BLM has determined that the proposed rule will not have substantial direct effects on the energy supply, distribution, or use, including a shortfall in supply or price increase. The rule does not relate to energy supply, distribution, or use in any respect.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, BLM has determined that this proposed rule is purely administrative and does not affect cooperative conservation. This proposed rule takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources because it does not interfere with such interests. The proposed rule solely affects a Federal responsibility not involving state or local participation, and has no impact on public health and safety.

Paperwork Reduction Act

These proposed regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal authors of this proposed rule are Kenny McDaniel, Manager, Gunnison Field Office, Colorado, Scott Lieurance, Forester—Senior Specialist, Washington Office, and Lyndon Werner, Forester, Oregon State Office, assisted by Ted Hudson, Senior Regulatory Specialist, Washington Office, Bureau of Land Management.

List of Subjects in 43 CFR Part 5420

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

Dated: November 3, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, for the reasons stated in the preamble and under the authorities stated below, BLM proposes to amend 43 CFR part 5420 as set forth below:

PART 5420—PREPARATION FOR SALE

1. The authority citation for part 5420 continues to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367; Sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

Subpart 5422—Volume Measurements

2. Amend section 5422.2 by revising paragraph (b) to read as follows:

§ 5422.2 Scale sales.

* * * * *

(b) (1) BLM may order third party scaling after determining that all of the following factors exist:

(i) A timber disaster has occurred;

(ii) A critical resource loss is imminent; and

(iii) Measurement practices listed in § 5422.1 and paragraph (a) of this section are inadequate to permit orderly disposal of the damaged timber.

(2) BLM may also order third party scaling, only by scalers or scaling bureaus under contract to BLM, for the scaling of density management timber sales when the quadratic mean diameter of the trees to be cut and removed is equal to or less than 20 inches.

(3) Third party scaling volumes must be capable of being equated to BLM standards in use for timber depletion computations, to insure conformance with sustained yield principles.

[FR Doc. 05–22779 Filed 11–16–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Distinct Population Segment of the California Tiger Salamander in Sonoma County

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for the Sonoma County population of the California tiger salamander. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and an alternative we are considering in our approach to this designation. We are considering a final designation of 21,298 ac (8,519 ha) or less due to an alternative methodology for designating critical habitat (see discussion below). The final critical habitat rule is due to the **Federal Register** on December 1, 2005. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be considered in preparation of the final rule.

DATES: We will accept public comments until November 28, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address, or fax your comments to 916/414–6713; or

3. You may send comments by electronic mail (e-mail) to: *fwsonoma_tiger_salamander@fws.gov.* For directions on how to file comments electronically, see the ''Public Comments Solicited'' section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Copies of the proposed rule and draft economic analysis for critical habitat designation are available on the Internet at *http://www.fws.gov/sacramento* or from the Sacramento Fish and Wildlife Office at the address and contact numbers above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (70 FR 44301; August 2, 2005), on our draft economic analysis of the proposed designation, and on the alternative included with this notice. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat, as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of California tiger salamander (CTS) habitat proposed to be designated in this alternative, what areas should be included in the designation or which should not compared to the original proposed critical habitat;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and this alternative and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

(6) The local governments of Sonoma County including the county itself are considering adopting a county-wide conservation plan preceded by an interim operating agreement to protect the salamander until the local plan can be finalized and formally adopted. If the interim implementation agreement can be finalized in time, the Service will include the existence of the plan in its determination of critical habitat for both the purposes of a 3(5)(A) determination and a 4(b)(2) determination. We are continuing to request comment on the Santa Rosa Plain Conservation Strategy, as requested in the proposed rule, the interim agreement and whether the Service should consider them in determinations under 4(b)(2) under the Act.

An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including the particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period on the August 2, 2005, proposed rule (70 FR 44301) and the reopened comment period following the October 25, 2005, notice of availability of the draft economic analysis (70 FR 61591) need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and the final economic analysis, we may, during the development of our final determination, find that areas proposed do not meet the definition of critical habitat, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AU23'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business

hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Copies of the proposed rule and draft economic analysis are available on the Internet at: *http://www.fws.gov/sacramento/.* You may also obtain copies of the proposed rule and economic analysis from the Sacramento Fish and Wildlife Office (see **ADDRESSES**), or by calling 916/414–6600.

Background

Previous Federal Actions

The Sonoma County Distinct Population Segment (DPS) of the California tiger salamander was emergency listed as endangered on July 22, 2002 (67 FR 47726). On March 19, 2003, we made a final determination of endangered status for the Sonoma County DPS of the California tiger salamander (68 FR 13498).

On August 2, 2005, we proposed to designate a total of 74,223 acres (30,037 hectares) as critical habitat in Sonoma County, California (70 FR 44301). The majority of the proposed designation occurs on privately owned lands. No known Tribal lands have been included in the proposed designation.

Alternative Under Consideration

Current Proposal

We are considering a final designation of 21,298 ac (8,519 ha) or less due to an alternative methodology for identifying critical habitat and mapping refinements. We are also requesting information regarding possible exclusions under section 4(b)(2) of the Endangered Species Act (Act). See discussion below. Pursuant to court order, the final critical habitat rule is due to the **Federal Register** on December 1, 2005.

For information on the primary constituent elements (PCEs) for the California tiger salamander Sonoma County DPS, see the proposed rule (August 2, 2005; 70 FR 44301). The PCEs remain the same as in the proposed rule.

Methodology/Criteria To Identify the Alternative Under Consideration

In the proposed critical habitat rule for the Sonoma population of the California tiger salamander, we identified the historical and potential range of the species in Sonoma County, utilizing all known breeding and adult locality data and GIS resources available to this office. We are currently taking into consideration comments received from the public and beginning to outline possible exclusions from habitat containing features essential to the conservation of the species as outlined below. In the course of these refinements, we have developed an alternative that we are now considering for designation.

Conserving California tiger salamanders over the long term requires a three-pronged approach: (1) Protecting the hydrology and water quality of breeding pools and ponds; (2) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (3) protecting sufficient upland habitat around each breeding location to allow for enough adult survival to maintain a breeding population over the long term. We have developed this alternative to focus on providing sufficient breeding and upland habitat to maintain and sustain existing populations of salamanders in documented breeding sites (vernal pool complexes) identified within Sonoma County.

The final listing rule identified the Sonoma County DPS California tiger salamander as occupying at least eight known breeding sites consisting of vernal pools, seasonal wetlands, and other water bodies surrounded by supporting upland and dispersal habitats (i.e., vernal pool complexes) with varying levels of fragmentation due to urban development. These complexes are generally described as the (1) Hall Road Preserve; (2) FEMA/ Broadmore North Preserve; (3) Engel Preserve; (4) Northwest Air Center; (5) Southwest Air Center; (6) North Air Center; (7) Wright Avenue; and (8) South Ludwig Avenue (68 FR 13498, March 19, 2003). These eight breeding sites (vernal pool complexes) are distributed in the City of Santa Rosa, and the immediate associated unincorporated areas, an area approximately 5 mi (8 km) by 4 mi (6 km) wide. California tiger salamanders were also known to occur south to the Cotati area. Four additional known breeding sites were converted into unsuitable habitat in the two years prior to listing, and a fifth breeding site near Cotati was converted to unsuitable habitat shortly after the emergency listing went into effect.

Consistent with the methodology used to map habitat containing features essential to the conservation of the Santa Barbara and Central populations of the California tiger salamander, we began mapping habitat by buffering known salamander breeding locations by a distance of 0.70 mi (1.1 km) to capture dispersal and upland habitat use. Trenham *et al.* (2001), investigated movements of California tiger salamanders between breeding ponds and projected that 0.70 mi (1.1 km) would encompass 99 percent of all interpond dispersal (Trenham *et al.* 2001).

Buffering known breeding sites by 0.70 m (1.1 km) will also encompass both the breeding habitat and the upland habitat surrounding the ponds where juvenile and adult California tiger salamanders live during the majority of their life cycle. California tiger salamanders frequently move from their breeding ponds in search of suitable upland refugia. A mark-recapture study demonstrated that California tiger salamanders commonly moved between ponds separated by 2,200 ft (671 m) (Trenham *et al.* 2001), and in another study, 16 percent of juvenile captures occurred at 2,296 ft (700 m) (Trenham *et al.* 2001). Trenham and Shaffer (in review) estimated that conserving upland habitats within 2,200 ft (671 m) of breeding ponds would protect 95 percent of California tiger salamanders at their study location in Solano County. Finally, a buffer of 0.70 m (1.1 km) will help protect breeding site watersheds, which is important for two reasons: (1) to ensure that the amount of water entering the pond is not altered in a manner that would allow for colonization of breeding sites by non-native predators, which can prey upon California tiger salamander eggs and larvae; and (2) to preserve water quality by minimizing the entry of sediments and other contaminants to the breeding ponds.

See Figure 1 for map of an alternative we are considering in our approach to this designation for the Sonoma County DPS of the California tiger salamander.

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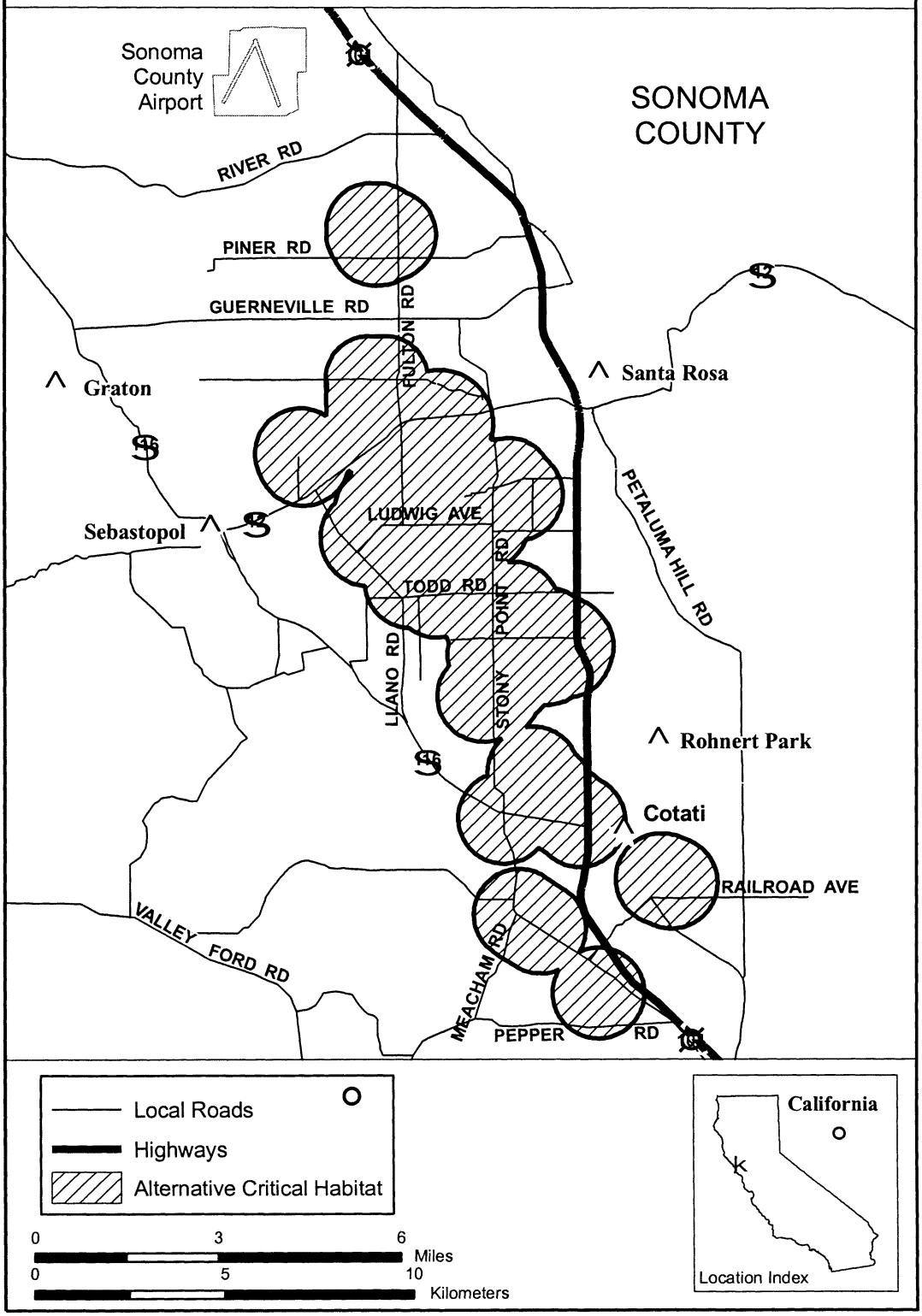
Figure 1. Alternative Critical Habitat for the Sonoma Distinct Population Segment of the California Tiger Salamander



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New Information

Occupation Since Time of Listing

We have new records of California tiger salamanders within the same vernal pool complexes in which salamanders were known at the time of listing. We have also identified one additional breeding site containing a complex of vernal pools generally

described as the Duer/Kelly Farms site, located west of the Hall Road Preserve and north of the intersection of Highway 12 and Duer Road. Any of the breeding sites or vernal pool complexes may contain one or more breeding pools in a given year, and the number and location of breeding pools within a complex varies from one year to another. Individual salamanders have been detected both in breeding pools and in the surrounding uplands (e.g., road kills, trapping during surveys).

Potential Exclusions

There are no federal lands or approved habitat conservation plans within the proposed designation. The following exclusions to the alternative under section 4(b)(2) may be considered:

■ Most or all of the alternative designation, on the basis of the conservation benefits that will be provided by the draft Santa Rosa Plain Conservation Strategy.

■ Some or all of the alternative designation, on the basis of economics.

■ Vernal pool preserves owned and managed by California Department of Fish and Game (acreage estimate currently unavailable).

■ Conservation banks owned by private landowners and managed for the benefit of California tiger salamander and other vernal pool species (acreage estimate currently unavailable).

Future Refinements

At this time we are unable to further refine the attached map, however, we recognize that upland habitat features will influence California tiger salamander movements within a particular landscape. Therefore, where we have site-specific information on those features, such as land use, topography, and geologic landform, we intend to restrict the proposed essential habitat lines to reflect that information. Examples of features we intend to remove from the final designation of critical habitat would likely include: (1) Commercial or residential developed areas; (2) upland habitat separated from the breeding habitat by a substantial barrier (e.g., State Highway); (3) habitat types within dispersal distance unsuitable for California tiger salamanders; (4) areas that do not provide underground refugia because they cannot support small mammal burrowing systems due to geological features; or (5) other such areas that do not contain sufficient PCEs to support the California tiger salamander.

Economics

The economic impact of the alternative on land development is $195,863,729. The revised impact on transportation projects is $426,000. The total revised cost of designation is thus $196,289,729, or $17,316,226 annualized over 20 years. In the event that portions of critical habitat within the urban growth boundaries are excluded, the cost drops to $128,008,620. These findings are summarized in Table 1. Table 2 displays these impacts by census tract, as well as impacts if the portion of each tract within the urban growth boundary (UGB) is excluded.

TABLE 1.—REVISED ECONOMIC IMPACTS OF DESIGNATION

Land Development	$195,863,729
Land Development (UGB excluded)	128,008,620
Transportation	426,000
Overall impact	196,289,729
Annualized Impact	17,316,226

TABLE 2.—IMPACTS BY CENSUS TRACT

FIPS	UGB not excluded		UGB excluded		Transportation impacts
	Surplus lost	Cumulative percentage	Surplus lost	Cumulative percentage	
06097153300	$125,612,192	64.1	$80,588,264	63.0	$0
06097153200	29,722,184	79.3	23,572,824	81.4	426,000
06097151201	18,746,038	88.9	9,252,835	88.6	0
06097153005	9,863,633	93.9	7,005,753	94.1	0
06097151311	4,707,828	96.3	980,615	97.9	0
06097151203	2,979,555	97.8	2,775,813	96.2	0
06097151100	1,164,227	98.4	1,164,227	97.1	0
06097151000	930,563	98.9	930,563	98.6	0
06097151402	807,866	99.3	640,000	99.1	0
06097151307	643,695	99.6	514,830	100.0	0
06097153501	572,914	99.9	572,896	99.6	0
06097152901	89,037	100.0	10,000	100.0	0
06097151308	13,999	100.0	.....	.....	0
06097153003	10,000	100.0	.....	.....	0
06097152904	0	100.0	.....	.....	0
06097151305	0	100.0	0	100.0	0
06097151301	0	100.0	0	100.0	0
06097151204	0	100.0	0	100.0	0
06097153006	0	100.0	.....	.....	0
06097153101	0	100.0	.....	.....	0
06097153102	0	100.0	.....	.....	0
Total	195,863,729	.....	128,008,620	.....	426,000

Author

The primary author of this notice is the staff of the Sacramento Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 10, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–22781 Filed 11–16–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AT27

[Docket No. 051104293–5293–01; I.D. 102705B–X]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2006 Summer Flounder, Scup, and Black Sea Bass Specifications; 2006 Research Set-Aside Projects

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2006 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. This proposed rule also would make changes to the regulations regarding the commercial black sea bass fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP, to reduce bycatch, and to improve the efficiency of the commercial black sea bass fishery. NMFS has conditionally approved four research projects for the harvest of the portion of the quota that has been recommended by the Mid-Atlantic Fishery Management Council (Council) to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (EFPs) to conduct this research, the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in response to the approved Research Set-Aside (RSA) projects 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 any EFP.

DATES: Comments must be received on or before December 2, 2005.

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

- E-mail: *FSB2006@noaa.gov*. Include in the subject line the following identifier: ''Comments on 2006 Summer Flounder, Scup, and Black Sea Bass Specifications.''
- Federal e-Rulemaking portal: *http://www.regulations.gov*.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2006 Summer Flounder, Scup, and Black Sea Bass Specifications.''
- Fax: (978) 281–9135.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subpart A (General Provisions), subpart G (summer flounder), subpart H (scup), and subpart I (black sea bass).

The regulations outline the process for specifying the annual catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, reviews the best available scientific information and recommends catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. Consistent with the implementation of Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), each Monitoring Committee meets annually to recommend the Total Allowable Landings (TAL), unless the TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas. Further, the TALs may be specified in any given year for the following 1, 2, or 3 years. NMFS is not obligated to specify multi-year TALs, but is able to do so, depending on the information available and the status of the fisheries.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their recommendations, with the exception of Board recommendations for the summer flounder fishery, at a joint meeting held August 8–9, 2005. The Board delayed its action regarding a summer flounder TAL recommendation until its November 2, 2005 meeting. The Council and Board passed a recommendation to suspend the procedural rules regarding specifications setting so that the Council could communicate its recommendation to NMFS and submit the specifications document.

Explanation of RSA

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the TAL for each species to be set aside each year for scientific research purposes. For the 2006 fishing year, a Request for Proposals was published to solicit research proposals based upon the research priorities that were identified by the Council (70 FR 20104, April 18, 2005). The deadline for submission of proposals was May 18, 2005. Four applicants were notified in August 2005 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes, as recommended by the Council and Board, and a brief description of the RSA projects. The RSA amounts may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a document in the **Federal Register** to restore the unused RSA amount to the applicable TAL.

For 2006, four RSA projects have been conditionally approved by NMFS and are currently awaiting a notice of award. The total RSA quotas, approved by the Council and Board, allocated for all four projects are: 355,762 lb (161 mt) of summer flounder; 184,690 lb (84 mt) of scup; 178,956 lb (81 mt) of black sea bass; 281,089 lb (127 mt) of *Loligo* squid; and 363,677 lb (165 mt) of bluefish.

The University of Rhode Island submitted a proposal to conduct a third year of work in a fishery-independent scup survey that would utilize unvented fish traps fished on hard bottom areas in southern New England waters to characterize the size composition of the scup population. Survey activities would be conducted from May 1 through November 8, 2006, at 12 rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery. Up to two vessels would conduct the survey. Sampling would occur off the coasts of Rhode Island and southern Massachusetts. Up to three vessels would participate in harvesting the RSA during the period January 1 through December 31, 2006. The RSA allocated for this project is 2,000 lb (907 kg) of summer flounder; 40,940 lb (19 mt) of scup; and 29,000 lb (13 mt) of black sea bass.

The National Fisheries Institute (NFI) and Rutgers University submitted a proposal to conduct a fourth year of work on a commercial vessel-based trawl survey program in the Mid-Atlantic region that would track the migratory behavior of selected recreationally and commercially important species. Information gathered during this project would supplement the NMFS finfish survey databases and improve methods to evaluate how seasonal migration of fish in the Mid-Atlantic influences stock abundance estimates. Up to two vessels would conduct survey work in the Mid-Atlantic during January, March, May, and November 2006, along up to eight offshore transects. The transects would include six fixed offshore transects, one each near Alvin, Hudson, Baltimore, Poor Man's, Washington, and Norfolk Canyons, and two to three adaptive transects positioned within the Mid-Atlantic area selected during a pre-cruise meeting with NFI, Rutgers University, and the Northeast Fisheries Science Center (Center). Up to 15, 1-nautical mile tows would be conducted along each transect at depths from 40 to 250 fathoms (73 to 457 m). Up to 25 vessels would participate in harvesting the RSA during the period January 1 through December 31, 2006. The RSA allocated for the project is 223,140 lb (101 mt) of summer flounder; 123,750 lb (56 mt) of scup; 61,500 lb (28 mt) of black sea bass; 281,089 lb (127.5 mt) of *Loligo* squid; and 363,677 lb (165 mt) of bluefish.

The Fisheries Conservation Trust submitted a proposal to evaluate size and possession limits in the summer flounder recreational fishery. The project involves modeling summer flounder recreational fishery data and conducting studies on angler behavior under different summer flounder possession limit scenarios. Field work would be conducted by up to four recreational fishing party vessels providing summer flounder fishing trips off of New York (southern Long Island) and/or New Jersey (Monmouth, Ocean, Atlantic, and Cape May Counties). Four different size/possession limit scenarios would be tested using three replicate sampling days per boat, equaling up to 48 full-day vessel trips. At the end of each trip, each angler would fill out a questionnaire providing the number of flounder caught and discarded, and individual preferences on various size limits. Additionally, approximately 25 commercial vessels would harvest the RSA amounts allocated to the project. The RSA allocated for the project is 130,622 lb (59 mt) of summer flounder; 20,000 lb (9 mt) of scup; and 50,000 lb (23 mt) of black sea bass.

The Virginia Institute of Marine Science submitted a proposal for the evaluation of size selectivity and relative efficiency of black sea bass habitat pots equipped with large-mesh panels. The project would estimate the selectivity of an experimental design of a coated-wire black sea bass habitat pot to reduce the capture of sublegal black sea bass. The experimental pot would be composed of large-mesh panels on the top, bottom, and posterior end of the pot (opposite the bridle). Three different sizes of large-mesh panel would be tested: 2-inch (5.1-cm), 2.5-inch (6.4-cm), and 3-inch (7.6-cm). The project would utilize one licensed commercial black sea bass vessel to test the experimental trap design, and possibly a second vessel in the same size range to harvest some of the RSA. Approximately 12 experimental cruises would be conducted between May 1 and December 13, 2006. Sampling location would depend on black sea bass abundance between Ocean City, Maryland, and Currituck Light, NC. The specific location of trap sets would be at the captain's discretion. In general, sites would be approximately 20–50 miles (32–80 km) offshore in 90–130 ft (27–40 m) of water. Overall, the study would utilize 110 black sea bass habitat pots. The RSA allocated for the project is 38,456 lb (17 mt) of black sea bass.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Explanation of Quota Adjustments Due to Quota Overages

This rule proposes commercial quotas based on the proposed TALs and Total Allowable Catches (TACs) and the formulas for allocation contained in the FMP. In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information

necessary to determine whether overage deductions are necessary will be available by the time the final rule to implement these specifications is published. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment.

Summer Flounder

Summer flounder was assessed in June 2005 at the 41st Northeast Regional Stock Assessment Workshop. The Stock Assessment Review Committee (SARC) indicated that the summer flounder stock is not overfished, but that overfishing is occurring relative the biological reference points established in Amendment 12 to the FMP, *i.e.*, a maximum fishing mortality threshold of $F_{msy} = F_{max}$ (the level of fishing that produces maximum yield per recuit), and a minimum biomass threshold of ½ B_{msy} (one-half of the biomass necessary to produce the maximum sustainable yield), with MSY = 48.5 million lb (22,000 mt). When $F > F_{max}$, overfishing is considered to be occurring, and when $B < ½ B_{msy}$, the stock is considered overfished.

The SARC panelists also accepted the recommendations of the Center's Southern Demersal Species Working Group to update the biological reference points as follows: $F_{msy} = F_{max} = 0.276$; MSY = 42 million lb (19,051 mt); and B_{msy} = 204 million lb (92,532 mt). The total stock biomass estimate for January 2005 is 121 million lb (54,885 mt), about 19 percent above the new minimum biomass threshold (½ B_{msy}) of 102 million lb (46,266 mt). The F estimated for 2004 is 0.40, substantially above the new maximum fishing mortality threshold. It has been recognized since 1995 that the summer flounder stock assessment model tends to underestimate fishing mortality rates and overestimate stock biomass in the most recent years of the analysis (typically 5 years) until those estimates stabilize as new data are added to the analysis. Retrospective analysis conducted this year showed that the Fs for 2002 and 2003 are approximately 50 percent greater than previously estimated. This pattern is likely the result of an underestimation of the true catch, due to discards and/or unreported landings. This persistent retrospective pattern suggests that, although the summer flounder stock continues to increase, it is increasing at a lower rate and is currently at a smaller size than previously forecast. Additional rebuilding of the stock is necessary because the Magnuson-Stevens Act requires that stocks be rebuilt to the level that produces MSY on a continuing basis.

The information provided by the Summer Flounder Demersal Species Working Group and the SARC requires NMFS to reduce the 33 million lb (14,969 mt) TAL previously specified for 2006 to a level commensurate with the objectives of the FMP. In addition, a 2000 Federal Court Order requires that the TAL have at least a 50-percent probability of achieving the F target. Based on the latest stock assessment, a TAL of 23.59 million lb (10,700 mt) has a 50-percent probability of achieving an F of 0.276 in 2006, if the TAL and assumed discard level in 2005 are not exceeded.

The Council considered two very different TAL-setting strategies intended to continue to rebuild the summer flounder resource. Using the status quo constant-F strategy, the TALs associated with at least a 50-percent probability of meeting the target F would be 23.59 million lb (10,700 mt), 27.5 million lb (12,474 mt), and 30.9 million lb (14,016 mt) in 2006, 2007, and 2008, respectively. However, an assessment update in 2006 likely would provide new information that might necessitate modification to a multi-year quota, as it did in 2005, in order to meet the biomass target of 204 million lb (92,532 mt). The Council also considered a constant-harvest strategy, in which the same TAL would be maintained from 2006 through the end of the rebuilding period to achieve the target biomass. The Center's analysis determined this TAL to be 26 million lb (11,793 mt), but indicated that the TAL would result in only a 25-to 30-percent probability of meeting an F of 0.276 in 2006, increasing to a 60-percent probability in 2007, and a 90-percent probability in 2008. The Summer Flounder Monitoring Committee's recommendation was to set a summer flounder constant-harvest TAL of 26 million lb for 2006, 2007, and 2008.

At the August 2005 meeting, the Council and Board discussed the Monitoring Committee's recommendation at length, focusing on the likely explanations for the increased fishing mortality in recent years, the probability of achieving the F target over a 3-year time period (rather than annually) via a constant-harvest strategy, and the desire to mitigate a substantial reduction in TAL for 2006. In the end, the Council adopted a constant-harvest TAL of 26 million lb for 2006, 2007, and 2008. This TAL would represent a 14-percent decrease for 2006 from the 2005 TAL of 30.3 million lb (13,744 mt), and a 21-percent decrease from the previous specification of 33.0 million lb (14,969 mt) for 2006.

After careful review, NMFS has decided that the Council's summer flounder TAL recommendation (*i.e.*, the Council's Preferred Alternative 1) fails to meet the minimum standard necessary because the analysis indicates that, for 2006, the TAL would result in only a 25-to 30-percent probability of meeting the F target of 0.276. As indicated above, the setting of an annual TAL with less than a 50-percent probability of achieving the F target, *i.e.*, a 2006 TAL greater than 23.59 million lb (10,700 mt), would be contrary to the objectives of the FMP and a Federal Court Order. The Council submission also analyzed the following two TAL alternatives: A TAL of 23.59 million lb (10,700 mt) for 2006 (Alternative 2); and a status quo TAL of 30.3 million lb (13,744 mt) for 2006 (Alternative 3). Of these two alternatives, only Alternative 2 meets the objectives of the FMP and the legal constraints of the Federal Court Order. For these reasons, NMFS proposes to implement a TAL of 23.59 million lb (10,700 mt) for 2006. This TAL would represent a 22-percent decrease for 2006 from the 2005 TAL of 30.3 million lb (13,744 mt), and a 28.5-percent decrease from the previous specification of 33 million lb (14,969 mt) for 2006. The initial TAL would be allocated 60 percent (14,154,000 lb (6,420 mt)) to the commercial sector and 40 percent (9,436,000 lb (4,280 mt)) to the recreational sector, as specified in the FMP. For 2006, the Council and Board agreed to set aside 355,762 lb (161 mt) of the summer flounder TAL for research activities. After deducting the RSA from the TAL proportionally for the commercial and recreational sectors, *i.e.*, 60 percent and 40 percent, respectively, the commercial quota would be 13,940,543 lb (6,303 mt) and the recreational harvest limit would be 9,293,695 lb (4,216 mt). The commercial quota then would be allocated to the coastal states based upon percentage shares specified in the FMP.

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing

fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document because NMFS does not have authority to establish such subcategories.

Table 1 presents the proposed allocations by state, with and without the commercial portion of the RSA deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's quota for the previous fishing year (using the landings information and procedures described earlier). Any commercial quota adjustments to account for overages will be included in the final rule implementing these specifications that is published in the **Federal Register**.

TABLE 1.—2006 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Commercial quota		Commercial quota less RSA	
		lb	kg[1]	lb	kg[1]
ME	0.04756	6,732	3,053	6,630	3,007
NH	0.00046	65	30	64	29
MA	6.82046	965,368	437,891	950,809	431,287
RI	15.68298	2,219,769	1,006,887	2,186,293	991,702
CT	2.25708	319,467	144,910	314,649	142,725
NY	7.64699	1,082,355	490,956	1,066,032	483,552
NJ	16.72499	2,367,255	1,073,787	2,331,554	1,057,593
DE	0.01779	2,518	1,142	2,480	1,125
MD	2.03910	288,614	130,915	284,262	128,941
VA	21.31676	3,017,174	1,368,590	2,971,672	1,347,950
NC	27.44584	3,884,684	1,762,093	3,826,099	1,735,519
Total	100.00001	14,154,000	6,420,254	13,940,543	6,323,430

[1] Kilograms are as converted from pounds and do not sum to the converted total due to rounding.

Scup

Scup was last formally assessed in June 2002 at the 35th Northeast Regional Stock Assessment Workshop (SAW). At that time, the Stock Assessment Review Committee (SARC 35) indicated that the species was no longer overfished, but that stock status with respect to overfishing currently could not be evaluated. However, more recent information indicates that the scup spawning stock biomass (SSB) has decreased. The 2004 biomass index, *i.e.*, the Center's spring survey 3-year average (2003 through 2005), for scup SSB was 0.69 kg/tow, about 75 percent below the biomass threshold of 2.77 kg/tow. Therefore, the stock is now considered overfished.

The proposed scup specifications for 2006 are based on an exploitation rate (21 percent) in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12 to the FMP, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8 to the FMP. On April 28, 1999, NMFS disapproved the proposed rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. Later, however, NMFS advised the Council that use of the exploitation rate as a proxy for F would be acceptable and risk-averse. Therefore, the proposed scup specifications for 2006 are based on an exploitation rate of 21 percent. NMFS considers the risks associated with the disapproved rebuilding plan as not applicable to the proposed specifications because they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements. The Council plans to address this deficiency through an Amendment to the FMP to be prepared in 2006.

Given the uncertainty associated with the spring survey, the Council and Board agreed with the Scup Monitoring Committee recommendation to set a TAC and TAL for 1 year only. A recommendation on the TAC for 2006 is complicated by the lack of information on discards and mortality estimates for fully recruited fish. The Scup Monitoring Committee agreed that, based on an assumption that the spring survey value in 2006 would be the same as for 2004, a TAL of 16.27 million lb (7,380 mt) would achieve the target exploitation rate for 2006. Estimated discards (3.52 million lb (1,597 mt)) were added to the TAL to derive a TAC of 19.79 million lb (8,977 mt). The Council and Board adopted the Monitoring Committee's TAC and TAL recommendations. NMFS is proposing to implement this TAC and TAL because it is considered likely to achieve the 21-percent exploitation rate required by the FMP.

The FMP specifies that the TAC associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector, *i.e.*, TAC minus discards equals TAL. The commercial TAC, discards, and TAL (commercial quota) are then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November–December)—15.94 percent. The commercial TAC would be 15,436,200 lb (7,002 mt) and the recreational TAC would be 4,353,800 lb (1,975 mt). After deducting estimated discards (3.36 million lb (1,524 mt) for the commercial sector and 160,000 lb (73 mt) for the recreational sector), the initial commercial quota would be 12,076,200 lb (5,478 mt) and the recreational harvest limit would be 4,193,800 million lb (1,902 mt). The Council and Board also agreed to set aside 184,690 lb (84 mt) of the scup TAL for research activities. Deducting this RSA would result in a commercial quota of

11,932,142 lb (5,412 mt) and a recreational harvest limit of 4,153,168 lb (1,884 mt).

The Council and the Board recommended an increase in the base commercial scup possession limit during the Winter II period (November–December) from 1,500 lb (680 kg) to 2,000 lb (907 kg). NMFS is proposing to implement this recommendation because it would increase opportunities to reach the Scup Winter II quota while reducing scup discards. NMFS also is proposing the Council and Board's recommendation to maintain the current initial possession limit of 30,000 lb (13.6 mt) for Winter I. The Winter I possession limit would be reduced to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached.

Table 2 presents the 2006 commercial allocation recommended by the Council, with and without the 184,690-lb (84-mt) RSA deduction. These 2006 allocations are preliminary and may be subject to downward adjustment in the final rule implementing these specifications due to 2005 overages, based on the procedures for calculating overages described earlier.

TABLE 2.—2005 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Commercial quota in lb (mt)	Commercial quota less RSA in lb (mt)	Possession limits in lb (kg)
Winter I	45.11	6,963,270 (3,159)	1,515,696 (688)	5,447,574 (2,471)	5,382,589 (2,442)	[1]30,0001 (13,608)
Summer	38.95	6,012,400 (2,727)	1,308,720 (594)	4,703,680 (2,134)	4,647,569 (2,108)	([3])
Winter II	15.94	2,460,530 (1,116)	535,584 (243)	1,924,946 (873)	1,901,983 (863)	2,000 (907)
Total[2]	100.00	15,436,200 (7,002)	3,360,000 (1,524)	12,076,200 (5,478)	11,932,142 (5,412)	.....

[1] The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[2] Totals subject to rounding error.
[3] n/a—Not applicable.

The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be rolled over to the quota for the Winter II period. In any year that NMFS determines that the landings of scup during Winter I are less than the Winter I quota for that year, NMFS will, through notification in the **Federal Register**, increase the Winter II quota for that year by the amount of the Winter I underharvest, and adjust the Winter II possession limits consistent with the amount of the quota increase. In 2004 and 2005, NMFS transferred substantial amounts of unused Winter I quota to the Winter II period. The Council and the Board recommended an increase in the Winter II possession limit-to-rollover amount ratios, i.e., an increase from 500 lb (227 kg) to 1,500 lb (680 kg) per 500,000 lb (227 mt) of unused Winter I period quota transferred to the Winter II period. NMFS is proposing to implement this recommendation, as presented in Table 3, because it would increase the likelihood of achieving the Scup Winter II quota.

TABLE 3.—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

Black sea bass was last assessed in June 2004 at the 39th Northeast Regional SAW. The Stock Assessment Review Committee (SARC 39) indicated that black sea bass were no longer overfished and overfishing was not occurring. The biomass threshold, defined as the maximum value of a 3-year moving average of the Center's spring survey catch-per-tow, is 0.9 kg/tow (the 1977–1979 average). The 2004 biomass index (the 3-year average for 2003–2005) is 1.3 kg/tow, about 44 percent above the threshold. Based on this value, the stock is not overfished.

The target exploitation rate for 2006 is 25 percent, which is based on the current estimate of F_{max} (0.32). The 2006 TAL recommendation is contingent upon assumptions regarding the black sea bass stock size in 2006 and past exploitation rates (specifically, 21 percent in 2003). If the Center's 2006 spring survey biomass index approximates the average value for 2003–2005 (0.396 kg/tow), then the TAL associated with a 25-percent exploitation rate would be 6.36 million lb (2,885 mt). Alternatively, if the 2006 spring survey approximates the average value for 2002–2004 (0.538 kg/tow), then the TAL associated with a 25-percent exploitation rate would be 8.63

million lb (3,915 mt). Given the uncertainty in the spring survey estimates for the 2003–2005 period, the Black Sea Bass Monitoring Committee recommended a 1-year TAL set at the midpoint between these two TALs, i.e., 7.5 million lb (3,402 mt). The Council and Board rejected the Monitoring Committee recommendation, and instead recommended an 8-million-lb (3,629-mt) TAL for 2006. This TAL lies within the range the Monitoring Committee considered, would be a 2.4-percent decrease from 2005, and equals the TAL established for 2004. NMFS is proposing to implement the Council's and Board's TAL recommendation because it is considered likely to achieve the 25-percent exploitation rate that is required by the FMP.

The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector; therefore, the initial TAL would be allocated 3.92 million lb (1,778 mt) to the commercial sector and 4.08 million lb (1,851 mt) to the recreational sector. The Council and Board also agreed to set aside 178,956 lb (81 mt) of the black sea bass TAL for research activities. After deducting the RSA, the TAL would be divided into a commercial quota commercial quota of 3,832,312 lb (1,738 mt) and a recreational harvest limit of 3,988,732 lb (1,809 mt).

Other Black Sea Bass Management Measures

Under the current regulations at § 648.144(b)(2), all black sea bass traps or pots must have an escape vent placed in the lower corner of the parlor portion of the pot or trap that complies with one of the following minimum sizes: 1.375 inches (3.49 cm) by 5.75 inches (14.61 cm); a circular vent 2.375 inches (6.03 cm) in diameter; or a square vent with sides of 2 inches (5.08 cm), inside measure. Black sea bass traps constructed of wooden lathes may have instead an escape vent constructed by leaving a space of at least 1.375 inches (3.49 cm) between one set of lathes in the parlor portion of the trap. These requirements have been in effect since February 2002 (66 FR 66348, December 26, 2001). In July 2005, the Commission held an industry workshop to discuss the results of recent scup and black sea bass vent studies and to develop recommendations on pot and trap configurations. Pursuant to § 648.140(b)(6), the Black Sea Bass Monitoring Committee recommended that two vents be required in the parlor portion of the pot or trap and that the minimum circle vent size be increased to 2.5 inches (6.35 cm) in diameter, as recommended at the industry workshop. NMFS is proposing to implement the Council's and Board's vent number and size recommendations because they would allow for greater escapement of sublegal fish and other non-target species black sea bass pots and traps. To allow fishery participants time to comply with the proposed changes to the black sea bass pot and trap gear restrictions, the effective date of this change in regulations would be delayed until January 1, 2007.

In addition, the Council and the Board encouraged individual states, though the Commission, to clarify that the black sea bass total length measurement does not include the caudal fin tendril. In order to prevent confusion among fishery participants, fish samplers, and enforcement personnel, and to provide consistency with the South Atlantic fisheries regulations, which are explicit on this issue, NMFS is proposing to amend the total length definition to explicitly exclude any caudal filament in the measurement of black sea bass.

Classification

NMFS has determined that the proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Council (see **ADDRESSES**). A summary of the economic analysis follows.

The economic analysis assessed the impacts of the various management alternatives. The no action alternative is defined as follows: (1) No proposed specifications for the 2006 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum mesh sizes, minimum sizes, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2006; (4) the existing black sea bass pot and trap gear restrictions would remain in place; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quotas). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action.

Alternative 1 consists of the harvest limits proposed by the Council for summer flounder, and the Council and Board for scup and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the status quo quotas, which were the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2006, it would also likely exceed the biological targets specified in the FMP. For clarity, note that this proposed rule would implement quotas contained in Alternative 1 for scup and black sea bass (the Council and Board's preferred alternatives for these fisheries) and in Alternative 2 for summer flounder.

Table 4 presents the 2006 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under these three quota alternatives.

TABLE 4.—COMPARISON, IN LB (MT), OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	Initial TAL	RSA	Preliminary adjusted commercial quota *	Preliminary recreational harvest;
Quota Alternative 1 (Preferred)				
Summer Flounder	26.0 million (11,793)	355,762 (161)	15.39 million (6,979)	10.26 million. (4,653)
Scup	16.27 million (7,380)	184,690 (84)	11.93 million (5,412)	4.15 million. (1,884)
Black Sea Bass	8.0 million (3,629)	178,956 (81)	3.83 million (1,738)	3.99 million. (1,809)
Quota Alternative 2 (Most Restrictive)				
Summer Founder	23.59 million (10,700)	355,762 (161)	13.94 million (6,326)	9.29 million. (4,217)
Scup	10.77 million (4,885)	184,690 (84)	7.65 million (3,468)	2.94 million. (1,333)
Black Sea Bass	7.5 million (3,402)	178,956 (81)	3.59 million (1,627)	3.73 million. (1,694)
Quota Alternative 3 (Status Quo-Least Restrictive)				
Summer Flounder	30.3 million (13,744)	355,762 (161)	17.97 million (8,149)	11.98 million. (5,433)
Scup	16.6 million (7,484)	184,690 (84)	12.12 million (5,496)	4.2 million. (1,905)
Black Sea Bass	8.2 million (3,719)	178,956 (81)	3.93 million (1,782)	4.09 million. (1,856)

* Note that preliminary quotas are provisional and may change to account for overages of the 2005 quotas.

Table 5 presents the percent change associated with each of these commercial quota alternatives (adjusted for RSA) compared to the final adjusted quotas for 2005.

TABLE 5.—PERCENT CHANGE ASSOCIATED WITH 2006 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2005 COMMERICAL ADJUSTED QUOTAS

	Total changes including overages and RSA		
	Quota Alternative 1 (preferred)	Quota Alternative 2 (most restrictive)	Quota Alternative 3 * (least restrictive)
Black Sea Bass			
Aggregate Change	−14%	−22%	+ less than 1%
Scup			
Aggregate Change	−2%	−37%	− less than 1%
Summer Flounder			
Aggregate Change	−3%	−9%	−1%

* Denotes status quo management measures.

All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the proposed 2006 quotas could affect 2,162 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2004. However, the more immediate impact of this rule will likely be felt by the 906 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2004.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2004 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2005 to 2006.

The analysis of the harvest limits in Alternative 1 indicated that these

harvest levels would result in revenue losses of less than 5 percent for 208 vessels and greater than 5 percent for 698 vessels. More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 108 vessels; 10–19 percent, 573 vessels; 20–29 percent, 13 vessels; 30–39 percent, 0 vessels; 40–49 percent, 3 vessels; and greater or equal to 50 percent, 2 vessels. Most commercial vessels showing revenue reduction of greater than 5 percent are concentrated in MA, RI, NY, NJ, and NC. The Council also examined the level of ex-vessel revenues for the impacted vessel to assess further impacts. While the analysis presented above indicates that in relative terms a large number of vessels (698) are likely to be impacted with revenue reductions of more than 5 percent, dealer data show that a large proportion of those vessels (207, or 30 percent) had small gross sales (less than $1,000), thus indicating that the dependence on fishing is likely very small.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2004 ex-vessel prices (summer flounder—$1.59/lb; scup—$0.60/lb; and black sea bass—$1.54/lb), the 2006 quotas in the proposed rule would decrease total summer flounder, scup, and black sea bass revenues by approximately $3.98 million, $170,000, and $220,000 respectively, relative to expected 2005 revenues.

Assuming that the decrease in total ex-vessel gross revenue associated with the proposed rule for each fishery is distributed equally among the vessels that landed those species in 2004, the average decrease in gross revenue per vessel associated with the preferred quota would be $5,203 for summer flounder, $394 for scup, and $387 for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2004 was 765, 432, and 569, respectively.

The overall reduction in ex-vessel gross revenue associated with the three species combined in 2006 compared to 2005 is approximately $4.37 million (assuming 2004 ex-vessel prices) under the proposed rule. If this amount is distributed equally among the 906 vessels that landed summer flounder, scup, and/or black sea bass in 2004, the average decrease in revenue would be approximately $4,823 per vessel. It is possible that, given the potential decrease in landings of summer flounder, scup, and black sea bass, prices for these species may increase, if all other factors remain constant. If this occurs, an increase in the price for summer flounder, scup, and black sea bass may mitigate some of the revenue reductions associated with lower quantities of quota available under this proposed rule.

Complete revenue analysis for 2007 and 2008 cannot be completed at this time because the Council is recommending the 2007 and 2008 TALs for summer flounder only. Assuming that the condition of the scup and black sea bass fisheries do not significantly change in 2007 and 2008 as compared to 2006, then the impacts of the summer flounder quotas in 2007 and 2008 will be similar to those described above. If ex-vessel prices for these species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above. Complete revenue analysis for the 2007 and 2008 fishing years will be conducted as part of the proposed rules for the 2007 and 2008 summer flounder, scup, and black sea bass specifications, respectively, once the Council recommends TALs for scup and black sea bass.

The analysis of the harvest limits of Alternative 2 (i.e., the most restrictive harvest limits) indicated that all 906 vessels would incur revenue losses equal to or greater than 5 percent. More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 114 vessels; 10–19 percent, 142 vessels; 20–29 percent, 597 vessels; 30–39 percent, 48 vessels; 40–49 percent, 3 vessels; and greater or equal to 50 percent, 2 vessels. As in the analysis for Alternative 1, it is likely that a large proportion of the impacted vessels are likely to have small gross sales (less than $1,000), thus indicating that the dependence on fishing is likely very small.

Assuming 2004 ex-vessel prices (see above), the 2006 quotas in Alternative 2 would decrease total summer flounder, scup, and black sea bass revenues by approximately $6.28 million, $2.75 million, and $310,000 respectively, relative to expected 2005 revenues. Assuming that the decrease in total ex-vessel gross revenue associated with Alternative 2 is distributed equally among the vessels that landed those species in 2004, the average decrease in gross revenue per vessel associated with Alternative 2 would be $8,209 for summer flounder, $6,366 for scup, and $545 for black sea bass.

The overall reduction in gross revenue associated with the three species combined in 2006 compared to 2005 is approximately $9.34 million (assuming 2004 ex-vessel prices) under Alternative 2. If this amount is distributed evenly among the 906 vessels that landed summer flounder, scup, and/or black sea bass in 2004, the average decrease in revenue would be approximately $10,309 per vessel.

The analysis of the harvest limits in Alternative 3 (i.e., the least restrictive harvest limits) indicated that these harvest levels would result in revenue increases for 372 vessels, losses of less than 5 percent for 504 vessels and losses of greater than 5 percent for 30 vessels. As in the analysis for Alternative 1, it is likely that a large proportion of the impacted vessels are likely to have small gross sales (less than $1,000), thus indicating that the dependence on fishing is likely very small.

Assuming 2004 ex-vessel prices (see above), the 2006 quotas in Alternative 3 would increase total summer flounder revenues by $110,000, and decrease total scup and black sea bass revenues by $70,000 and $60,000, respectively, relative to expected 2005 revenues. Assuming that the change in total ex-vessel gross revenue associated with Alternative 3 is distributed equally among the vessels that landed those species in 2004, the average change in gross revenue per vessel associated with Alternative 3 would be a $144 increase for summer flounder, a $162 decrease for scup, and a $105 decrease for black sea bass.

The overall reduction in gross revenue associated with the three species combined in 2006 compared to 2005 is approximately $20,000 (assuming 2004 ex-vessel prices) under Alternative 3. If this amount is distributed evenly among the 906 vessels that landed summer flounder, scup, and/or black sea bass in 2004, the average decrease in revenue would be approximately $22 per vessel.

For the analysis of the alternative recreational harvest limits, the 2006 recreational harvest limits were compared with previous years through 2004, the most recent year with complete recreational data. Landings statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5-percent overage in 1993 to a 122-percent overage in 2000. In 2002, recreational landings were 8.01 million lb (3,633 mt), 18 percent below the recreational harvest limit of 9.72 million lb (4,409 mt). In 2003, recreational landings were 11.64 million lb (5,280 mt), 25 percent above the recreational harvest limit of 9.28 million lb (4,209 mt). In 2004, recreational landings were 10.76 million lb (4,881 mt), 10 percent below the recreational harvest limit of 11.98 million lb (5,434 mt).

The Alternative 1 summer flounder 2006 recreational harvest limits

(adjusted for RSA) of 10.26 million lb (4,654 mt), would be a 14-percent decrease from the 2005 recreational harvest limit of 11.98 million lb (5,434 mt), and would represent a 4-percent decrease from 2004 landings. The 2006 summer flounder Alternative 2 recreational harvest limit of 9.29 million lb (4,217 mt), would be 22 percent lower than the 2005 recreational harvest limit, and would represent a 14-percent decrease from 2004 recreational landings. The 2006 summer flounder Alternative 3 (status quo) recreational harvest limit of 11.98 million lb (5,433 mt) would be a less than 1-percent decrease from the 2005 recreational harvest limit (due to the increase in summer flounder RSA for 2005) and would represent an 11-percent increase from 2004 recreational landings.

If Alternative 1 or 2 is implemented, it is possible that more restrictive management measures (lower possession limits, larger minimum size limits, and/or shorter open seasons) may be required to prevent anglers from exceeding the 2006 recreational harvest limit, depending on the effectiveness of the 2005 recreational management measures. While it is likely that proposed management measures would restrict the recreational fishery for 2006, and that these measures may cause some decrease in recreational satisfaction, there is no indication that any of these measures may lead to a decline in the demand for party/charter boat trips. The market demand for this sector is relatively stable. Currently, neither behavioral nor demand data are available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. It is likely that party/charter anglers will target other species when faced with potential reductions in the amount of summer flounder, scup, and black sea bass that they are allowed to catch. The Council intends to recommend specific measures to attain the 2006 summer flounder recreational harvest limit in December 2005, and will provide additional analysis of the measures upon submission of its recommendations in early 2006.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 517 percent from 1998 to 2000. In 2002, recreational landings were 3.62 million lb (1,642 mt), or 33 percent above the recreational harvest limit of 2.71 million lb (1,229 mt). In 2003, recreational landings were 9.33 million lb (4,232 mt), or 132 percent above the recreational harvest limit of 4.01 million lb (1,819 mt). In 2004, recreational landings were 4.01 million lb (1,819 mt), or 1 percent above the recreational harvest limit of 3.96 million lb (1,796 mt). Under the proposed rule, the adjusted scup recreational harvest limit for 2006 would be 4.15 million lb (1,884 mt), 5 percent above the 2005 recreational harvest limit, and would represent a 5-percent decrease from 2004 recreational landings. The Alternative 2 scup recreational harvest limit of 2.94 million lb (1,333 mt) for 2006 would be 26 percent less than the 2005 recreational harvest limit, and 33 percent less than 2004 recreational landings. The Alternative 3 scup recreational harvest limit of 4.2 million lb (1,905 mt) for 2006 would be an increase of 6 percent from the 2005 recreational harvest limit and would represent a 4-percent decrease from 2004 recreational landings. Under Alternative 2, more restrictive management measures might be required to prevent anglers from exceeding the 2006 recreational harvest limit, depending largely upon the effectiveness of the 2005 recreational management measures. As described above for the summer flounder fishery, the effect of greater restrictions on scup party/charter boats is unknown at this time. Overall, positive social and economic impacts are expected to occur as a result of the scup recreational harvest limit for 2006 because current opportunities for recreational fishing would be maintained. The Council intends to recommend specific measures to attain the 2006 scup recreational harvest limit in December 2005, and will provide additional analysis of the measures upon submission of its recommendations early in 2006.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2002, 2003, and 2004, recreational landings were 4.35 million lb (1,973 mt), 3.29 million lb (1,492 mt), and 1.94 million lb (880 mt), respectively. For the recreational fishery, the adjusted 2006 harvest limit under Alternative 1 would be 3.99 million lb (1,809 mt), a 3-percent decrease from the 2005 recreational harvest limit and a 106-percent increase from 2004 recreational landings. Under Alternative 2, the 2006 recreational harvest limit would be 3.73 million lb (1,694 mt), a 10-percent decrease from the 2005 recreational harvest limit and a 92-percent increase from 2004 recreational landings. The 2006 recreational harvest limit under Alternative 3 would be 4.09 million lb (1,856 mt), a less than 1-percent increase from the 2005 recreational harvest limit and a 111-percent increase from 2004 recreational landings. Under Alternatives 1 and 2, although the recreational harvest limit would be reduced relative to the 2005 level, it is not expected that more restrictive management measures would be necessary to constrain landings if 2005 landings are similar to those in 2003 or 2004. Because Alternative 3 is the status quo, reduced from the 2005 level only due to the larger RSA for 2006, it is not anticipated that more restrictive measures would be required in 2006 to constrain the fishery. The Council intends to recommend specific measures to attain the 2006 black sea bass recreational harvest limit in December 2005, and will provide additional analysis of the measures upon submission of its recommendations early in 2006.

In summary, the proposed 2006 commercial quotas and recreational harvest limits, after accounting for the proposed RSA amounts, would result in substantially lower quantities of summer flounder in 2006 versus 2005. Anticipated changes in scup and black sea bass landings are not significant. The proposed specifications were chosen because they allow for the maximum level of landings, while still achieving the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The proposed commercial scup possession limits for Winter I (30,000 lb (13.6 mt) per trip, to be reduced to 1,000 lb (454 kg) upon attainment of 80 percent of the Winter I quota) and Winter II (2,000 lb (907 kg) per trip) and the amount of increase to the Winter II possession limit-to-rollover amount ratio were chosen as an appropriate balance between the economic concerns of the industry (*i.e.*, landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over each period. The proposed Winter I possession limit specifically coordinates with the 30,000-lb (13.6-mt) landing limits per 2-week period recommended by the Commission (beginning in 2005) to be implemented by most states, while satisfying concerns about enforcement of possession limits. Continuation of the Winter I possession limit is not expected to result in changes to the economic or social aspects of the fishery relative to 2005. In 2004 and 2005, NMFS transferred substantial amounts

of unused Winter I quota to the Winter II period. The increase in the Winter II possession limit and in the possession limit-to-rollover amount ratio is intended to help convert scup discards to landings, thereby improving the efficiency of the commercial scup fishery, and increasing the likelihood of achieving the Scup Winter II quota.

Requiring a second vent in the parlor portion of black sea bass traps and increasing the circular vent size from 2.375 inches (6.0 cm) to 2.5 inches (6.4 cm), as recommended at a 2005 black sea bass commercial industry workshop, would have positive economic and social impacts in the long-term. Reducing the mortality of sublegal fish would improve the efficiency of the commercial black sea bass fishery (via increasing yields and amount of mature fish in the stock). The cost to the industry to implement the changes varies depending on type of pot/trap (*i.e.*, wooden or wire). The cost of adding or replacing a circular vent would range between $3.08 and $3.24 per pot/trap and would take approximately 10 minutes per wire pot/trap. Circular vents are not typically found in wooden traps due to structural integrity concerns. The cost of adding an additional vent to a wooden trap would range between $2.68 and $5.36 per trap and would take approximately 10–20 minutes per trap. Because the effective date of the proposed changes would be delayed until January 1, 2007, the annualized cost of the proposed regulations would be half of those described above. The Council indicates that, because complete cost data for the black sea bass pot/trap fishery are not available, it is not possible to calculate how the proposed gear changes would affect the total cost of production for black sea bass pot/trap fishermen. However, the Council estimates that total trap production costs would increase by less than 5 percent.

The commercial portion of the summer flounder RSA allocations in the proposed rule, if made available to the commercial fishery, could be worth as much as $339,397 dockside, based on a 2004 ex-vessel price of $1.59/lb. Assuming an equal reduction in fishing opportunity among all active vessels (*i.e.*, the 765 vessels that landed summer flounder in 2004), this could result in a per-vessel potential revenue loss of approximately $444. Changes in the summer flounder recreational harvest limit as a result of the 355,762–lb (161,479-kg) RSA are not expected to be significant as the deduction of RSA from the TAL would result in a relatively marginal decrease in the recreational harvest limit from 9.4 million lb (4,282 mt) to 9.3 million lb (4,217 mt). Because this is a marginal change, it is unlikely that the recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The scup RSA allocation, if made available to the commercial fishery, could be worth as much as $86,435 dockside, based on a 2004 ex-vessel price of $0.60/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (*i.e.*, the 432 vessels that landed scup in 2004), this could result in a loss of potential revenue of approximately $200 per vessel. The deduction of RSA from the TAL results in a relatively marginal decrease in the recreational harvest limit from 4.19 million lb (1,902 mt) to 4.15 million lb (1,884 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The black sea bass RSA allocation, if made available to the commercial fishery, could be worth as much as $135,040 dockside, based on a 2004 ex-vessel price of $1.54/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (*i.e.*, the 569 vessels that caught black sea bass in 2004), this could result in a loss of approximately $237 per vessel. The deduction of RSA from the TAL would result in a relatively marginal decrease in recreational harvest from black sea bass recreational harvest limit from 4.08 million lb (1,851 mt) to 3.99 million lb (1,809 mt). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation.

Overall, long-term benefits are expected as a result of the RSA program. The four conditionally-approved projects would provide improved data and information regarding the size composition of the scup population, the influence of Mid-Atlantic species seasonal migration on stock abundance estimates, angler behavior under various recreational management scenarios, and black sea bass habitat pot efficiency. The results of these projects will provide needed information on high-priority fisheries management issues related to Mid-Atlantic fisheries management. If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. It should also be noted that fish harvested under the RSAs would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease if the RSAs are utilized.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 15, 2005.

James W. Balsiger,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, add a second sentence to the definition of ''Total Length'' to read as follows:

§ 648.2 Definitions.

* * * * *

Total Length (TL) * * * For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

* * * * *

3. In § 648.144, revise paragraph (b)(2) to read as follows:

§ 648.144 Gear restrictions.

* * * * *

(b) * * *

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.5 cm by 14.6 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wood lathes may have instead escape vents constructed by leaving spaces of at least 1.375 inches (3.5 cm) between two sets of lathes in the parlor portion of the trap. These dimensions for escape vents and lathe spacing may be adjusted pursuant to the procedures in § 648.140.

* * * * *

[FR Doc. 05–22856 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 70, No. 221
Thursday, November 17, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) approval of minutes, (3) public comment, (4) project proposals/possible action, (5) Web site update, (6) general discussion, (7) next agenda.

DATES: The meeting will be held on November 28, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, 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) 968–1815; 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 any file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 25, 2005 will have the opportunity to address the committee at those sessions.

Dated: November 9, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05–22793 Filed 11–16–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resource Conservation Service

Finding of No Significant Impact for Silt Salinity Control Project, Garfield County, CO

Introduction

The plan/environmental assessment was developed under the authority of the Soil Conservation and Domestic Allotment Act of 1936. Funding for implementation is expected to be provided under the Federal Improvement and Reform Act of 1996, Public Law 104–127, as amended; Food Security Act of 1985, Subtitle D, Title XII, 16 U.S.C. 3830 et seq. An environmental evaluation was undertaken in conjunction with the development of the watershed plan. This evaluation was conducted in consultation with local, State and Federal agencies as well as with interested organizations and individuals. Copies of the Plan/Environmental may be obtained by contacting Allen Green, Colorado State Conservationist at the following address. Data developed during the environmental evaluation is available for public review at the following location as well: U.S. Department of Agriculture, Natural Resource Conservation Service, 655 Parfet St., Lakewood, Colorado 80215–5517.

Background

The Silt unit was not identified by name in Title II of the Colorado River Basin Salinity Control Act, but was identified by USDA as an area which should be studied for possible salinity control.

The combined environmental assessment has three major components: (1) To determine the contribution of salt loading from the irrigated farmland; (2) to determine the opportunity for USDA to reduce salt loading through improvements in irrigation delivery and application systems; (3) to determine environmental effects of the proposed action.

Approximately 7,430 acres can be irrigated in the Silt Unit by five irrigation ditches. One of the aspects of the environmental evaluation involved inventorying and analyzing current irrigation systems and management practices. Data was analyzed on the five irrigation ditch systems. Each of the systems was analyzed to determine what types of improvements are needed. The remaining ditches were not studied because they are small or no longer in use.

The Wasatch Formation, a claystone shale marine formation with a very high salt content, underlies much of the valley and is the principal source of salt contributed to the Colorado River. Lenses of crystaline salt often are exposed during excavation into shale. Because of the arid climate, salts have not been leached naturally and applying excess irrigation water to the soil greatly accelerates the leaching process.

The Silt Unit contributes approximately 24,700 tons of salt annually to the Colorado River based on the 17-year USGS record of volume and concentration of outflow, minus volume and concentration of inflow. The 17-year record spans a good representation of dry and wet years. Approximately 14,030 tons come from irrigation practices, and is in the middle of the range of values used for the seven salinity project areas e.g. Grand Valley, Colorado; Lower Gunnison, Colorado; Mancos Valley, Colorado; McElmo Creek, Colorado; Uinta Basin, Utah; Price-San Rafael, Utah; and Big Sandy River, Wyoming. The remaining 10,670 tons represents salt produced from natural sources. Salt loading estimates include approximately 4,160 tons from ditch seepage and approximately 9,870 tons from on-farm deep percolation of irrigation water.

The proposed alternative plan contains structural and management improvements to irrigation systems which will in turn reduce salt loading to the Colorado River by 3,990 tons.

Consultation-Public Participation

The Bookcliff Conservation District led the public participation process, which included several Public meetings. Public involvement primarily consisted of meetings; however, local newspapers were used to publicize the project. Several State and Federal agencies were consulted during project plan development.

Proposed Action

The proposed action will result in reducing seepage from the lateral ditches and increasing the irrigation efficiency to reduce deep percolation on 2,800 acres.

This action will consist of piping or concrete lining 45,000 linear feet of earthen irrigation ditches. On-farm irrigation improvements would consist of improved surface application systems and sprinkler irrigation.

The estimated total construction cost for the pipeline and sprinkler systems is $3,546,000. The total estimated project cost is $4,964,400. It is recommended that the federal cost-share used to implement the plan not be greater than 75 percent. A cost effectiveness analysis was used to determine the annual cost per ton of salt reduction.

Basic Conclusions

The conservation treatment associated with the proposed action will not change the air quality or potable water quality of the area. The project will not create any new hazards to the transportation network within the effected project area. For these reasons it is felt that the public health and safety conditions of the effected area will not be significantly impacted.

There are no known unique geographic features in the project area that could be impacted by the proposed action.

During the inter-agency review process of the project plan no highly controversial effects were identified.

Past experience with similar projects in the area provide a high degree of confidence in the predicted impacts of the proposed actions.

This project is not unusual in nature and is quite similar to a project currently being implemented in Mesa County. For this reason we feel confident that no precedents are being set with this project.

No significant individual or cumulative effects to the human environment are expected when considering the context and intensity of the proposed action.

Our project investigations did not identify any cultural resource sites currently listed on the National List of Historic Places. In light of this, the proposed action will not impact any such sites.

Threatened and endangered species habitats do exist within the project boundaries. The proposed treatment will not change the extent or composition of this habitat therefore no impact is anticipated.

Communications with State and Federal natural resource management agencies did not reveal any violations of any laws, including the National Environmental Policy Act.

Many of the wetlands in the project area are ''irrigation induced.'' A minimal number of these acres would be impacted. Wetland functions for the majority of these are already impacted by the land use associated with them. The distribution and size of these wetlands is not likely to change.

The water quality of the Colorado River will be enhanced due to a reduction in salt loading from agriculture.

The agricultural producers participating in the project will benefit from the labor savings associated with implementation of improved on-farm irrigation application systems.

Ultimate Conclusion

I find that the proposed action is not a major Federal action significantly affecting the quality of the human environment.

Dennis Alexander,

Assistant State Conservationist-Programs.

[FR Doc. 05–22809 Filed 11–16–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–03]

Action Affecting Export Privileges; Performance Medical Supplies; In the Matter of: Performance Medical Supplies, 16 Gardenia Cresent, Cheltenham, Victoria 3192, Australia; Respondent; Order Relating to Performance Medical Supplies

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'') has initiated an administrative proceeding against Performance Medical Supplies (''Performance Medical Supplies'') pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2005)) (''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act''),[2] through issuance of a charging letter to Performance Medical Supplies that alleged that Performance Medical Supplies committed 10 violations of the Regulations. Specifically, the charges are:

1. One violation of 15 CFR 764.2(d)—*Conspiracy to Export Physical Therapy Equipment to Iran Without the Required U.S. Government Authorizations:* In or about April 2000, Performance Medical Supplies conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by knowingly participating in the export of physical therapy equipment from the United States, via Australia, to Iran without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of the Treasury (''OFAC'') before the physical therapy equipment, items subject to the Regulations and the Iranian Transactions Regulations, could be exported from the United States to Iran. In furtherance of conspiracy, Performance Medical Supplies and its co-conspirator devised and employed a scheme under which Performance Medical Supplies would purchase the items from its co-conspirator in the United States and would then forward the items to Iran.

2. Three violations of 15 CFR 764.2(b)—*Aiding the Export of Physical Therapy Equipment to Iran Without the Required U.S. Government Authorization:* From on or about March 28, 2000 through and including April 7, 2000, Performance Medical Supplies engaged in conduct prohibited by Regulations when it, on three occasions, aided the export of physical therapy equipment from the United States to Iran, via Australia, without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of physical therapy equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. The U.S. exporter did not have OFAC authorization for the export.

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR Parts 730–774 (2000)). The 2005 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.

3. Three violations of 15 CFR 764.2(e)—*Ordering Physical Therapy Equipment With Knowledge That a Violation of the Regulations Was to Occur:* On three occasions, Performance Medical Supplies ordered physical therapy equipment with knowledge that violations of the Regulations would occur. At all times relevant hereto, Performance Medical Supplies knew that prior authorization was required from the U.S. Government to export the physical therapy equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Performance Medical Supplies ordered the items knowing that they would be exported to Iran without the required U.S. Government authorization.

4. Three Violations of 15 CFR 764.2(h)—*Actions to Evade the Requirements of the Regulations:* On three occasions, Performance Medical Supplies took actions to evade the U.S. Government's licensing requirements for the export of physical therapy equipment to Iran. Specifically, Performance Medical Supplies participated in the routing of sales to Iran through Australia to conceal the fact that the physical therapy equipment was destined for Iran.

Whereas, BIS and Performance Medical Supplies have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

Whereas, I have approved of the terms of such Settlement Agreement;

It Is Therefore Ordered:

First, for a period of five years from the date of entry of the Order, Performance Medical Supplies, 16 Gardenia Cresent, Cheltenham, Victoria 3192, Australia, its successors or assigns, and when acting for or on behalf of Performance Medical Supplies, its officers, representatives, agents, or employees (''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquired or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, to prevent evasion of this Order, BIS, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, may make any person, firm, corporation, or business organization related to Performance Medical Supplies by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the charging letter, the Settlement Agreement, this Order, and the record of this case as defined by Section 766.20 of the Regulations shall be made available to the public.

Sixth, that the administrative law judge shall be notified that this case is withdrawn from adjudication.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Entered this 9th day of November 2005.

Darryl W. Jackson,

Assistant Secretary of Commerce, for Export Enforcement.

[FR Doc. 05–22782 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China; Notice of Amended Final Determination Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 17, 2005.

SUMMARY: On March 15, 2005, the United States Court of International Trade (''CIT'') issued an order sustaining the Department of Commerce's (''the Department'') second remand determination of the *Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) (''*Final Determination*''). *See Anshan Iron & Steel Co. v. United States*, 366 F. Supp. 2d 128 (CIT 2005). Because all litigation in this matter has now concluded, the Department is issuing its amended final determination in accordance with the CIT's decision.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5403.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2001, the Department published the *Final Determination*, covering the period of investigation (''POI'') April 1, 2000 through September 30, 2000. On November 29, 2001, the antidumping duty order was published. *See Notice of the Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 59561 (November 29, 2001). Anshan Iron & Steel Company, Ltd., New Iron & Steel Company, Ltd., and Angang Group International Trade Corporation (collectively ''Anshan''), Benxi Iron & Steel Company, Ltd., Benxi Steel Plate Company, Ltd., and Benxi Iron & Steel Group International Economic and Trade Company Ltd. (collectively ''Benxi''), and Shanghai Baosteel Group Corporation, Baosteel America, Inc., and Baosteel Group International Trade Corporation (''Baosteel'') (collectively ''Respondents'') contested various aspects of the *Final Determination*.

On July 16, 2003, the CIT issued its opinion and remanded to the Department two issues in the *Final Determination* for reconsideration: (1) with respect to the Department's decision to assign surrogate values to Respondents' self–produced factors, the CIT ordered the Department to either provide an adequate explanation for its deviation from previous practice, or assign surrogate values to Respondents' inputs into its self–produced factors; and (2) with respect to the Department's decision not to treat defective hot–rolled sheet as a byproduct, the Court ordered the Department to adjust Baosteel's factors–of-production calculations by including defective sheet as merchandise under investigation. *See Anshan Iron & Steel Co. v. United States*, Slip Op. 03–83 (CIT 2003). Pursuant to the CIT's decision, the Department issued its remand. *See Final Results of Redetermination Pursuant to Remand* (November 7, 2003) (available at http://ia.ita.doc.gov). On September 22, 2004, the CIT issued its opinion regarding the Department's first remand, affirming in part and remanding in part the Department's results. The CIT ordered the Department: 1) to reopen the record in this case, admit the complete financial statements of the surrogate Indian producer, Tata Iron and Steel Co., Ltd. (''TATA''), and consider that information in its redetermination; and 2) reconsider its factors–of-production analysis by either providing an adequate explanation for its deviation from previous practice, or assigning surrogate values to Respondents' factors of production for their self–produced intermediate inputs. *See Anshan Iron & Steel Company, Ltd. v. United States*, 358 F. Supp. 2d. 1236 (CIT 2004). The Department complied with the CIT's request and reopened the record to admit TATA's complete financial statement. Based on an analysis of this new information, the Department recalculated Respondents' normal value to assign surrogate values to each of the inputs used by Respondents to self–produce electricity, nitrogen, oxygen, and argon. On January 7, 2005, the Department filed its second remand results. *See Final Results of Redetermination Pursuant to Remand* (January 7, 2005) (available at *http://ia.ita.doc.gov*). On March 15, 2005, the CIT sustained the Department's second remand results. *See Anshan Iron & Steel Co. v. United States*, 366 F. Supp. 2d 128 (CIT 2005).

Amended Final Determination

Because there is now a final and conclusive decision in the court proceeding, we are amending the Final Determination to reflect the results of the second remand determination. The recalculated margins are as follows:

Manufacturer/exporter	Weighted–average margin (percent)
Angang Group International Trade Corporation, ... New Iron & Steel Co., Ltd.,. and Angang Group Hong Kong Co., Ltd..	31.09
Benxi Iron & Steel Group International ..... Economic & Trade Co., Ltd.,. Bengang Steel Plates Co., Ltd.,. and Benxi Iron & Steel Group Co., Ltd..	57.19
Shanghai Baosteel Group Corporation, ... Baoshan Iron and Steel Co., Ltd.,. and Baosteel Group International Trade Corporation.	12.39

Cash Deposit Requirements

The Department will direct United States Customs and Border Protection to require, on or after the date of publication of this notice in the **Federal Register**, the cash deposit rates listed above for the subject merchandise. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of an administrative review of this order.

This notice is issued and published in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended.

Dated: November 8, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6373 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–852]

Initiation of Antidumping Duty Investigation: Liquid Sulfur Dioxide from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4929 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION

The Petition

On September 30, 2005, the Department of Commerce (Department) received a petition on imports of liquid sulfur dioxide from Canada filed in proper form by Calabrian Corporation (the petitioner) on behalf of the domestic industry producing liquid sulfur dioxide[1] (*Liquid Sulfur Dioxide from Canada: Antidumping Duty Petition* dated September 30, 2005 (Petition)). The period of investigation (POI) is July 1, 2004, through June 30, 2005.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleged that imports of liquid sulfur dioxide from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring or threaten to injure an industry in the United States.

Scope of Investigation

The product covered by this investigation is technical or commercial

[1] *See Memorandum from the Team to Barbara Tillman, Acting Deputy Assistant Secretary: Decision Memorandum Concerning Filing Date of Petition*, October 6, 2005, (explaining that the proper filing date is September 30, 2005, as the petition was filed at the ITC after the noon deadline on September 29).

grade and refrigeration grade liquid sulfur dioxide of a minimum 99.98 percent assay. Sulfur dioxide is identified by the chemical formula SO_2. The Chemical Abstract Service (CAS) No. for sulfur dioxide is 7446–09–5. Liquid sulfur dioxide is pure sulfur dioxide gas compressed through refrigeration and stored under pressure. Sulfur dioxide in its gaseous state is excluded from the petition.

Liquid sulfur dioxide subject to this investigation is currently classifiable under subheading 2811.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attn: Irene Darzenta Tzafolias. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed by or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *see also High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the petition, we have determined there is a single domestic like product, liquid sulfur dioxide, which is defined further in the ''Scope of the Investigation'' section above, and we have analyzed industry support in terms of that domestic like product. *See Initiation Checklist* at Attachment 1.

Based on information provided in the petition, the share of total estimated U.S. production of the domestic like product in calendar year 2004 represented by the petitioner did not account for more than 50 percent of the total production of the domestic like product. Therefore, in accordance with 732(c)(4)(D) of the Act, we polled the industry. *See Notice of Extension of the Deadline for Determining the Adequacy of the Petition: Liquid Sulfur Dioxide from Canada*, 70 FR 61937 (October 27, 2005).

On October 7, 2005, we issued polling questionnaires to all known domestic producers of liquid sulfur dioxide identified in the petition. On October 12, 2005, we sent a letter to the domestic producers transmitting revised scope language provided by the petitioner on October 11, 2005, as well as a clarification regarding the reporting of liquid sulfur dioxide that was produced and consumed internally. The questionnaires are on file in the Central Records Unit (CRU) in room B–099 of the main Department of Commerce building. We requested that each company complete the polling questionnaire and certify their responses by faxing their responses to the Department by the due date. For a detailed discussion of the responses received, please see the *Initiation Checklist* at Attachment I.

On October 25, 2005, we sent additional questions to Rhodia Inc. (Rhodia) and Chemtrade Logistics (U.S.) Inc. (Chemtrade U.S.), domestic producers expressing opposition to the petition, and received responses on October 31, 2005. Based on the responses received, we determined that Rhodia's opposition should be disregarded in our industry support calculation.

Section 732(c)(4)(B)(i) of the Act states that the Department ''shall disregard the position of domestic producers who oppose the petition if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.'' In addition, section 351.203(e)(4)(i) of the Department's regulations states that the position of a domestic producer that opposes the petition may be disregarded if such producer is related to a foreign

producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary's satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order. Moreover, section 771(4)(B)(ii)(II) contemplates that the Department will consider whether an exporter controls a producer, when determining whether a domestic producer is related to a foreign company for purposes of section 732(c)(4)(B)(i).

In its October 31, 2005, response, Rhodia confirmed that it has a significant relationship with a Canadian exporter of subject merchandise. Specifically, Rhodia, which ceased production of the subject merchandise on December 31, 2004, entered into an asset purchase and sale agreement with Chemtrade Logistics Inc. (Chemtrade Canada) at the end of 2003, whereby it sold all of its domestic manufacturing and sales business to Chemtrade Canada and was obligated not to compete in the liquid sulfur dioxide industry for a period of 5 years. In addition, Rhodia is currently marketing and distributing liquid sulfur dioxide supplied by Chemtrade Canada, and is entitled to a commission on these sales.

In this case, we find that Rhodia and Chemtrade Canada are related, as defined in section 771(4)(B)(ii)(II) of the Act. Section 771(4)(B)(ii)(II) states that a producer and an exporter or importer shall be considered to be related parties if ''the exporter or importer directly or indirectly controls the producer.'' This subparagraph also states that ''a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.'' Because of the nature of the relationship between Rhodia and Chemtrade Canada, Chemtrade Canada is legally and operationally in a position to restrain or direct Rhodia. For further discussion, see *Initiation Checklist*.

Section 732(c)(4)(B)(i) of the Act also states that the Department will disregard the opposition of related producers ''unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.'' Rhodia has not demonstrated that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order. Furthermore, it is unclear what ''interests as a domestic producer'' Rhodia has because it no longer produces the domestic like product pursuant to its business arrangement with Chemtrade Canada. Therefore, we determine that it is appropriate to disregard Rhodia's opposition to the petition under section 732(c)(4)(B)(i) of the Act and section 351.203(e)(4)(i) of the Department's regulations based on the fact that it is related to Chemtrade Canada and failed to demonstrate that its interests as a domestic producer would be adversely affected by the imposition of an antidumping duty order on liquid sulfur dioxide.

Our analysis of the data indicates that the domestic producers of liquid sulfur dioxide who support the petition account for at least 25 percent of the total production of the domestic like product and, once Rhodia's opposition is disregarded, more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See Initiation Checklist* at Attachment I. Accordingly, the Department determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met. The petitioner has suggested that we disregard another party who opposed the petition, Chemtrade U.S., because it is related to Chemtrade Canada and is a significant importer of liquid sulfur dioxide from Canada; however, because the petitioner has met the 50 percent threshold, after disregarding Rhodia's opposition, we have determined that we need not address the opposition of Chemtrade U.S.

Therefore, the Department determines that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(F) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department initiate. *See Initiation Checklist* at Attachment I (Industry Support).

U.S. Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions relating to the U.S. and home market prices are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

Export Price

Pursuant to section 772(a) of the Act, the petitioner based export price on two price quotations from a Canadian producer of liquid sulfur dioxide to U.S. customers. *See* petition at 18–20 and Attachment 15 and amended petition at 9. The Department deducted from these prices freight expenses and merchandise processing fees of 0.21 percent of dutiable value (net of freight). The freight rates are based on the published 2005 freight tariffs of Canadian Pacific Railway. *See* proprietary *Initiation Checklist*.

Normal Value

To calculate NV, pursuant to section 773(a) of the Act, the petitioner provided a 2003 published price for liquid sulfur dioxide and June 2005 Canadian prices obtained through foreign market research. *See* petition at 15–18 and Attachments 10–13 and amended petition at 6–9. For purposes of this initiation, we have relied on the market research by the petitioner of Canadian liquid sulfur dioxide prices because these prices are more contemporaneous. In addition, we disregarded two of these prices and recalculated another price based on source documentation in the petition. *See* proprietary *Initiation Checklist*. The petitioner deducted estimated freight expenses to derive ex–factory prices. The freight rates are based on the published 2005 freight tariffs of Canadian Pacific Railway. *See* proprietary *Initiation Checklist*.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of liquid sulfur dioxide from Canada are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of export price to the NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for liquid sulfur dioxide from Canada, revised as a result of the Department's recalculations, range from 141.14 percent to 219.99 percent.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and profit. We have assessed the

allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklists*.

Initiation of Antidumping Investigation

Based upon our examination of the petition on liquid sulfur dioxide from Canada, we find that this petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of liquid sulfur dioxide from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the Government of Canada.

International Trade Commission Notification

We have notified the International Trade Commission (ITC) of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of liquid sulfur dioxide from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 733(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 9, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6370 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–603]

Top–of-the–Stove Stainless Steel Cooking Ware from Taiwan; Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) determined that revocation of the antidumping duty order on top–of-the–stove stainless steel cooking ware (cooking ware) from Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Investigations Nos. 731–TA–298 and 299 (Second Review); Investigations Nos. 701–TA–267 and 268 and 731–TA–304 and 305 (Second Review); Porcelain–on-Steel Cooking Ware From China and Taiwan; Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan*, 70 FR 67740 (November 8, 2005) (*ITC Determination*). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department of Commerce (the Department) is revoking the antidumping duty order on cooking ware from Taiwan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation of the antidumping duty order is April 18, 2005, the fifth anniversary of the date of publication in the **Federal Register** of the determination to continue the order.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION Zev Primor, AD/CVD Operations, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department and the ITC initiated sunset reviews of the antidumping duty order on cooking ware from Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the order revoked. *See Top–of-the–Stove Stainless Steel Cooking Ware from the Republic of Korea and Taiwan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 56443 (September 27, 2005).

On October 27, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on cooking ware from Taiwan would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 3808 (October 2005) and *ITC Determination*.

Scope of the Order

The merchandise subject to this antidumping duty order is cooking ware from Taiwan. The subject merchandise is all non–electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the orders are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7323.93.00 and 9604.00.00. The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Determination

As a result of the determination by the ITC that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, is revoking the antidumping duty order on cooking ware from Taiwan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(i), revocation is effective April 18, 2005, the fifth anniversary of the date of the determination to continue the order. The Department will instruct United States Customs and Border Protection (CBP) to discontinue the suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 18, 2005. The Department will instruct CBP to

continue to suspend liquidation of entries of the subject merchandise entered or withdrawn from warehouse, for consumption prior to April 18, 2005, and will complete any pending administrative reviews of this order and will conduct administrative reviews of these entries in response to appropriately filed requests for review.

The Department's and ITC's five-year (sunset) reviews and notices are in accordance with sections 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 9, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6371 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–601)

Top–of-the–Stove Stainless Steel Cooking Ware from the Republic of Korea; Continuation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on top–of-the–stove stainless steel cooking ware (cooking ware) from the Republic of Korea (Korea) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of the cooking ware antidumping duty order.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION Zev Primor, AD/CVD Operations, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department and the ITC initiated sunset reviews of the antidumping duty order on cooking ware from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the order revoked. *See Top–of-the–Stove Stainless Steel Cooking Ware from the Republic of Korea and Taiwan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 56443 (September 27, 2005).

On October 27, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on cooking ware from Korea would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 3808 (October 2005) and *Investigations Nos. 731–TA–298 and 299 (Second Review); Investigations Nos. 701–TA–267 and 268 and 731–TA–304 and 305 (Second Review); Porcelain–on-Steel Cooking Ware From China and Taiwan; Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan*, 70 FR 67740 (November 8, 2005).

Scope of the Order

The merchandise subject to this antidumping duty order is cooking ware from Korea. The subject merchandise is all non–electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the orders are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7323.93.00 and 9604.00.00. The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on cooking ware from Korea. United States Customs and Border Protection (CBP) will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than November 2010.

The Department's and ITC's five-year (sunset) reviews and notices are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 9, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6372 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA): Request for Comments on NFPA's Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes*®, which holds over 270 documents, are administered by more than 225 Technical Committees comprised of approximately 7,000 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that takes approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for

developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals; Calling for Comments on the Committee's disposition of the Proposals and these Comments are published in the Report on Comments; having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

Note: Under new rules effective this Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline of October 20, 2006. Certified motions will be posted by November 17, 2006. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June 2007 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *www.nfpa.org* or contact NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be published in the NFPA's 2006 Fall Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-six reports are published in the 2006 Fall Revision Cycle Report on Proposals and will be available on December 23, 2005. Comments received on or before March 3, 2006, will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2006 Fall Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site—*www.nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before March 3, 2006, for the 2006 Fall Revision Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2006 Fall Revision Cycle Report on Comments by August 25, 2006. A copy of the Report on Comments will be sent automatically to each commenter.

2006 Fall Revision Cycle—Report on Proposals

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision]

NFPA 12	Standard on Carbon Dioxide Extinguishing Systems	P
NFPA 12A	Standard on Halon 1301 Fire Extinguishing Systems	P
NFPA 16	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems	P
NFPA 18A	Standard on Water Additives for Fire Control and Vapor Mitigation	N
NFPA 25	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems	P
NFPA 30	Flammable and Combustible Liquids Code	P
NFPA 51	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes	P
NFPA 58	Liquefied Petroleum Gas Code	P
NFPA 68	Guide for Venting of Deflagrations	C
NFPA 85	Boiler and Combustion Systems Hazards Code	P
NFPA 204	Standard for Smoke and Heat Venting	P
NFPA 385	Standard for Tank Vehicles for Flammable and Combustible Liquids	P
NFPA 471	Recommended Practice for Responding to Hazardous Materials Incidents	P
NFPA 472	Standard for Professional Competence of Responders to Hazardous Materials Incidents	C
NFPA 550	Guide to the Fire Safety Concepts Tree	R
NFPA 551	Guide for the Evaluation of Fire Risk Assessments	P
NFPA 560	Standard for the Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	P
NFPA 900	Building Energy Code	P
NFPA 1005	Standard on Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters	N
NFPA 1037	Standard for Professional Qualifications for Fire Marshals	N
NFPA 1041	Standard for Fire Service Instructor Professional Qualifications	P
NFPA 1051	Standard for Wildland Fire Fighter Professional Qualifications	P
NFPA 1061	Standard for Professional Qualifications for Public Safety Telecommunicator	P
NFPA 1402	Guide to Building Fire Service Training Centers	C
NFPA 1403	Standard on Live Fire Training Evolutions	C
NFPA 1451	Standard for a Fire Service Vehicle Operations Training Program	C
NFPA 1600	Standard on Disaster/Emergency Management and Business Continuity Programs	C
NFPA 1851	Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles	C
NFPA 1911	Standard for Service Tests of Fire Pump Systems on Fire Apparatus	C
NFPA 1914	Standard for Testing Fire Department Aerial Devices	W
NFPA 1915	Standard for Fire Apparatus Preventive Maintenance Program	W

2006 FALL REVISION CYCLE—REPORT ON PROPOSALS—Continued

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision]

NFPA 1951	Standard on Protective Ensemble for USAR Operations	C
NFPA 1961	Standard on Fire Hose	P
NFPA 1981	Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services	C
NFPA 1982	Standard on Personal Alert Safety Systems (PASS)	C
NFPA 2001	Standard on Clean Agent Fire Extinguishing Systems	P

Dated: November 8, 2005.

William Jeffrey,

Director.

[FR Doc. 05–22785 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA) Proposes To Revise Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that takes approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals; Calling for Comments on the Committee's disposition of the proposals and these Comments are published in the Report on Comments; having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

Note: Under new rules effective this Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline stated in the ROC. Certified motions will then be posted on the NFPA website. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *www.nfpa.org* or contact NFPA Codes and Standards Administration.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Proposals, that is, a public notice asking for any interested persons to submit specific written proposals for developing or revising the Document. The Call for Proposals is published in a variety of publications. Interested parties have approximately twenty weeks to respond to the Call for Proposals.

Following the Call for Proposals period, the Technical Committee holds a meeting to consider and accept, reject or revise, in whole or in part, all the submitted Proposals. The committee may also develop its own Proposals. A document known as the Report on Proposals, or ROP, is prepared containing all the Public Proposals, the Technical Committees' action and each Proposal, as well as all Committee-generated Proposals. The ROP is then submitted for the approval of the Technical Committee by a formal written ballot. If the ROP does not receive approval by a two-thirds vote calculated in accordance with NFPA rules, the Report is returned to the committee for further consideration and is not published. If the necessary approval is received, the ROP is published in a compilation of Reports on Proposals issued by NFPA twice yearly for public review and comment, and the process continues to the next step.

The Reports on Proposals are sent automatically free of charge to all who submitted proposals and each respective committee member, as well as anyone else who requests a copy. All ROP's are also available for free downloading at *www.nfpa.org.*

Once the ROP becomes available, there is a 60-day comment period during which anyone may submit a Public Comment on the proposed changes in the ROP. The committee then reconvenes at the end of the comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the committee is required for approval of actions on the Comments. All of this information is complied into a second Report, called the Report on Comments (ROC), which, like the ROP, is published and made available for public review for a seven-week period.

The process of public input and review does not end with the publication of the ROP and ROC. Following the completion of the Proposal and Comment periods, there is yet a further opportunity for debate and

discussion through the Technical Report Sessions that take place at the NFPA Annual Meeting.

The Technical Report Session provides an opportunity for the final Technical Committee Report (i.e., the ROP and ROC) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at a Technical Report Session, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion. A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Technical Report Session.

The specific rules for the types of motions that can be made are who can make them are set forth in NFPA's Regulation Governing Committee Projects which should always be consulted by those wishing to bring an issue before the membership at a Technical Report Session.

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *www.nfpa.org.*

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

Document–edition	Document title	Proposal closing date
NFPA 17—2002	Standard for Dry Chemical Extinguishing Systems	5/26/2006
NFPA 17A—2002	Standard for Wet Chemical Extinguishing Systems	5/26/2006
NFPA 59—2004	Utility LP-Gas Plant Code	3/3/2006
NFPA 70E—2004	Standard for Electrical Safety in the Workplace	9/15/2006
NFPA 115—2003	Standard on Laser Fire Protection	5/26/2006
NFPA 496—2003	Standard for Purged and Pressurized Enclosures for Electrical Equipment	5/26/2006
NFPA 497—2004	Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	5/26/2006
NFPA 499—2004	Recommended Practice for the Classification of Combustible Dusts and of Hazardous (Classified) Locations for electrical installations in Chemical Process Areas.	5/26//2006
NFPA 730—2006	Guide for Premises Security	5/26/2006
NFPA 731—2006	Standard for the Installation of Electronic Premises Security Systems	5/26/2006
NFPA 801—2003	Standard for Fire Protection for Facilities Handling Radioactive Materials	5/26/2006
NFPA 806—P*	Performance Based Standard for Fire Protection for Advanced Nuclear Reactor Electric Generating Plants.	5/26/2006
NFPA 921—2004	Guide for Fire and Explosion Investigations	5/26/2006
NFPA 1901—2003	Standard for Automotive Fire Apparatus	3/10/2006
NFPA 1962—2003	Standard for the Inspection, Care and Use of Fire Hose, Couplings and Nozzles; and the Service Testing of Fire Hose.	3/10/2006
NFPA 1964—2003	Standard for Spray Nozzles	3/10/2006
NFPA 1989—2003	Standard on Breathing Air Quality for Fire and Emergency Services Respiratory Protection	12//30/2005
NFPA 1999—2003	Standard on Protective Clothing for Emergency Medical Operations	12/30/2005

*P Proposed NEW drafts are available from NFPA's Web site—*www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471.

Dated: November 8, 2005.

William Jeffrey,

Director.

[FR Doc. 05–22786 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092105E]

Endangered Species; File No. 1541

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Kristen M. Hart, Ph.D, United States Geologic Survey, Florida Integrated Science Center, Center for Coastal and Watershed Studies, has been issued a permit to take green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Regional Office, Office of Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 12, 2005, notice was published in the **Federal Register** (70 FR 40004) that a request for a scientific research permit to take green, Kemp's ridley, loggerhead, and hawksbill sea turtles had been submitted by the applicant. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will capture up to 106 green, 1 Kemp's ridley, 1 loggerhead, and 1 hawksbill sea turtles by tended pound-net or dip-net over the course of the three year permit. All turtles will be measured, weighed, blood sampled, flipper tagged, Passive Integrated Transponder tagged, fecal sampled if large enough, and released. All green turtles will be gastric lavaged. A subset of green turtles will also have a satellite transmitter or sonic and radio receivers attached to their carapace. The research will gather information on turtle habitat, genetic origin, size and age composition, species distribution, and health status. This information will be used to develop conservation management measures for these species. The research will occur in the waters of the Big Sable Creek complex in southwest Florida. The permit is issued for a 3–year period.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 10, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–22812 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110905H]

Marine Mammals; File No. 1076–1789

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Alliance of Marine Mammal Parks and Aquariums, 418 North Pitt Street, Alexandria, Virginia 22314 [Kristi West, Ph.D., Principal Investigator], has applied in due form for a permit to import and export parts from all cetaceans and pinniped species (excluding walrus) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 19, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1076–1789.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Alliance of Marine Mammal Parks and Aquariums members participate in multiple research and husbandry programs with the overall objective to study and document the health and biology of wild marine mammals as well as those marine mammals maintained in public display, research, or stranding facilities. To fully achieve this objective, the applicant is requesting a permit to import/export parts and specimen samples (hard and soft parts) collected from all species of marine mammals (all cetaceans and pinnipeds, except for walrus). The majority of the specimens will be obtained from animals maintained in Alliance member facilities for public display. However, specimens from stranded animals and those involved in legally authorized research projects would also be covered by this permit. Topics of particular interest include diseases of marine mammals, effects of environmental contaminants, artificial insemination, stock structure, age determination, mortality determinations, pregnancy rates, calf production, feeding habits and nutrition, and distribution. Parts and specimen samples may be taken at any time during the year and in all areas worldwide. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; *http://www.nmfs.noaa.gov/pr/permits/review.htm*;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Dated: November 10, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–22811 Filed 11–16–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 15, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of women's and girls' cotton and man-made fiber shirts and blouses, not-knit (Category 341/641).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of women's and girls' cotton and man-made fiber shirts and blouses, not-knit (Category 341/641) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44566 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case. **See Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 67456 (November 7, 2005). The Committee is further extending the determination period through November 30, 2005.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–22895 Filed 11–15–05; 4:05 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 15, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber swimwear (Category 359-S/659-S).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber swimwear (Category 359-S/659-S) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44568 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case. **See Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 67457 (November 7, 2005). The Committee is further extending the determination period through November 30, 2005.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–22896 Filed 11–15–05; 4:05 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 15, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber skirts (Category 342/642).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber skirts (Category 342/642) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44567 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case. **See Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 67457 (November 7, 2005). The Committee is further extending the determination period through November 30, 2005.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–22897 Filed 11–15–05; 4:05 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 15, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber nightwear (Category 351/651).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber nightwear (Category 351/651) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44568 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case. **See Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 67457 (November 7, 2005). The Committee is further extending the determination period through November 30, 2005.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–22898 Filed 11–15–05; 4:05 pm]

BILLING CODE 3510–DS

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, December 2, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–22879 Filed 11–15–05; 12:20 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, December 9, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–22880 Filed 11–15–05; 12:20 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, December 16, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–22881 Filed 11–15–05; 12:20 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, December 23, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–22882 Filed 11–15–05; 12:20 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, December 30, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–22883 Filed 11–15–05; 12:20 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 10, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Direct Loan Income Contingent Repayment Plan Alternative Documentation of Income.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 863,357.

Burden Hours: 285,007.

Abstract: A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2937. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@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. 05–22757 Filed 11–16–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the

following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 10, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement.

Title: Direct Loan Income Contingent Repayment Plan—Consent to Disclosure of Tax Information.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 393,577.

Burden Hours: 78,716.

Abstract: This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2939. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@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. 05–22758 Filed 11–16–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–137]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 9, 2005.

Take notice that on November 4, 2005, ANR Pipeline Company (ANR) tendered for filing and approval a point amendment to an existing negotiated rate service agreement between ANR and Wisconsin Gas L.L.C. ANR requests an effective date of November 4, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6335 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–014]

Dauphin Island Gathering Partners; Notice of Tariff Filing and Negotiated Rate

November 9, 2005.

Take notice that on November 4, 2005, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective December 4, 2005. Dauphin Island states that these tariff sheets reflect changes to its statement of negotiated rates.

Twenty-Third Revised Sheet No. 9.
Eighteenth Revised Sheet No. 10.
Sixth Revised Sheet No. 359.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6347 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–25–000]

Dispersed Generating Company, LLC; Notice of Filing

November 9, 2005.

Take notice that on November 4, 2005, Dispersed Generating Company, LLC (Dispersed Gen) pursuant to section 203 of the Federal Power Act, filed an application requesting authorization for the disposition of jurisdictional assets related to the proposed sale of two currently non-operational combustion turbine generating facilities to MMC Energy North America, LLC, or its wholly-owned and newly formed special purpose subsidiaries, MMC Chula Vista LLC. Dispersed Gen respectfully requests confidential treatment of some of the documents attached to the application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6338 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–25–000]

Preventing Undue Discrimination and Preference in Transmission Services; Notice Providing for Reply Comments

November 9, 2005.

On November 1, 2005, Edison Electric Institute (EEI) filed a Motion to Provide for Filing of Reply Comments in the above-docketed proceeding. In its filing, EEI requests that the Commission provide interested parties an opportunity to file reply comments in response to the Commission's Notice of Inquiry (NOI) issued September 16, 2005, in the above-docketed proceeding. *Preventing Undue Discrimination and Preference in Transmission Services*, 112 FERC ¶ 61299 (2005).

By this notice, as requested by EEI, interested parties are provided an opportunity to file reply comments in response to the Commission's September 16 NOI. Reply comments should be filed on or before January 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6345 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1482–001]

Electric Energy, Inc.; Notice of Compliance Filing

November 9, 2005.

Take notice that on November 3, 2005, Electric Energy, Inc. (EEInc) tendered for filing supplemental information pertaining to its September 15, 2005 request for market-based rate authority. EEInc states that this filing includes a revised generation market power analysis.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6340 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1281–000, ER05–1281–001, and ER05–1281–002]

FPL Energy Duane Arnold, LLC; Notice of Issuance of Order

November 9, 2005.

FPL Energy Duane Arnold, LLC (FPL Duane) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy, capacity and ancillary services at market-based rates. FPL Duane also requested waiver of various Commission regulations. In particular, FPL Duane requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by FPL Duane.

On November 8, 2005, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by FPL Duane should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests, is December 8, 2005.

Absent a request to be heard in opposition by the deadline above, FPL Duane is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPL Duane, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of FPL Duane's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6339 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–056]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

November 9, 2005.

Take notice that on November 4, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet Nos. 8.01v and 8.01w, each reflecting an effective date of November 7, 2005.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6346 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–84–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 9, 2005.

Take notice that on November 4, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheets, to be effective on December 4, 2005:

Fifth Revised Sheet No. 50.
Fourth Revised Sheet No. 50A.
Fourth Revised Sheet No. 50B.
First Revised Sheet No. 52A.
Second Revised Sheet 84A.
Third Revised Sheet No. 115.
Fifth Revised Sheet No. 161.
Seventh Revised Sheet No. 162.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance

with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6348 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–019]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rates

November 9, 2005.

Take notice that on November 4, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet to be effective on November 5, 2005:

Original Sheet No. 6G.
Original Sheet No. 6H.

Iroquois states that the proposed effective date of this tariff sheet is November 5, 2005. Iroquois further states that the Original Sheet Nos. 6G and 6H reflect a negotiated rate agreement between Iroquois and Virginia Power Energy Marketing, Inc. (VPEM), with those negotiated rates to be effective November 5, 2005 through April 1, 2006.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6349 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–125–000]

Kentucky Power Company; Notice of Filing

November 9, 2005.

Take notice that on November 1, 2005, Kentucky Power Company (KPCo) tendered for filing a Notice of Cancellation of its Service Agreement No. 1 under FERC Electric Tariff Original Volume No. 1 and FERC Electric Tariff Original Volume No. 1, under which KPCo currently provides service to the City of Olive Hill, Kentucky. KPCo requests an effective date of January 1, 2006.

KPCo states that a copy of the filing was served upon the Kentucky Public Service Commission and the City of Olive Hill.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6341 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–112]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

November 9, 2005.

Take notice that on November 4, 2005, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26U, to become effective September 28, 2005.

Natural states that the purpose of this filing is to terminate an existing interruptible transportation negotiated rate transaction.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6350 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–039]

PacifiCorp; Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

November 9, 2005.

On October 3, 2005, the United States Department of the Interior (Interior), filed a petition for a declaratory order to resolve matters relating to the terms and conditions of any annual license that may issue for the Klamath Hydroelectric Project No. 2082, which is licensed to PacifiCorp. The project is located primarily on the Klamath River in Klamath County, Oregon, and Siskiyou County, California.

The petition contends that the project license includes a contract between Interior and PacifiCorp's predecessor in interest, California Oregon Power Company, which the Commission required to be executed and filed as a condition of issuance of the license (Link River Dam contract). The Link River Dam contract provides, among other things, for the licensee to furnish electric power at specified rates to the United States for pumping and drainage of irrigation water at the Klamath River irrigation project, which is administered by Interior's Bureau of Reclamation. Interior seeks a declaration that the terms and conditions of the Link River Dam contract, particularly those relating to the sale of power, will continue in force during any annual licenses issued for the project when the existing license expires on March 1, 2006.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may become parties to the proceeding. Comments, protests, or motions to intervene must be filed within 10 days of publication of this notice in the Federal Register and must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and Project No. 2082–039.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Send the filings (original and 8 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of the petition for declaratory order are on file with the Commission and are available for public inspection in Room 2A and may also be viewed on the Web at *http://www.ferc.gov/onlinerims.htm*. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6343 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06-19-000; CP06-20-000; CP06-21-000]

Unocal Windy Hill Gas Storage, LLC; Notice of Application

November 9, 2005.

Take notice that on November 2, 2005, Unocal Windy Hill Gas Storage, LLC (Windy Hill), 14141 Southwest Freeway, Sugar Land, Texas 77478, filed in the above referenced dockets, an application pursuant to section 7(c) of the Natural Gas Act (NGA), requesting: (i) A certificate of public convenience and necessity authorizing Windy Hill to construct, own, operate, and maintain an underground natural gas storage facility in four bedded salt caverns near the town of Brush, Morgan County, Colorado; (ii) a blanket certificate pursuant to part 157, subpart F of the Commissions regulations; (iii) a blanket certificate pursuant to part 284, subpart G of the Commission's regulations; (iv)

authorization to provide storage services at market based rates; and (v) approval of a pro forma FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Specifically, Windy Hill proposes to construct and operate a high-deliverability salt dome natural gas storage facility, including compression facilities, near the town of Brush, Morgan County, Colorado. When completed, the project will have a total working gas capacity of 6 Bcf. The facilities will be capable of injection and withdrawal rates of 135 MMcf per day and 400 MMcf per day, respectively. Windy Hill also proposes to construct pipeline laterals to interconnect with the interstate pipeline systems of Cheyenne Plains Gas Pipeline Company, LLC and Colorado Interstate Gas Company, as well as the intrastate pipeline system of Public Service Company of Colorado.

Any questions regarding this application should be directed to J. Patrick Nevins, Partner, Hogan & Hartson, LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109, phone (202) 637-6441.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: November 30, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6337 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 9, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–554–003.

Applicants: PacifiCorp.

Description: PacifiCorp reports that on 10/14/05 it paid $26,929 to Warms Springs Power Enterprises in compliance with FERC's 8/25/05 Order.

Filed Date: 11/03/2005.

Accession Number: 20051108–0212.

Comment Date: 5 p.m. Eastern Time on Friday, November 25 2005.

Docket Numbers: ER06–150–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection LLC submits its Third Revised Rate Schedule No. 24 and Sixth Revised Volume No. 1.

Filed Date: 11/02/2005.

Accession Number: 20051108–0285

Comment Date: 5 p.m. Eastern Time on Wednesday, November 23, 2005.

Docket Numbers: ER06–151–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to the PJM FERC Electric Tariff, Third Revised Rate Schedule No. 24 & Sixth Revised Volume No. 1.

Filed Date: 11/02/2005.

Accession Number: 20051108–0255.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 23, 2005.

Docket Numbers: ER06–152–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp submits a revised Market-Base Rate Tariff designated as FERC Electric Tariff, Fourth Revised Volume No. 10.

Filed Date: 11/03/2005.

Accession Number: 20051108–0209.

Comment Date: 5 p.m. Eastern Time on Friday, November 25, 2005.

Docket Numbers: ER06–153–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf AEP Texas Central Company submits a restated and amended interconnection agreement dated 11/29/99.

Filed Date: 11/03/2005.

Accession Number: 20051108–0210.

Comment Date: 5 p.m. Eastern Time on Friday, November 25, 2005.

Docket Numbers: ER06–154–000; ER05–1307–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits a Compliance Filing of Second Revised Sheet No. 121 to FERC Electric Tariff, Second Revised Volume No. 4.

Filed Date: 11/03/2005.

Accession Number: 20051108–0211.

Comment Date: 5 p.m. Eastern Time on Friday, November 25, 2005.

Docket Numbers: ER06–155–000.

Applicants: Walton Electric Membership Corporation.

Description: Walton Electric Membership Corp informs FERC it is no longer a public utility subject to jurisdiction pursuant to section 201(f) of the Federal Power Act and no longer is required to file reports effective 8/8/05.

Filed Date: 11/02/2005.

Accession Number: 20051108–0207.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 23, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6334 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 9, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 2016–120.

c. *Dates Filed:* August 12, 2005.

d. *Applicant:* City of Tacoma, Washington.

e. *Name of Project:* Cowlitz River Project.

f. *Location:* The project is located on the Cowlitz River, in Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Cindy Swanberg, Tacoma Power, 3628 South 35th Street, Tacoma, WA 98409–3192, (253) 502–8362.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Rebecca Martin at (202) 502–6012, or e-mail address: *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 2, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2016–120) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The City of Tacoma is requesting to amend the boundaries of the wildlife lands described in Settlement Agreement Article 24 of the Cowlitz River Hydroelectric Project License. The proposed changes would remove 96.4 acres of currently designated wildlife area and replaces the removed acres with 110.1 acres currently within the project boundary but not designated as wildlife area. The proposed changes affect less than 1% of the wildlife area. The proposed changes would allow the construction of a low water boat launch, allow the Washington State Parks and Recreation Commission to construct a group campground, and facilitate the management of the Cowlitz Wildlife Area.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6342 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Exemptions and Soliciting Comments, Motions To Intervene, and Protests

November 9, 2005.

a. *Type of Application:* Application for Surrender of License and Exemptions.

b. *Project Numbers:* P–2978–005, P–2979–006 & P–2980–007.

c. *Date Filed:* October 25, 2005.

d. *Applicant:* City of Traverse City (Licensee and Exemptee).

e. *Name of Projects:* Licensed Brown Bridge Project (FERC No. 2978), Exempted Boardman Project (FERC No. 2979) & Exempted Sabin Project (FERC No. 2980).

f. *Location:* The projects are located on the Boardman River, in Grand Traverse County, Michigan. The projects affect no federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Richard L. Smith, Executive Director, Traverse City Light & Power Department, 1131 Hastings Street, Traverse City, MI 49686, telephone (231) 932–4559 or Joe Kaltenbach, Power Production Superintendent, Traverse City Light & Power Department, 1131 Hastings Street, Traverse City, MI 49686, telephone (231) 932–4557.

i. *FERC Contact:* Any questions on this notice should be addressed to Blake Condo at (202) 502–8914, or e-mail address: *blake.condo@ferc.gov*.

j. *Deadline for filing comments and/or motions:* December 9, 2005.

k. *Description of Request:* The City of Traverse City (licensee) requests approval of its application for surrender of its Brown Bridge license and its Boardman and Sabin exemptions due to the projects being uneconomical. The licensee has consulted with local, state, federal, tribal, and non-governmental organizations and included with the application were letters of support from these entities. The licensee proposes to surrender the license and exemptions and remove all electric generating equipment. The licensee proposes, following the surrender of the license and exemptions, to study the feasibility of removing the dams.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter one of the three docket numbers excluding the last three digits in the docket number field (P–2978, P–2979, or P–2980) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Numbers of the particular application to which the filing refers (P–2978–005, P–2979–006, or P–2980–007). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6344 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–13–000]

Joint Boards on Security Constrained Economic Dispatch; Notice Announcing the Agenda for the South Joint Board Meeting

November 9, 2005.

On September 30, 2005, the Commission announced its intention to hold initial joint board meetings.[1] These joint board meetings are being held pursuant to section 1298 of the Energy Policy Act of 2005,[2] which added section 223 to the Federal Power Act (FPA).[3] FPA section 223 requires the Commission to convene joint boards on a regional basis pursuant to FPA section 209 ''to study the issue of security constrained economic dispatch for the various market regions,'' ''to consider issues relevant to what constitutes 'security constrained economic dispatch' and how such a mode of operating * * * affects or enhances the reliability and affordability of service,'' and ''to make recommendations to the Commission.'' Subsequently, three notices were issued providing details on the joint boards and the joint board meetings.[4]

[1] *Joint Boards on Security Constrained Economic Dispatch*, 112 FERC ¶ 61,353 (2005) (September 30 Order).

[2] Public Law No. 109–58, § 1298, 119 Stat. 594, 986 (2005).

[3] 16 U.S.C. 824 *et seq.* (2000).

[4] The three notices were issued on October 14, 21 and 27, 2005, in accordance with the September 30 Order. The first notice announced the locations and other details for the joint board meetings. The second notice provided a list of the members of each joint board. A third notice provided hotel information for the joint board meetings for the

This notice provides the agenda for the initial joint board meeting for the South region scheduled for Sunday, November 13, 2005 from 1 p.m. to 5 p.m. (Pacific Time) in the Valencia Conference Rooms 5 and 6 at Renaissance Esmeralda Resort and Spa, 44–400 Indian Wells Lane, Indian Wells, California 92210–9971. Attire for the meeting is business casual.

Attachment A of this notice contains the agenda for the South joint board meeting. Attachment B lays out a list of objectives/issues that the joint board will discuss to prepare the report due to Congress.

At the meeting, microphones will be made available to allow members of the audience to participate during a portion of the joint board's discussion as noted on the agenda. Electronic copies of presentation materials will be made available on the Commission Web site *http://www.ferc.gov* as they are received.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts; and offers access to the open meetings via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

Comments related to the meeting may be filed in the captioned docket no later than December 5, 2005. The comments will be publicly available for review in the Commission's e-Library.

For more information about the meeting, please contact Sarah McKinley at 202–502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–6351 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

PJM/MISO and Northeast regions and noted that the Province of Manitoba was participating as an observer in the PJM/MISO joint board.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–13–000]

Joint Boards on Security Constrained Economic Dispatch; Notice Announcing the Agenda for the West Joint Board Meeting

November 9, 2005.

On September 30, 2005, the Commission announced its intention to hold initial joint board meetings.[1] These joint board meetings are being held pursuant to section 1298 of the Energy Policy Act of 2005,[2] which added section 223 to the Federal Power Act (FPA).[3] FPA section 223 requires the Commission to convene joint boards on a regional basis pursuant to FPA section 209 ''to study the issue of security constrained economic dispatch for the various market regions,'' ''to consider issues relevant to what constitutes 'security constrained economic dispatch' and how such a mode of operating * * * affects or enhances the reliability and affordability of service,'' and ''to make recommendations to the Commission.'' Subsequently, three notices were issued providing details on the joint boards and the joint board meetings.[4]

This notice provides the agenda for the initial joint board meeting for the West region scheduled for Sunday, November 13, 2005 from 1 p.m. to 5 p.m. (Pacific Time) in the Emerald Conference Room at Renaissance Esmeralda Resort and Spa, 44–400 Indian Wells Lane, Indian Wells, California 92210–9971. Attire for the meeting is business casual.

Attachment A of this notice contains the agenda for the West joint board meeting. Attachment B lays out a list of objectives/issues that the joint board will discuss to prepare the report due to Congress.

At the meeting, microphones will be made available to allow members of the audience to participate during a portion of the joint board's discussion as noted on the agenda. Electronic copies of presentation materials will be made available on the Commission Web site *http://www.ferc.gov* as they are received.

A free Webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the Webcasts; and offers access to the open meetings via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

Comments related to the meeting may be filed in the captioned docket no later than December 5, 2005. The comments will be publicly available for review in the Commission's e-Library.

For more information about the meeting, please contact Sarah McKinley at 202–502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–6336 Filed 11–16–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Joint Boards on Security Constrained Economic Dispatch*, 112 FERC ¶ 61,353 (2005) (September 30 Order).

[2] Pub. L. No. 109–58, § 1298, 119 Stat. 594, 986 (2005).

[3] 16 U.S.C. 824 *et seq.* (2000).

[4] The three notices were issued on October 14, 21 and 27, 2005, in accordance with the September 30 Order. The first notice announced the locations and other details for the joint board meetings. The second notice provided a list of the members of each joint board. A third notice provided hotel information for the joint board meetings for the PJM/MISO and Northeast regions and noted that the Province of Manitoba was participating as an observer in the PJM/MISO joint board.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

November 10, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 17, 2005; 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

Contact person for more Information: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

898TH—Meeting

REGULAR MEETING

[November 17, 2005, 10 a.m.]

Item No.	Docket No.	Company
		Administrative Agenda
A–1	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–2	AD02–1–000	Agency Administrative Matters.
		Markets, Tariffs, and Rates—Electric
E–1	RM05–35–000	Standard of Review for Modifications to Jurisdictional Agreements.
E–2	RM06–4–000	Regulations Providing Incentive-Based Rate Treatments for the Transmission of Electric Energy in Interstate Commerce by Public Utilities.
E–3	Omitted.	
E–4	ER00–1969–020 ...	New York Independent System Operator, Inc.
	EL00–57–004	Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
	EL00–60–004	Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
	EL00–63–004	New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
	EL00–64–004	Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.
E–5	EL05–145–000	District of Columbia Public Service Commission.
E–6	ER05–1501–000 ...	California Independent System Operator Corporation.
E–7	ER05–1502–000 ...	California Independent System Operator Corporation.
E–8	ER05–1511–000 ...	Noble Thumb Windpark I, LLC.
E–9	ER05–1366–000 ...	Cincinnati Gas & Electric Company.
	ER05–1367–000 ...	PSI Energy, Inc.
	ER05–1368–000 ...	Union Light Heat & Power Company.
	ER05–1369–000 ...	Cinergy Marketing & Trading, L.P.
	ER05–1369–001.	
	ER05–1370–000 ...	Brownsville Power I. LLC.
	ER05–1370–001 ...	Caledonia Power I. LLC.
	ER05–1372–000 ...	CinCap IV, LLC.
	ER05–1373–000 ...	CinCap V, LLC.
	ER05–1374–000 ...	Cinergy Capital & Trading, Inc.
	ER05–1375–000 ...	Cinergy Power Investments, Inc.
	ER05–1376–000 ...	St. Paul Cogeneration, LLC.
E–10	ER06–27–000	Midwest Independent Transmission System Operator.
	ER04–691–063.	
	EL04–104–060	Public Utilities With Grandfathered Agreements.
E–11	ER05–531–003	ISO New England, Inc. and New England Power Pool.
E–12	ER03–171–002	Enertgy Mississippi, Inc.
	ER03–171–003.	
	ER03–171–004.	
	ER03–171–005.	
E–13	ER00–3562–003 ...	Calpine Energy Services, L.P.
	ER03–341–002	Calpine PowerAmerica-OR, LLC.
	ER03–342–002	Calpine PowerAmerica-CA, LLC.
	ER03–838–003	Power Contract Financing, LLC.
	ER04–1081–001 ...	PCF2, LLC.
	ER04–1080–001 ...	Calpine Energy Management, L.P.
	ER03–209–002	CES Marketing V, L.P.
	ER03–36–004	Calpine Northbrook Energy Marketing, LLC.
	ER99–2858–008 ...	MEP Pleasant Hill, LLC.
	ER05–48–001	Calpine Bethpage 3, LLC.
	ER05–1266–001 ...	Ontelaunee Power Operating Company, LLC.
	ER05–817–001	CES Marketing, VII, LLC.
	ER05–818–001	CES Marketing VIII, LLC.
	ER05–819–001	CES Marketing IX, LLC.
	ER05–820–001	CES Marketing X, LLC.
	ER02–1319–004 ...	Zion Energy, LLC.
	ER04–831–002	Calpine Newark, LLC.
	ER04–832–002	Calpine Parlin, LLC.
	ER00–1115–003 ...	Calpine Construction Finance Company, L.P.
	ER03–446–002	Calpine Philadelphia Energy, Inc.
	ER02–1959–003 ...	CPN Bethpage 3rd Turbine, Inc.
	ER04–1099–001 ...	Bethpage Energy Center 3, LLC.
	ER04–1100–001 ...	TBG Cogen Partners.
	ER01–2688–008 ...	Gilroy Energy Center, LLC.
	ER02–2227–004 ...	Creed Energy Center, LLC.

REGULAR MEETING—Continued

[November 17, 2005, 10 a.m.]

Item No.	Docket No.	Company
	ER02–600–006	Delta Energy Center, LLC.
	ER02–2229–003 ...	Goose Haven Energy Center, LLC.
	ER03–24–003	Los Esteros Critical Energy Facility, LLC.
	ER05–67–001	Metcalf Energy Center, LLC.
	ER05–68–001	Pastoria Energy Facility LLC.
	ER99–1983–003 ...	Geysers Power Company, LLC.
	ER03–290–002	Calpine California Equipment Finance Company, LLC.
E–14	Omitted.	
E–15	ER99–2342–004 ...	Tampa Electric Company.
	ER99–2342–005.	
	ER99–2342–007.	
	ER01–931–008	Panda Gila River, L.P.
	ER01–931–009.	
	ER01–931–011.	
	ER01–930–008	Union Power Partners, L.P.
	898TH—Meeting.	
	ER01–930–009.	
	ER01–930–011.	
	ER96–1563–021 ...	TECO EnergySource, Inc.
	ER96–1563–022.	
	ER96–1563–024.	
	ER99–415–007	Commonwealth Chesapeake Company, LLC.
	ER99–415–008.	
	ER99–415–010.	
	ER02–510–004	TPS Dell, LLC.
	ER02–510–005.	
	ER02–510–007.	
	ER02–507–004	TPS McAdams, LLC.
	ER02–507–005.	
	ER02–507–007.	
	ER02–1000–005 ...	TECO–PANDA Generating Company, L.P.
	ER02–1000–006.	
	ER02–1000–008.	
	EL05–68–000	Tampa Electric Company Panda Gilda, L.P., Union Power Partners, L.P., TECO EnergySource, Inc., and Commonwealth Chesapeake Company, LLC.
E–16	EL05–38–003	Okalahoma Municipal Power Authority v. American Electric Power Service Corporation.
E–17	ER05–287–001	Granite Ridge Energy, LLC.
	ER00–1147–002.	
E–18	ER05–17–005	Trans-Elect NTD Path 15, LLC.
E–19	ER02–1398–002 ...	KeySpan-Ravenswood, LLC.
	ER02–1470–002 ...	KeySpan-Glenwood Energy Center, LLC.
	ER02–1573–002 ...	KeySpan-Port Jefferson Energy Center, LLC.
E–20	Omitted.	
E–21	EC04–121–000	American Electric Power Service Corporation AEP Texas Central Company.
E–22	EL06–16–000	Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations.
E–23	PL06–4–000	Informal Staff Advice on Regulatory Requirements.
E–24	EL04–90–002	Nevada Power Company.
E–25	EL01–106–001	Old Dominion Electric Cooperative v. PJM Interconnection, LLC.
E–26	RM02–12–001	Standardization of Small Generator Interconnection Agreements and Procedures.
E–27	EL01–19–004	H.Q. Energy Services (U.S.), Inc. v. New York.
	EL01–19–005	Independent System Operator, Inc.
	EL01–19–006.	
	EL02–16–004	PSEG Energy Resources & Trade LLC v. New York.
	EL02–16–005	Independent System Operator, Inc.
	EL02–16–006.	
E–28	Omitted.	
E–29	Omitted.	
	Markets, Tariffs, and Rates—Miscellaneous	
M–1	Omitted.	
	Markets, Tariffs, and Rates—Gas	
G–1	RP00–107–003	Williston Basin Interstate Pipeline Company.
	RP00–107–004.	
G–2	RM05–2–001	Policy for Selective Discounting by Natural Gas Pipelines.
G–3	RP04–267–001	Transcontinental Gas Pipe Line Corporation.
G–4	OR05–11–000	*Continental Resources, Inc.* v. *Bridger Pipeline, LLC.*
G–5	RM06–5–000	Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates.

REGULAR MEETING—Continued

[November 17, 2005, 10 a.m.]

Item No.	Docket No.	Company
G–6	OR92–8–024	SFPP, L.P.
	OR93–5–015.	
	OR94–3–014.	
	OR94–4–016.	
	OR95–5–013	*Mobil Oil Corporation* v. *SFPP, L.P.*
	OR95–34–012	*Tosco Corporation* v. *SFPP, L.P.*
	OR96–2–010	*ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation* v. *SFPP, L.P.*
	OR96–2–011.	
	OR96–10–007.	
	OR96–10–009.	
	OR98–1–009.	
	OR98–1–011.	
	OR00–4–002.	
	OR00–4–004.	
	OR96–2–003	*Ultramar Diamond Shamrock Corporation and Ultramar, Inc.* v. *SFPP, L.P.*
	OR96–2–010.	
	OR96–10–008.	
	OR96–10–009.	
	OR96–17–004.	
	OR96–17–006.	
	OR97–2–004.	
	OR97–2–005.	
	OR98–2–005.	
	OR98–2–007.	
	OR00–8–005.	
	OR00–8–007.	
	OR98–13–005	Tosco Corporation v. SFPP, L.P.
	OR98–13–007.	
	OR00–9–005.	
	OR00–9–007.	
	OR00–7–005	*Navajo Refining Corporation* v. *SFPP, L.P.*
	OR00–7–006.	
	OR00–10–005	Refinery Holding Company.
	OR00–10–006.	
	IS98–1–001	SFPP, L.P.
	IS98–1–002.	
	IS04–323–002.	
Energy Projects—Hydro		
H–1	P–2042–030	Public Utility District No. 1 of Pend Oreille County.
H–2	P–2205–018	Central Vermont Public Service Corporation.
H–3	P–2210–123	Appalachian Power Company.
Energy Projects—Certificates		
C–1	EM06–5–000	Expediting Infrastructure Construction to Speed Hurricane Recovery.
C–2	CP05–388–000	Southern Natural Gas Company.
C–3	CP05–40–001	Rendezvous Gas Services, LLC.
	CP05–41–001.	
C–4	RP04–215–002	Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company.
C–5	PL06–2–000	Coordinated Processing of NGA Section 3 and 7 Proceedings.

Magalie R. Salas,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 05–22835 Filed 11–14–05; 4:05 pm]

BILLING CODE 6717–01–U

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0386; FRL–7998–1]

RIN 2060–AE24

Consumer and Commercial Products: Schedule for Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the list of product categories scheduled for regulation under section 183(e) of the Clean Air Act (CAA).

SUMMARY: This notice revises the groupings in which the listed categories of consumer and commercial products will be regulated under section 183(e) of the CAA. Although there are no additions to or deletions from the list, the categories are being regrouped.

EFFECTIVE DATE: November 17, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0386 (legacy docket No. A–94–65). All documents in the docket are listed in the index. Publicly available docket materials are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at: U.S. EPA, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, or by calling (202) 566–1744 or 1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, EPA, Office of Air Quality Planning and Standards, Emission Standards Division (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–5460, facsimile number (919) 541–0072, electronic mail address: *moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. Docket ID No. OAR–2004–0386 (legacy docket ID No. A–94–65) contains information considered by EPA in development of the consumer and commercial products study and the initial list and schedule for regulation. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West Building, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. An electronic version of the public docket is available through EDOCKET, EPA's electronic public docket and comment system. You may use EDOCKET at *http://docket.epa.gov/edkpub/index.jsp* to view public documents, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number. You may access this notice electronically through the Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available through the WWW. Following signature, a copy of the notice will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this preamble is organized as follows:

I. What Are the Significance and History of the Section 183(e) List and Schedule for Regulating Consumer and Commercial Products?
II. Why Is EPA Revising the List and Schedule for Regulations?
III. What Are the Revisions EPA Is Making to the Section 183(e) Category List and Schedule for Regulations?
IV. Statutory and Executive Order Reviews.

I. What Are the Significance and History of the Section 183(e) List and Schedule for Regulating Consumer and Commercial Products?

Ground-level ozone, which is a major component of smog, is formed in the atmosphere by reactions of volatile organic compounds (VOC) and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. Acute health effects are induced by short-term exposures (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged exposures to ozone (observed at concentrations as low as 0.08 ppm), typically while individuals are engaged in moderate exertion. Moderate exertion levels are more frequently experienced by individuals than heavy exertion levels. The acute health effects include respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and pulmonary inflammation. Groups at increased risk of experiencing such effects include active children, outdoor workers, and others who regularly engage in outdoor activities, as well as those with preexisting respiratory disease. Currently available information also suggests that long-term exposures to ozone may cause chronic health effects (*e.g.*, structural damage to lung tissue and accelerated decline in baseline lung function).

Under section 183(e) of the CAA, EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the national ambient air quality standards (NAAQS) for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (*i.e.*, ozone nonattainment areas), and to divide the list of categories to be regulated into four groups.

The original schedule for regulations that established the four groups of categories was published in the **Federal Register** on March 23, 1995 (60 FR 15264). EPA stated in that notice that EPA may amend the schedule and the products listed in particular groups and may exercise its discretion in scheduling its actions under section 183(e) of the CAA in order to achieve an effective regulatory program. A revised schedule and grouping was published on March 18, 1999 (64 FR 13422). For more background information, you

should read the previous notices relating to the development of the initial list and schedule and subsequent change.

II. Why Is EPA Revising the List and Schedule for Regulations?

In order to manage workload on development of rules or control techniques guidelines (CTG) for the product categories identified for regulation under section 183(e) of the CAA, EPA is regrouping the list such that each of the remaining groups contains five product categories. With one exception, today's action does not change the order of product categories on the list. Letterpress printing materials is being moved to allow grouping of the three printing product categories for concurrent development. Although EPA notes that section 183(e) does not require the Agency to place product categories into equal groups, this revision of the list will maintain equal groups of product categories for Groups II, III, and IV. Based upon current circumstances, EPA believes that a more equal distribution of the product categories will allow the Agency to optimize use of available resources and work more effectively with stakeholders in each industry. Furthermore, by reordering the product categories in this fashion, EPA hopes to address product categories that account for a larger percentage of VOC emissions in Group II, and thus earlier in the process.

III. What Are the Revisions EPA Is Making to the Section 183(e) Category List and Schedule for Regulations?

The category list and schedule for regulations currently is divided into Groups I through IV, containing six, one, four, and ten product categories, respectively. EPA has already completed the product categories identified in Group I. EPA issued national volatile organic compound emission standards for ''autobody refinishing coatings,'' ''consumer products'' (24 categories), and ''architectural coatings.'' EPA issued CTG for ''shipbuilding and ship repair surface coating operations,'' ''aerospace coatings,'' and ''wood furniture manufacturing operations.'' Today's change redistributes the 15 product categories in Groups II through IV such that each of these groups contains five product categories. The revised list showing the product categories in each of the four groups is presented in Table 1. EPA notes that there is ongoing litigation to establish dates for completion of Groups II, III, and IV.

TABLE 1.—CONSUMER AND COMMERCIAL PRODUCTS SCHEDULE FOR REGULATIONS

	Emissions, megagrams per year (Mg/yr)
Group I:	
Consumer products (24 categories)	301,347
Shipbuilding and repair coatings	23,302
Aerospace coatings	165,892
Architectural coatings	362,454
Autobody refinishing coatings	85,509
Wood furniture coatings	88,109
Total for Group I	1,026,613
Group II:	
Flexible package printing materials	136,364
Lithographic printing materials	545,454
Letterpress printing materials	25,636
Industrial cleaning solvents	232,890
Flatwood paneling coatings	19,618
Total for Group II	959,962
Group III:	
Aerosol spray paints	58,521
Paper, film, and foil coatings	92,064
Plastic parts coatings	20,000
Metal furniture coatings	97,220
Large appliance coatings	22,994
Total for Group III	290,799
Group IV:	
Fiberglass boat manufacturing materials	11,000
Petroleum drycleaning solvents	49,091
Auto and light-duty truck assembly coatings	68,182
Miscellaneous metal products coatings	198,545
Miscellaneous industrial adhesives	185,175
Total for Group IV	511,993
Emissions addressed by schedule	2,789,367
Percentage of total (3,481,804 mg/yr)	80.1

IV. Statutory and Executive Order Reviews

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

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs, or the rights and obligations of recipients thereof; or

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

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

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13132 (Federalism), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and the National Technology Transfer and Advancement Act, do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: November 10, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–22817 Filed 11–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7998–2]

EPA Accepting Nominations for the Children's Health Protection Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency invites nominations of qualified candidates to be considered for appointments to fill specific vacancies on the Children's Health Protection Advisory Committee (CHPAC). Nominations are sought in the following two areas: Experience relating to children's environmental health on Tribal lands and experience with children's environmental health in public health nursing. In addition to this notice other avenues may be used to identify potential candidates.

Deadline for receiving nominations is Friday, December 2, 2005. Please submit a resume or curriculum vitae with each nomination via mail or e-mail to the addresses below. Appointments will be made by the Administrator of the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Joanne Rodman, Designated Federal Officer, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: The Children's Health Protection Advisory Committee is a body of researchers, academicians, health care providers, environmentalists, children's advocates, professionals, government employees, and members of the public who advise EPA on regulations, research, and communication issues relevant to children. For additional information go to: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/whatwe_advisory.htm.*

Dated: November 10, 2005.

Joanne Rodman,

Designated Federal Official.

[FR Doc. 05–22818 Filed 11–16–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0172; FRL–7998–3]

Draft Staff Paper for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about November 14, 2005, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a draft document, *Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information (Draft Staff Paper).* The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, *Air Quality Criteria for Ozone and Related Photochemical Oxidants*, required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for ozone. The OAQPS also will make available for public review and comment related draft technical support documents, *Ozone Population Exposure Analysis for Selected Urban Areas* (draft Exposure Analysis) and *Ozone Health Risk Assessment for Selected Urban Areas* (draft Risk Assessment).

DATES: Comments on the draft Staff Paper, draft Exposure Analysis, and draft Risk Assessment should be submitted on or before December 30, 2005.

ADDRESSEES: Submit your comments, identified by Docket ID No. OAR–2005–0172, by one of the following methods:

- Agency Web site: EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2005–0172.
- Fax: Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2005–0172.
- Mail: Send your comments to: Air and Radiation Docket Center, Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2005–0172.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room B102, Washington, DC 20004.

Instructions: Direct your comments to Docket ID No. OAR–2005–0172. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM

you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at the Web address provided under ''Instructions'' above. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1744; fax (202) 566–1741.

Availability of Related Information: Documents referred to in this notice are available from the following sources:

• *Public Docket.*

The EPA has established an official public docket for this action under Docket ID No. OAR–2005–0172. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to the ozone NAAQS review. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center at the address listed above. A reasonable fee may be charged for copying.

• *Electronic Access.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the documents specifically referenced in this action. These documents are also available at *http://www.epa.gov/ttn/naaqs/standards/ozone/s_ozone_index.html*; the draft Staff Paper is available under ''Staff Papers'' the draft Exposure Analysis and Risk Assessment technical support documents are available under ''Technical Documents'' and the draft Health Assessment Plan is available under ''Planning Documents.''

FOR FURTHER INFORMATION CONTACT: Dr. David McKee, Office of Air Quality Planning and Standards (mail code C539–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *mckee.dave@epa.gov;* telephone: (919) 541–5288; fax: (919) 541–0237.

SUPPLEMENTARY INFORMATION: Section 108(a) of the CAA directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * * .'' Under section 109 of the CAA, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the CAA subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Also, EPA is to revise the NAAQS, if appropriate, based on the revised criteria.

Ozone is one of six ''criteria'' pollutants for which EPA has established air quality criteria and NAAQS. Presently, EPA is reviewing the criteria and NAAQS for ozone. This review includes preparation of two key documents, the Air Quality Criteria for Ozone and Related Photochemical Oxidants (''Criteria Document'') and a related ''Staff Paper.'' The EPA completed its second external review draft Criteria Document for Ozone and Related Photochemical Oxidants in August 2005 (70 FR 51810, August 31, 2005).

The purpose of the draft Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in the second external review draft Air Quality Criteria Document and identify critical elements that EPA staff believe should be considered in reviewing the NAAQS. The Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Air Quality Criteria Document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

In January 2005, a first external review draft of the Air Quality Criteria Document was released by EPA for public review and comment and for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board (70 FR 4850, January 31, 2005) at a public meeting held in May 2005. Comments received from review of the first draft document have been considered in preparing the second draft Air Quality Criteria Document. Based on the information contained in the Air Quality Criteria Document, the draft Staff Paper includes assessments and analyses related to: (1) Air quality characterization; (2) integration and evaluation of health information; (3) exposure analysis; (4) health risk assessment; and (5) evaluation of information on vegetation damage and other welfare effects. The draft Staff Paper contains no staff conclusions and recommendations with respect to possible revisions to the current standards but recommends alternative standards for purposes of conducting exposure and risk analyses. A second draft of the Staff Paper will include staff conclusions and recommendations on potential revision or retention of the primary (health-based) and secondary (welfare-based) ozone NAAQS.

The draft Exposure Analysis and Risk Assessment technical support documents describe and present the results from an ozone exposure analysis and health risk assessment in several urban areas. A draft plan, *Ozone Health Assessment Plan: Scope and Methods for Exposure Analysis and Risk Assessment*, was previously reviewed by CASAC and the public. Comments received on that plan have been considered in developing the draft Exposure Analysis and Risk Assessment technical support documents being released at this time. The Exposure Analysis and Risk Assessment methodologies and results are also discussed in the draft Staff Paper.

The EPA is soliciting early advice and recommendations from the CASAC by means of a consultation on the first draft Staff Paper, first draft Exposure Analysis, and first draft Risk Assessment at an upcoming public meeting of the CASAC. A **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will consider comments received from CASAC and the public in preparing a second draft of the Staff Paper and the Exposure Analysis and Risk Assessment technical support documents.

Dated: November 10, 2005.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–22816 Filed 11–16–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 1, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Scott Neil Selko, Mead, Nebraska; to acquire voting shares of Selko Banco, Inc., and thereby indirectly acquire voting shares of Bank of Mead, both of Mead, Nebraska.

Board of Governors of the Federal Reserve System, November 10. 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6358 Filed 11–16–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. STC Bancshares Corp., Saint Charles, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of STC Capital Bank, Saint Charles, Illinois (in organization).

In connection with this application, Applicant also has applied to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Community First Bancshares, Inc., Harrison, Arkansas; to acquire additional voting shares, for a total of 23.2 percent of the voting shares, of White River Bancshares Company, Fayetteville, Arkansas, and thereby indirectly acquire voting shares of Signature Bank of Arkansas, Fayetteville, Arkansas.

Board of Governors of the Federal Reserve System, November 10, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6357 Filed 11–16–05; 8:45 am]

BILLING CODE 6210–01–S

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the updated OGE Senior Executive Service (SES) Performance Review Board.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel D. Dunning, Deputy Director for Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–482–9300; TDD: 202–208–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.310 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE's SES Performance Review Board are being drawn, as in the past, in large measure from the ranks of other agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of OGE's SES Performance Review Board as it was last published at 69 FR 59230–59231 (October 4, 2004).

Approved: November 10, 2005.

Marilyn L. Glynn,

General Counsel, Office of Government Ethics.

The following officials have been selected as regular members of the SES Performance Review Board of the Office of Government Ethics:

Jane S. Ley [Chair], Deputy Director for Government Relations and Special Projects, Office of Government Ethics;

Daniel D. Dunning [Alternate Chair], Deputy Director for Administration and Information Management, Office of Government Ethics;

Stephen Epstein, Director, Standards of Conduct Office, Department of Defense;

Rosalind A. Knapp, Deputy General Counsel, Department of Transportation;

Daniel L. Koffsky, Special Counsel, Office of Legal Counsel, Department of Justice.

[FR Doc. 05–22783 Filed 11–16–05; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Title VI, Part B—Native Hawaiian Program.

Announcement Type: Initial announcement.

Funding Opportunity Number: Program Announcement No. AoA–06–01.

Statutory Authority: The Older Americans Act, Public Law 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.047, Title VI.

Dates: The deadline date for the submission of applications is February 15, 2006.

I. Funding Opportunity Description

This announcement seeks applications for the provision of supportive and nutrition services to Native Hawaiian elders who are 60 years of age or older. The Act provides that a public or nonprofit private organization having the capacity to provide services for Native Hawaiians is eligible for assistance under Title VI, Part B, if the organization will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive services and nutrition services.

For the purposes of Title VI, Part B, the term ''Native Hawaiian'' means an individual any of whose ancestors were natives of the area, which consists of the Hawaiian Islands prior to 1778. Nutritional services, and information and assistance services, are required by the Act. Nutrition services include congregate meals and home-delivered meals. Supportive services include information and assistance, transportation, chore services, and other supportive services, which contribute to the welfare of older Native Hawaiians. These services must be available for older Native Hawaiians living in the geographic boundaries of the Title VI, Part B, service area proposed by the applicant organization and approved by the Assistant Secretary for Aging.

Organizations receiving funds to provide services to older Native Hawaiians shall assure that all activities will be conducted in coordination with the State Agency on Aging and with the activities carried out under Title III in the same geographical area. A detailed description of the funding opportunity may be found at *www.aoa.gov* under AoA Grant Programs—Funding Opportunities and *www.olderindians.org*.

II. Award Information

1. Formula Grants.

2. *Distribution of funds among Native Hawaiian organizations is subject to the availability of appropriations to carry out Title VI.* Funding levels for Fiscal Year 2005 range from $73,620 to $179,810. These amounts are an estimation for Fiscal Year 2006 funding and subject to change. As required by the OAA Section 624A, subject to the availability of appropriation, organizations who were grantees in 1992 will not be funded less than the 1991 grant award. New applications will be funded pending availability of additional appropriations.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

All current Title VI, Part B grantees and new applicants that are public or nonprofit private organizations having the capacity to provide services for Native Hawaiians are encouraged to apply.

2. Cost Sharing or Matching

There is no required cost sharing or matching for these grants.

3. DUNS Number

All grant applicants must obtain a DUNS number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The DUNS number is free and easy to obtain. 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 by using this link: *https://www.whitehouse.gov/omb/grants/duns_num_guide.pdf*.

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of American Indian, Alaskan Native and Native Hawaiian Programs, Washington, DC 20201, or by calling 202/357–3537. Applications kits may also be found on *www.AoA.gov* or *www.olderindians.org*.

2. Address for Application Submission

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–06–01).

Applications may be delivered (in person, via messenger) to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW, Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA–06–01). If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants.

3. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the **DATES** section of this notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed.

VI. Application Review Information

Applications are reviewed to ensure that all required screening criteria and narrative information below is included:

- Has the ability to provide nutrition and supportive services consistent with the Older American Act;
- Has conducted a current Needs Assessment (or assurance that one will be completed within the first year of the project);
- Describes coordination efforts with Title III programs in the same geographical area;

• Describes their current or proposed policies and procedures, including fiscal control;

• Describes reporting and evaluation procedures;

• Narrative description of the Title VI, Part B, service area. The area to be served by Title VI, Part B, must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by Title III.

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Yvonne Jackson, Director, Office of American Indian, Alaskan Native and Native Hawaiian Programs, Washington, DC 20201, telephone: (202) 357–3501.

Dated: November 10, 2005.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 05–22769 Filed 11–16–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice of conference call.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given that the Policy Committee of the 2005 White House Conference on Aging (WHCoA) will have a conference call to finalize the resolutions and other items related to the 2005 WHCoA. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, should inform the contact person listed below in advance of the conference call. This notice is being published less than 15 days prior to the conference call due to scheduling problems.

DATES: The conference call will be held on Thursday, November 17, 2005, at 12 p.m., Eastern Standard Time.

ADDRESSES: The conference call may be accessed by dialing, U.S. toll-free,1–800–857–0419, passcode: 8932323, on the date and time indicated above.

FOR FURTHER INFORMATION CONTACT: Kim Butcher, (301) 443–2887, or e-mail at *Kim.Butcher@whcoa.gov.* Registration is not required. Call in is on a first come, first-served basis.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will have a meeting by conference call to finalize on the resolutions that will be mailed to the delegates for review prior to the WHCoA that is scheduled from December 11 to 14, 2005. The public is invited to listen by dialing the telephone number and using the passcode listed above under the **ADDRESSES** section.

Dated: November 14, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–22810 Filed 11–16–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Input Opportunity

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following:

Availability of opportunity for the Public to Provide Input on two proposed documents:

''Recommendations for Applying the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses in Medical Diagnosis, Research and Population Surveillance, Worker Health Monitoring, Government Program Eligibility, and Compensation Settings,'' and

''Ethical Considerations for B Readers.''

The National Institute for Occupational Safety and Health (NIOSH), acting on behalf of the Secretary of Health and Human Services (HHS), is responsible for prescribing the manner in which radiographs are read and classified for the chest x-ray program available to coal miners under the Federal Mine Safety and Health Act, 30 U.S.C. 843; 42 CFR part 37. In carrying out this responsibility, NIOSH issues B Reader certifications to physicians who demonstrate proficiency in the classification of chest radiographs for the pneumoconioses using the International Labour Office (ILO) Classification System. NIOSH uses these B Readers in its Coal Workers Health Surveillance Program. B Readers are also employed in a variety of other clinical, research and compensation settings. NIOSH is using the issuance of the new International Labour Office (ILO) Classification of Radiographs as an opportunity to expand its Web site on the B Reader Program and use of the ILO system. NIOSH-certified B Readers use the internationally-recognized ILO system to classify chest radiographs for the presence and severity of pulmonary parenchymal and pleural changes potentially caused by exposure to dusts such as asbestos, silica, and coal mine dust. The revised program Web site provides more information about radiographic reading and the ILO system including recommendations or ''best practices'' for use of the ILO system in different settings.

We are specifically seeking public comment for the draft Document:

''Recommendations for Applying the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses in Medical Diagnosis, Research and Population Surveillance, Worker Health Monitoring, Government Program Eligibility, and Compensation Settings.''

This document can be found at *http://www.cdc.gov/niosh/topics/chestradiography/recommendations.html.*

At this same time, NIOSH is also seeking comment on its proposed ''Ethical Considerations for B Readers'' which can be found at this same Web site. In a recent decision in the *In Re Silica Products Litigation,* 2005 WL 1593936 (S.D. Tex June 30, 2005), Federal District Court Judge Janis Jack raised questions regarding the ethical conduct of certain physicians, some of whom were B Readers, in reading x-rays in litigation. NIOSH is proposing ''Ethical Considerations for B Readers'' which includes a code of ethics modeled after those of the American College of Radiology and the American Medical Association. We welcome comments on this proposed code of ethics.

Please review and submit your comments on either or both of these documents to *CWHSP@cdc.gov.* If you would prefer to have a hard copy rather than electronic, please contact NIOSH at this same e-mail address, and we will be happy to fax or mail copies of the documents to you.

The documents will remain available for comment until January 17, 2006. After that date, NIOSH will consider all the comments submitted and make appropriate revisions to the document

before posting a final version on its Web site.

FOR FURTHER INFORMATION CONTACT: David N. Weissman, MD, CDC/NIOSH, Division of Respiratory Disease Studies, Mailstop H–2900, 1095 Willowdale Road, Morgantown, WV 26505, 304–285–5749.

Information requests can also be submitted by e-mail to *CWHSP@cdc.gov.*

Dated: November 10, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 05–22762 Filed 11–16–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System of Records

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing a new SOR titled, ''Medicare Premium Withhold System (PWS), No. 09–70–0552.'' On December 8, 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law (Pub. L.) 108–173). Among other provisions, MMA allows Medicare payment to health plans for coverage of outpatient prescription drugs under the Medicare Part D benefit. The Social Security Act (the Act) provides for four summary payment mechanisms: Risk adjusted, federal reinsurance subsidies, risk corridor payments, and subsidized coverage for qualified low-income individuals. In addition, there is a premium payable by each beneficiary for Part D coverage, as well as the pre-existing premium for Part C (now known as Medicare Advantage (MA)), created under Title II legislation.

Beginning January 2006, MMA will provide enrollees in MA, and Medicare Advantage Prescription Drug (MAPD) plans an option to have Part C and Part D premiums withheld from their monthly retirement annuities provided by the Social Security Administration (SSA), Railroad Retirement Board (RRB), or Office of Personnel Management (OPM). The Medicare Premium Withhold System is the system of record (SOR) for maintaining and managing Part C and Part D beneficiary premium payment amounts. For 2006, two external agencies, the SSA and the RRB, provide this monthly premium withholding through the PWS. The Medicare Advantage Prescription Drug System (MARx) notifies SSA and RRB of premium amounts to be withheld and applicable periods on a daily basis. PWS uses interfaces from MARx to track these premium withholding amounts as ''expected.'' PWS also uses interfaces with SSA and RRB to record the withheld premium amounts and periods they apply to as ''actual.'' The PWS notifies the appropriate MA and MAPD of all beneficiary withholdings and facilitates the payment of withheld premiums via the automated plan payment system (APPS) and the Financial Accounting System (FACS) for ultimate payment by the United States Treasury.

The primary purpose of the SOR is to process a monthly premium withhold file from SSA and RRB, capture expected premium withholding amounts from MARx and compare them to actual withholding amounts, produce a reconciliation of the reported withholding amounts with amounts transferred via Governmental Payment and Collection (IPAC) files from SSA and RRB, and generate plan payment requests to APPS. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor or consultant contracted by the Agency; (2) support Medicare Prescription Drug Plans (PDP) and Medicare Advantage Prescription Drug Plans (MAPD) directly or through a CMS contractor for the administration of Title XVIII of the Act; (3) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (4) support constituent requests made to a congressional representative; (5) support litigation involving the Agency, and (6) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: *Effective Dates:* CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 3, 2005. To ensure that all parties have adequate time in which to comment, the SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Linda Bosque, Computer Technology Information Specialist, Division of Medicare Advantage Payment Systems, Information Services Modernization Group, Office of Information Services, CMS, Room N3–13–10, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–0164.

SUPPLEMENTARY INFORMATION: CMS has long realized that the Medicare program is in the middle of a rapidly changing health insurance industry characterized by an expansion of service delivery models and payment options. The managed care provisions of the Balance Budget Act (BBA) of 1997 (Public Law 105–33) combined with the MMA have made managing beneficiary health choices one of the most critical challenges facing CMS and the health industry at large. To be of maximum use, the data must be organized and categorized into comprehensive interrelated systems.

The Medicare Premium Withhold System (PWS) is a new system that helps remove barriers to beneficiary enrollment in Medicare's new prescription drug benefits, which will be offered by MAPDs and PDPs effective January 1, 2006. Through the PWS, CMS has extended to both Part C and Part D enrollees the option of withholding their monthly premium amounts from retirement annuities provided by external agencies, including SSA and RRB (and OPM in future releases of the system). The PWS builds upon the Enterprise Data Exchange with these three agencies, adding data stores and reporting capabilities in order to

facilitate beneficiary cost-sharing. By forwarding withheld premium amounts to MAs, MAPDs and PDPs, PWS retrospectively supplements the monthly, prospective payment to plans of capitated amounts and low-income subsidies calculated in MARx. In addition to these components of the plan payment transaction, APPS receives from PWS all the premium-related information required to facilitate the execution of plan payments.

Beginning January 2006, MMA will provide enrollees in MA, and Medicare Advantage Prescription Drug (MAPD) plans an option to have Part C and Part D premiums withheld from their monthly retirement annuities provided by the Social Security Administration (SSA), Railroad Retirement Board (RRB) or Office of Personnel Management (OPM). The Medicare Premium Withhold System is the system of record (SOR) for maintaining and managing Part C and Part D beneficiary premium payment amounts. For 2006, two external agencies, the SSA and RRB, provide this monthly premium withholding through the PWS.

The Medicare Advantage Prescription Drug System (MARx) notifies SSA and RRB of premium amounts to be withheld and applicable periods on a daily basis. PWS uses interfaces from MARx to track these premium withholding amounts as ''expected.'' PWS also uses interfaces with SSA and RRB to record the withheld premium amounts and periods they apply to as ''actual.'' The PWS notifies the appropriate MA and MAPDs of all beneficiary withholdings and facilitates the payment of withheld premiums via the automated plan payment system (APPS), and the Financial Accounting System (FACS) for ultimate payment by the U.S. Treasury. The PWS carries out these responsibilities through key monthly functions including:

- Receiving monthly premium withhold files from SSA and RRB that identify premium amounts withheld and the periods they apply to. These are used as ''actual'' amounts.
- Receiving a monthly premium withhold extract from MARx that identifies beneficiaries electing Premium Withhold and the premium amounts and the periods they apply to. These are used by PWS as ''expected'' amounts.
- PWS performs monthly reconciliation of the MARx expected amounts and the SSA or RRB actual amounts, identifying discrepancies and, if necessary, directing MARx to convert a beneficiary whose withholding is incorrect to direct bill status. The results of the reconciliation are reported to MARx for distribution to the plans.
- PWS also performs a reconciliation of the report of funds transferred by SSA and RRB to the actual transfer accomplished via the Intergovernmental Payment and Collection (IPAC) files from SSA and RRB.
- PWS 1 produces a file that is sent to the Automated Plan Payment System (APPS) that indicates the proper payment of withheld funds to the MA and MAPD plans.

An independent technical evaluation of CMS' managed care systems found that the new premium withhold functionality required by MMA could not be supported by existing Medicare systems. The comprehensive review of existing systems was necessary in order to proceed with a development effort that would ensure the new MMA provisions and future customer service and program management objectives were met.

I. Description of System of Records

A. Statutory and Regulatory Basis for the System

Authority for maintenance of the system is given under Section 101 of MMA (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860, 1866, and 1876 of Title XVIII of the Act (42 U.S.C. 1395(A)(1)(a), 1395cc, and 1395mm).

B. Collection and Maintenance of Data in the System

The Medicare Premium Withhold System creates a PWS Data Mart to store data needed for processing and record keeping. The PWS Data Mart stores, at the beneficiary level, the expected withholding data and the actual withholding data as reported by the withholding agencies.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release PWS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of PWS.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to process a monthly premium withhold file from SSA and RRB, capture expected premium withholding amounts from MARx and comparing them to actual withholding amounts, produce a reconciliation of the reported withholding amounts with amounts transferred via IPAC files from SSA and RRB, and generate plan payment requests to APPS.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PWS facilitator without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure

is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To Medicare Prescription Drug Plans (PDP) and Medicare Advantage Prescription Drug Plans (MAPD) directly or through a CMS contractor for the administration of Title XVIII of the Act.

PDPs and MAPDs require PWS information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to Part D benefits under the Medicare Prescription Drug Benefit Program.

3. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require PWS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, state agencies in their administration of a Federal health program may require PWS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require PWS information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

4. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

6. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require PWS information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), subparts A and E. Disclosures of Protected Health Information that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; MMA, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effect of the Proposed System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of PWS. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: November 3, 2005.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No.: 09–70–0552

SYSTEM NAME

''Medicare Premium Withhold System'' (PWS) HHS/CMS/OIS.

SECURITY CLASSIFICATION

Level Three Privacy Act Sensitive.

SYSTEM LOCATION

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

The system will include information on recipients of Medicare hospital insurance (Part A) and Medicare medical insurance (Part B) and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the Medicare Advantage (MA) Program.

CATEGORIES OF RECORDS IN THE SYSTEM

The system will also include information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system will contain identifying information such as beneficiary name, health insurance claim number, social security number, and other demographic information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Authority for maintenance of the system is given under section 101 of the MMA (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a) (1) (A), 1860, 1866, and 1876 of Title XVIII of the Act (42 CFR parts 417 and 422).

PURPOSE (S) OF THE SYSTEM

The primary purpose of the SOR is to process a monthly premium withhold file from SSA and RRB, capture expected premium withholding amounts from MARx and compare them to actual withholding amounts, produce a reconciliation of the reported withholding amounts with amounts transferred via Governmental Payment and Collection (IPAC) files from SSA and RRB, and generate plan payment requests to APPS. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor or consultant contracted by the Agency; (2) support Medicare Prescription Drug Plans (PDP) and Medicare Advantage Prescription Drug Plans (MAPD) directly or through a CMS contractor for the administration of Title XVIII of the Act; (3) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (4) support constituent requests made to a congressional representative; (5) support litigation involving the Agency, and (6) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES

A. ENTITIES WHO MAY RECEIVE DISCLOSURES UNDER ROUTINE USE

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PWS facilitator without the consent of the individual to whom such information pertains. Each proposed disclosure of information

under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To Medicare Prescription Drug Plans (PDP) and Medicare Advantage Prescription Drug Plans (MAPD) directly or through a CMS contractor for the administration of Title XVIII of the Act.

3. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

4. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), subparts A and E. Disclosures of Protected Health Information that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

Computer diskette and on magnetic storage media.

RETRIEVABILITY

Information can be retrieved by name and health insurance claim number of the beneficiary.

SAFEGUARDS

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy.

These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; MMA, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 6 years and 3 months. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Medicare Advantage Appeals and Payment Systems, Information Services Modernization Group, Office of Information Services, CMS, Room N3–16–24, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing

the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Data for this system is collected from the Medicare Advantage Prescription Drug System (MARx) system, the Medicare Beneficiary Database (MBD), as well as two external providers of monthly retirement annuities, SSA, and RRB, with potentially OPM as the third external partner in a future release of the PWS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–22763 Filed 11–16–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Program Announcement for Assets for Independence Demonstration Program Grants

Notice of amendment to the standing announcement for Assets for Independence Demonstration Program Grants, HHS–2005–ACF–OCS–EI–0053, CFDA #93.602, published on February 9, 2005.

AGENCY: Office of Community Services (OCS), Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Notice of Amendment.

The program announcement concerning the application procedures for the Assets for Independence Demonstration Program grants published on February 9, 2005 in Volume 70, **Federal Register**, pages 6879—6888 is hereby modified. The amendment modifies the application receipt requirements.

SUMMARY: On February 9, 2005, the Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services published an announcement seeking applications for the Assets for Independence Demonstration Program. The announcement appeared in Volume 70, pages 6879–6888 of the **Federal Register**. This document announces a change in the application receipt requirements. To be considered timely for all application due dates, applications now must be *received* at the OCS Operations Center no later than the due dates.

The Program Announcement for Assets for Independence Demonstration Program is a standing announcement. It is effective until canceled or changed by the Office of Community Services (OCS). Applicants may submit applications at any time throughout the year. OCS will review and make funding decisions about applications submitted by any of three due dates: March 15, June 15, and November 1. (If a date falls on a weekend, the due date will be the following Monday.) For example, starting in mid-March annually, OCS will review all applications submitted November 2 through March 15. Starting in early June, OCS will review all applications submitted March 16 through June 15. And, starting in early November, OCS will review all applications submitted June 16 through November 1. Unsuccessful applicants may submit a new application in any succeeding application period.

(1) Under *Section IV.3. Submission Dates and Times*

Please Delete the following:

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review referenced in Section IV.6.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial service is affixed to the envelope/package containing the application(s). To be acceptable of proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

(Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Please Replace the deleted paragraphs under *Section IV.3. Submission Dates and Times* with the following:

Explanation of Due Dates

The closing time and date for *receipt* of applications is referenced above. Applications *received* after 4:30 p.m., eastern time, on the closing date will be classified as late and will not be considered in the current competition.

Applicants are responsible for ensuring that applications are mailed or submitted electronically well in advance of the application due date.

(Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

All information in this Notice of amendment is accurate and replaces information specified in the February 9, 2005 Notice.

Announcement Availability: The Assets for Independence Demonstration Program announcement and all application materials are available at *http://www.Grants.gov.* Standard forms and certifications may also be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.* Finally, the OCS Asset Building Web site at *http://www.acf.hhs.gov/assetbuilding* provides much information about the Assets for Independence Demonstration Program and the application process. The page includes links to all required forms as well as to a guidebook for developing an AFI Project and applying for an AFI grant.

FOR FURTHER INFORMATION CONTACT: James Gatz, Manager, Assets for Independence Program, Telephone: (202) 401–4626 or E-mail: *AFIProgram@acf.hhs.gov.* An array of helpful information is posted on the OCS Asset Building Web site at *http://www.acf.hhs.gov/assetbuilding.*

Dated: November 10, 2005.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. 05–22799 Filed 11–16–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug and Biological Product Consolidation; Investigational New Drug Application Number Conversion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Drug Evaluation and Research (CDER) will assign new numbers to a group of investigational new drug applications (INDs). In 2003, FDA transferred certain product oversight responsibilities from the Center for Biologics Evaluation and Research (CBER) to CDER. The consolidation of INDs transferred from CBER with CDER INDs resulted in INDs with duplicate numbers. To resolve this issue, CDER is renumbering some INDs that were submitted to CDER before the consolidation. This **Federal Register** notice serves to notify sponsors in lieu of sending letters to them.

ADDRESSES: Information on CDER IND renumbering is available on the Internet at *http://www.fda.gov/cder/regulatory/applications/INDrenumbering.htm*.

FOR FURTHER INFORMATION CONTACT: Samuel Y. Wu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., bldg. WO22, rm. 1121, Silver Spring, MD 20993, 301–796–0637.

SUPPLEMENTARY INFORMATION:

I. Therapeutic Biological Products Transferred to CDER

On October 1, 2003, FDA transferred responsibility for regulating most therapeutic biologics, with certain exceptions (e.g., cell and gene therapy products and therapeutic vaccines), from the Office of Therapeutics Research and Review, CBER, to the Office of New Drugs, CDER, and the Office of Pharmaceutical Science, CDER (68 FR 38067, June 26, 2003). Applications for the therapeutic biological products now under CDER's review—including INDs, biologics license applications, investigational device exemptions, and new drug applications—were transferred to CDER. For more information on the transfer of therapeutic biological products from CBER to CDER, see FDA's Web site *http://www.fda.gov/cber/transfer/transfer.htm*.

II. Duplicate IND Numbers

The consolidation of INDs transferred from CBER to CDER has resulted in duplicate IND numbers. To resolve this issue, INDs numbered below 14,000 that were submitted to CDER before the consolidation will be assigned new numbers. To determine the new number, CDER has added 80,000 to the original IND number. For example, IND 8,999 will become IND 88,999 and IND 11,192 will become 91,192. INDs that were originally submitted to CBER and transferred to CDER will retain their numbers.

III. Web Site for Information on Renumbered INDs

FDA has created a Web site with more detailed information about the IND number conversion scheme. The Web site address is *http://www.fda.gov/cder/regulatory/applications/INDrenumbering.htm*.

Dated: November 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–22802 Filed 11–16–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in December 2005.

The SAMHSA National Advisory Council will meet in an open session December 6 from 9 a.m. to 5:30 p.m. and on December 7 from 9 a.m. to 12:30 p.m. The meeting will include a SAMHSA Administrator's Report, presentations on SAMHSA's response to Hurricanes Katrina and Rita, discussions concerning issues on SAMHSA's appropriation and budget, and discussions on current administrative, legislative and program developments. In addition, the recipients of two SAMHSA-funded model programs will describe their approaches to prevent and treat substance abuse and mental health disorders. On December 7, the Race Against Drugs Motorcar will be on display in the SAMHSA parking lot.

Attendance by the public at the meeting will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members will be available, as soon as possible after the meeting, either by accessing the SAMHSA Council Web site, *www.samhsa.gov/council/council,* or may be obtained by communicating with the contact whose name and telephone number is listed below. The transcript for the meeting will also be available on the SAMHSA Council Web site within three weeks after the meeting.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, December 6, 2005, 9 a.m. to 5:30 p.m. (Open). Wednesday, December 7, 2005, 9 a.m. to 12:30 p.m. (Open).

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Toian Vaughn, Executive Secretary, SAMHSA National Advisory Council and SAMHSA Committee Management Officer, 1 Choke Cherry Road, Room 8–1089, Rockville, Maryland 20857. Telephone: (240) 276–2307; FAX: (240) 276–2220 and E-mail: *toian.vaughn@samhsa.hhs.gov.*

Dated: November 10, 2005.

Toian Vaughn,

Executive Secretary, SAMHSA National, Advisory Council and SAMHSA Committee, Management Officer.

[FR Doc. 05–22788 Filed 11–16–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[COTP Mobile–05–051]

Notice, Request for Comments; Letter of Recommendation, Gulf LNG Clean Energy Marine Terminal Project, Jackson County, MS

AGENCY: Coast Guard, DHS.

ACTION: Request for comments; notice of public meeting.

SUMMARY: In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port (COTP) Mobile, AL is preparing a letter of recommendation as to the suitability of the Pascagoula Bar, Horn Island Pass, Lower Pascagoula, and Bayou Casotte Channels for liquefied natural gas (LNG) marine traffic. The letter of recommendation is in response to a letter of intent submitted by Gulf LNG

Clean Energy Marine Terminal Project to operate a LNG facility in Jackson County, MS. The COTP Mobile, AL is soliciting written comments and related material, and will hold a public meeting seeking comments, pertaining specifically to maritime safety and security aspects of the proposed LNG facilities. In preparation for issuance of a letter of recommendation and the completion of certain other regulatory mandates, the COTP Mobile, AL will consider comments received from the public as input into a formalized risk assessment process. This process will assess the safety and security aspects of the facility, adjacent port areas, and navigable waterways.

DATES: All written comments and related material must reach the Coast Guard on or before December 14, 2005. In addition, a public meeting will be held December 7, 2005 from 5 p.m. to 7 p.m. local time. Those who plan to speak at the meeting should provide their name by December 2, 2005 to Lieutenant (Junior Grade) J. Mangum using one of the methods listed under **FOR FURTHER INFORMATION CONTACT**. The comment period associated with the public meeting will remain open for seven days following the meeting. The meeting location is: Pascagoula High School, 1716 Tucker Ave, Pascagoula, MS.

ADDRESSES: You may submit written comments to Commanding Officer, U.S. Coast Guard Sector Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390. Sector Mobile maintains a file for this notice. Comments and material received will become part of this file and will be available for inspection and copying at Sector Mobile between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Lieutenant (Junior Grade) J. Mangum at Coast Guard Sector Mobile by one of the methods listed below:

(1) Phone at 251–441–5940;

(2) E-mail at *jmangum@msomobile.uscg.mil*;

(3) Fax to 251–441–6169.

SUPPLEMENTARY INFORMATION:

Request for Written Comments

We encourage you to submit written comments and related material pertaining specifically to marine safety and security aspects associated with the proposed LNG facilities. If you do so, please include your name and address, identify the docket number for this notice (COTP Mobile-05–051), and give the reason for each comment. You may submit your comments and related material by mail, or hand delivery, as described in **ADDRESSES**, or you may send them by fax or e-mail using the contact information under **FOR FURTHER INFORMATION CONTACT**. To avoid confusion and duplication, please submit your comments and material by only one means.

If you submit comments by mail or hand 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 U.S. Coast Guard Sector Mobile, please enclose a stamped, self-addressed postcard or envelope.

Public Meeting

Due to the scope and complexity of this project, we have decided to hold a public meeting to allow the public the opportunity to comment on the proposed LNG facility. With advance notice, organizations and members of the public may provide oral statements regarding the suitability of the Pascagoula Bar, Horn Island Pass, Lower Pascagoula, and Bayou Casotte Channels for LNG vessel traffic. In the interest of time and use of the public meeting facility, oral statements should be limited to five minutes. Persons wishing to make oral statements should notify Lieutenant (Junior Grade) J. Mangum using one of the methods listed under **FOR FURTHER INFORMATION CONTACT** by December 2, 2005. Written comments may be submitted at the meeting or to the Docket up to December 14, 2005.

Background and Purpose

In accordance with the requirements of 33 CFR 127.007, Gulf LNG Energy, LLC submitted a Letter of Intent on December 3, 2004, to operate an LNG facility in Jackson County, MS.

The proposed Gulf LNG Energy, LLC terminal is an LNG import, storage, and re-gasification facility. LNG carriers (ships) would berth at a new pier and LNG would be transferred by pipeline from the carriers to one of two storage tanks, each with a net capacity of 160,000 cubic meters (m3) and a gross capacity of 320,000 m3. The LNG would then be regasified and metered into natural gas pipelines. LNG would be delivered to the terminal in double-hulled LNG carriers ranging in capacity from 88,000 m3 to 150,000 m3. The larger carriers would measure up to approximately 975 feet long with up to approximately a 150 foot wide beam, and draw 37 feet of water. The Gulf LNG Energy LLC terminal would handle approximately 150 vessels per year, depending upon natural gas demand, and carrier size, with shipments arriving about every 2.5 days.

The U.S. Coast Guard exercises regulatory authority over LNG facilities which affect the safety and security of port areas and navigable waterways under Executive Order 10173, the Magnuson Act (50 U.S.C. 191), the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221, *et seq.*) and the Maritime Transportation Security Act of 2002 (46 U.S.C. 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 CFR Part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard COTP conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically, the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements.
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility.
- Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility.
- Density and character of marine traffic on the waterway.
- Bridges or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Natural hazards, including rocks and sandbars.
- Underwater pipelines and cables.
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other Federal, State, and local

government agencies reviewing the project. Under an interagency agreement the Coast Guard will provide input to, and coordinate with, the Federal Energy Regulatory Commission (FERC), the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, on safety and security aspects of the Gulf LNG Energy, LLC terminal project, including both the marine and land-based aspects of the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Mobile, AL will be conducting a formal risk assessment, evaluating various safety and security aspects associated with the proposed Gulf LNG Clean Energy Marine Terminal Project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input into the risk assessment process.

Additional Information

Additional information about the Gulf LNG Clean Energy Marine Terminal Project is available from FERC's Office of External Affairs at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using their eLibrary link. Comments relating to aspects other than marine safety and security aspects associated with the proposed LNG facility may be submitted at this Web site. For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, contact Lieutenant (Junior Grade) J. Mangum listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: November 10, 2005.

Steve Venckus,

Chief, Office of Regulations and Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. 05–22828 Filed 11–14–05; 3:29 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[COTP Mobile–05–050]

Notice, Request for Comments; Letter of Recommendation, LNG Bayou Casotte Energy LLC Terminal Project, Jackson County, MS

AGENCY: Coast Guard, DHS.

ACTION: Request for comments; notice of public meeting.

SUMMARY: In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port (COTP) Mobile, AL is preparing a letter of recommendation as to the suitability of the Pascagoula Bar, Horn Island Pass, Lower Pascagoula, and Bayou Casotte Channels for liquefied natural gas (LNG) marine traffic. The letter of recommendation is in response to a letter of intent submitted by Bayou Casotte Energy LLC to operate a LNG facility in Jackson County, MS. The COTP Mobile, AL is soliciting written comments and related material, and will hold a public meeting seeking comments, pertaining specifically to maritime safety and security aspects of the proposed LNG facilities. In preparation for issuance of a letter of recommendation and the completion of certain other regulatory mandates, the COTP Mobile, AL will consider comments received from the public as input into a formalized risk assessment process. This process will assess the safety and security aspects of the facility, adjacent port areas, and navigable waterways.

DATES: All written comments and related material must reach the Coast Guard on or before December 14, 2005. In addition, a public meeting will be held December 7, 2005 from 5 p.m. to 7 p.m. local time. Those who plan to speak at the meeting should provide their name by December 2, 2005 to Lieutenant (Junior Grade) J. Mangum using one of the methods listed under **FOR FURTHER INFORMATION CONTACT.** The comment period associated with the public meeting will remain open for seven days following the meeting. The meeting location is: Pascagoula High School, 1716 Tucker Ave, Pascagoula, MS.

ADDRESSES: You may submit written comments to Commanding Officer, U.S. Coast Guard Sector Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390. Sector Mobile maintains a file for this notice. Comments and material received will become part of this file and will be available for inspection and copying at Sector Mobile between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Lieutenant (Junior Grade) J. Mangum at Coast Guard Sector Mobile by one of the methods listed below:

(1) Phone at 251–441–5940;

(2) E-mail at *jmangum@msomobile.uscg.mil;*

(3) Fax to 251–441–6169.

SUPPLEMENTARY INFORMATION:

Request for Written Comments

We encourage you to submit written comments and related material pertaining specifically to marine safety and security aspects associated with the proposed LNG facilities. If you do so, please include your name and address, identify the docket number for this notice (COTP Mobile–05–050), and give the reason for each comment. You may submit your comments and related material by mail, or hand delivery, as described in **ADDRESSES,** or you may send them by fax or e-mail using the contact information under **FOR FURTHER INFORMATION CONTACT.** To avoid confusion and duplication, please submit your comments and material by only one means.

If you submit comments by mail or hand 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 U.S. Coast Guard Sector Mobile, please enclose a stamped, self-addressed postcard or envelope.

Public Meeting

Due to the scope and complexity of this project, we have decided to hold a public meeting to allow the public the opportunity to comment on the proposed LNG facility. With advance notice, organizations and members of the public may provide oral statements regarding the suitability of the Pascagoula Bar, Horn Island Pass, Lower Pascagoula, and Bayou Casotte Channels for LNG vessel traffic. In the interest of time and use of the public meeting facility, oral statements should be limited to five minutes. Persons wishing to make oral statements should notify Lieutenant (Junior Grade) J. Mangum using one of the methods listed under **FOR FURTHER INFORMATION CONTACT** by December 2, 2005. Written comments may be submitted at the meeting or to the Docket up to December 14, 2005.

Background and Purpose

Bayou Casotte Energy LLC submitted a letter of intent on February 10, 2005 to operate an LNG facility in Pascagoula, FL. Bayou Casotte Energy LLC is a wholly owned subsidiary of Chevron U.S.A. (CUSA) Inc.

The proposed Bayou Casotte Energy LLC Terminal is an LNG import, storage, and re-gasification facility. LNG carriers (ships) would berth at a new pier and LNG would be transferred by pipeline from the carriers to one of three storage tanks, each with a net capacity of 160,000 cubic meters (m3) and a gross capacity of 174,600 m3. The LNG would then be regasified and metered into natural gas pipelines. LNG would be delivered to the terminal in double-hulled LNG carriers ranging in capacity from 125,000 m3 to 165,000 m3. The larger carriers would measure up to approximately 1092 feet long with up to approximately a 158 feet wide beam, and draw 40 feet of water. The Bayou Casotte Energy LLC Terminal would handle approximately 166 vessels per year, depending upon natural gas demand, and carrier size, with shipments arriving about every 2.2 days.

The U.S. Coast Guard exercises regulatory authority over LNG facilities which affect the safety and security of port areas and navigable waterways under Executive Order 10173, the Magnuson Act (50 U.S.C. 191), the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221, *et seq.*) and the Maritime Transportation Security Act of 2002 (46 U.S.C. 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 CFR Part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard COTP conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically, the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements.
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility.
- Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility.
- Density and character of marine traffic on the waterway.
- Bridges or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Natural hazards, including rocks and sandbars.
- Underwater pipelines and cables.
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other Federal, State, and local government agencies reviewing the project. Under an interagency agreement the Coast Guard will provide input to, and coordinate with, the Federal Energy Regulatory Commission (FERC), the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, on safety and security aspects of the Bayou Casotte Energy LLC Terminal Project, including both the marine and land-based aspects of the project. In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Mobile, AL will be conducting a formal risk assessment, evaluating various safety and security aspects associated with the proposed Bayou Casotte Energy LLC Terminal Project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input into the risk assessment process.

Additional Information

Additional information about the Bayou Casotte Energy LLC Terminal Project is available from FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using their eLibrary link. Comments relating to aspects other than marine safety and security aspects associated with the proposed LNG facility may be submitted at this Web site. For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

Information on Services for Individuals With Disabilities

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Dated: November 10, 2005.

Steve Venckus,

Chief, Office of Regulations and Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. 05–22826 Filed 11–14–05; 3:29 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–22]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a

notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 24th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Alethes LLC	8601 RR 2222 BLD–1, Austin, TX 78730	San Antonio, TX	9/06/2005	Denver.
BSM Financial LP	16479 Dallas Parkway, Ste. 211, Addison, TX	Houston, TX.	10/6/2005	Denver.
BSM Financial LP	16479 Dallas Parkway, Ste. 211, Addison, TX 75001	San Antonio, TX	10/6/2005	Denver.
Century Mortgage Corporation.	1730 Mount Vernon Rd., Atlanta, GA 30338	Atlanta, GA.	9/6/2005	Atlanta.
Everett Financial Inc	17290 Preston Road, Ste. 300, Dallas, TX 75252	Fort Worth, TX	10/6/2005	Denver.
Infinity Mortgage Corporation.	1117 Perimeter Center W., Suite 201, Atlanta, GA 30338.	Atlanta, GA.	10/6/2005	Atlanta.
Lending Street LLC	1619 South Kentucky St., Amarillo, TX 79102	Lubbock, TX.	10/6/2005	Denver.
Mortgage Pros LLC	12335 North Rockwell Ave., Oklahoma City, OK 73142.	Oklahoma City, OK	9/06/2005	Denver.
Pioneer Mortgage Services LLC.	795 E 340 S, American Fork, UT 84003	Salt Lake City, UT	10/06/2005	Denver.
Plainscapital McAfee Mortgage Company.	1370 NW 114th St., Ste. 205, Clive, IA 50325	Des Moines, IA	9/06/2005	Denver.

Dated: November 4, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. E5–6333 Filed 11–16–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the St. Francis/Sokoki Band of Abenakis of Vermont

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA), proposes to determine that the St. Francis/Sokoki Band of Abenakis of Vermont, P.O. Box 276, Swanton, Vermont, c/o Ms. April Merrill, is not an

Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy criteria 83.7(a), 83.7(b), 83.7(c) and 83.7(e), and thus, does not meet the requirements for a government-to-government relationship with the United States.

DATES: Publication of the AS–IA's notice of the proposed finding in the **Federal Register** initiates a 180-day comment period during which the petitioner, interested and informed parties, and the public may submit arguments and evidence to support or rebut the evidence relied upon in the proposed finding. Interested or informed parties must provide a copy of their comments to the petitioner. The regulations, 25 CFR 83.10(k), provide petitioners a minimum of 60 days to respond to any submissions on the proposed findings received from interested and informed parties during the comment period.

ADDRESSES: Comments on the proposed finding or requests for a copy of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., Washington, DC 20240, Attention of the Office of Federal Acknowledgment, Mail Stop 34B–SIB.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, of February 8, 2005, as amended on August 11, 2005.

The acknowledgment process is based on the regulations at 25 CFR part 83, first issued in 1978 and revised in 1994. Under these regulations, the petitioner has the burden to present evidence that it meets the seven mandatory criteria in section 83.7.

Pursuant to section 83.6(c), ''the documented petition must include thorough explanations and supporting documentation in response to all of the criteria.'' Furthermore, section 83.6(d) provides that a petition will be turned down for a lack of evidence. This notice of proposed finding is based on a determination that the St. Francis/Sokoki Band of Abenkis of Vermont (SSA), Petitioner #68, does not satisfy all seven of the mandatory criteria for acknowledgment as an Indian tribe described in 25 CFR 83.7.

The SSA submitted a letter of intent to petition for Federal acknowledgment on March 28, 1980. The AS–IA placed the petitioner on active consideration on February 4, 2005.

The SSA petitioner claims to have descended as a group mainly from the Missisquoi, a historical Western Abenaki Indian tribe. During the colonial period (approximately 1600–1800), the Missiquoi occupied the Lake Champlain region near the present-day town of Swanton in Franklin County in northwestern Vermont. The available evidence in the historical record indicates that by 1800 the disruption caused by colonial wars and non-Indian settlement had forced almost all the Western Abenakis in northern New England (including Vermont) to relocate to the Saint Francis River area of Quebec, Canada, and become part of the St. Francis [Odanak] village of Canadian Indians. The petitioner, however, contends that its ancestors remained behind in northwestern Vermont after 1800, or moved to Canada until it was ''safe'' to return. The petitioner also maintains that its ancestors lived ''underground,'' hiding their Native American identity to avoid drawing the attention of their non-Indian neighbors, until the 1970's. The details of this claimed process of living ''underground,'' however, are not explained by the petitioner. Some of the available documentation indicates that some of the group's ancestors moved from various locations in Quebec, Canada, to the United States over the course of the 19th century, but the available evidence does not demonstrate that the petitioner or its claimed ancestors descended from the St. Francis Indians of Quebec, another Indian group in Canada, a Missisquoi Abenaki entity in Vermont, or any other Western Abenaki group or Indian entity from New England in existence before or after 1800. The available evidence indicates that no external observers from 1800 to 1975 described the petitioner or its claimed ancestors, or any group of Indians, as an Indian entity or a distinct Indian community in northwestern Vermont.

The SSA petitioner does not meet criterion 83.7(a), which requires that it has been identified as an American Indian entity on a substantially continuous basis since 1900. The available evidence demonstrates that no external observers identified the SSA petitioner or a group of its ancestors as an Indian entity from 1900 to 1975. External sources, including Federal authorities, State agencies, local governments, scholars, newspapers, periodicals, and Indian organizations, have identified SSA as some form of Indian entity only on a regular basis since 1976. Based on the available evidence, therefore, the SSA has not been identified on a substantially continuous basis since 1900, and does not meet criterion 83.7(a). The SSA petitioner is encouraged to submit documentation demonstrating that it has been identified as an Indian entity from 1900 to 1975. The current record suggests that it formed only recently in the middle 1970's.

The SSA does not meet criterion 83.7(b), which requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The available evidence does not demonstrate a predominant portion of the SSA petitioning group's members or its claimed ancestors have maintained consistent interaction and significant social relationships throughout history. Instead, the evidence demonstrates that the SSA petitioner is a collection of individuals of claimed (but not demonstrated) Indian ancestry with little or no social or historical connection with each other before the early 1970's. The available evidence also establishes that the petitioner's claimed ancestors and current members have not maintained at least a minimal distinction from other populations in the northwestern Vermont area and Lake Champlain region from historical times to the present.

The available evidence does not demonstrate the SSA petitioner has a historical or social connection to any Western Abenaki entity in existence before 1800. The petitioner has not provided sufficient evidence to establish that a predominant portion of its claimed ancestors were interacting as a group before 1800. Indeed, it is not known from the available evidence what these claimed ancestors were doing before they moved to Vermont over the course of the 19th century. Thus, the petitioner does not meet the requirements of criterion 83.7(b) before 1800.

A major problem with the evidence SSA submitted to demonstrate community for its claimed 19th century ancestors is the use of family-name variations to construct its ancestral family lines. The petitioner developed these names from family names found mainly on 19th century lists of St. Francis Indians at Odanak in Quebec, a historical group from which only a very small number of SSA's current members actually claim descent. It appears that the SSA petitioner took the family names of current members and searched for variations of those names on lists of Saint Francis Indians. The SSA petitioner also searched for further

variations of those family names in local church, town, land, school, and census records from the 19th century in the Franklin County area of Vermont, or from the ''oral traditions'' of its members. Once the petitioner perceived what it believed were similarities between the name of a present-day family and names on these historical records, it designated the family as part of an ''Abenaki'' community in the Franklin County area during the 19th century.

The use of such a methodology to demonstrate consistent interactions and significant social relationships for SSA's claimed ancestral families is unpersuasive. Using this process means that the families were identified as part of a claimed ancestral community based on the presumption that individuals with perceived similar names had shared social interactions, and not because the record actually demonstrated consistent interactions and social relationships among them.

In addition, the SSA petitioner has not submitted the documentation it used to create the lists of claimed ancestral families. Instead, the petitioner described the contents of various town, church, and census records, and submitted abstracted lists of various family names of claimed ancestors. Copies of the actual primary documents from which the petitioner claimed to have extracted this information were not submitted. Further, the SSA petitioner did not provide most of the interviews, field notes, or genealogical materials referenced in its narratives. The petitioner is encouraged to submit copies of these documents for verification and analysis.

Moreover, the petitioner has not provided sufficient evidence to explain how the claimed ancestral families which shared these family name or surname variations were consistently interacting in a way that would meet the requirements of criterion 83.7(b). For example, the petitioner has submitted little or no primary documentation from the 19th century to show these claimed ancestral families had significant marriage rates within the group, significant social relationships (formal or informal) connecting individual ancestors, important cooperative labor or other economic activities among claimed ancestors, or noteworthy sacred or secular behavior involving most of the group. It is also unclear if most of the claimed ancestral families from the 19th century actually have descendants in SSA's current membership.

The petitioner has also described or provided abstracted lists of family names from four categories of evidence: local historical accounts, church and town records, Federal census data, and genealogical research on Abenaki family names, which it claims demonstrates the existence of its ancestral community in northwestern Vermont during the 19th century. It has not submitted copies of the documents referenced in the four groups of evidence and is encouraged to do so. Despite the lack of primary documentation, an evaluation of the limited available evidence does not indicate the four categories of evidence demonstrate that a predominant portion of the group's claimed ancestors comprised a distinct community during the 19th century. Rather, the evaluation reveals that many of the petitioner's claimed ancestral families began migrating to Vermont as individual families, beginning slowly in a disconnected fashion in the early 19th century, and continuing in a very gradual manner until well into the 20th century. Many came from unknown places in Quebec or separate locations throughout the Canadian province. Others came from Massachusetts, New York, Connecticut, or Rhode Island. There is no available evidence showing these families interacted with each other as part of a community in Canada or elsewhere in the United States. There is also no evidence to demonstrate that the claimed ancestors migrated to Vermont as a group or acted as part of a community distinct in some way from the wider society after they arrived in Vermont. Thus, the petitioner does not meet the requirements of criterion 83.7(b) from 1800 to 1900.

The information presented by the petitioner does not indicate the presence of a group or a community of the petitioner's claimed ancestors from 1900 to the early 1970's; rather, it indicates only that some of the current petitioner's claimed ancestors lived in Franklin County, Vermont (particularly in the Town of Swanton) during the 20th century. The petitioner submitted very few copies of primary documents such as birth certificates, land records, or census enumerations, choosing instead to submit abstracts of this information. These abstracts, however, are inadequate for the purposes of the Department's verification research and evaluation, which require copies of original documents. Furthermore, on several occasions when original documents were located by the Department or submitted by the State of Vermont, they did not contain the information the petitioner claimed.

Information provided by the petitioner and located by the Department does not demonstrate that the ancestors claimed by the petitioner formed an ''enclave'' in the Town of Swanton, Vermont. Some claimed ancestors lived on the streets defined as making up an area of the town referred to as ''Back Bay,'' but others lived elsewhere in the town, and nonmember families also appear to have lived on these streets. The petitioner has not demonstrated the existence of a distinct community within Swanton, Vermont, consisting of the petitioner's ancestors, or that those ancestors constituted a ''community-within-a-community'' among the French-Canadian or Roman Catholic families in the town. The petitioner also has not demonstrated that assorted references to ''Abenaki'' Indians refer to their ancestors, rather than to Abenaki from New England and Canada who traveled to the area to hunt, fish, or sell crafts.

The group maintains that it did not keep membership lists before the 1970's and the initial organization of the SSA. However, the petition lacks the type of evidence which, in the absence of formal lists, would help to define the makeup of a community, such as lists of attendees at meetings or other gatherings, letters detailing interaction among people in religious or social organizations, or journals describing the participation by people in rituals such as baptisms, marriages, and funerals. Without this information, it is not possible to determine who was supposed to have been a member of this ''group'' before the 1970's. Membership standards since the 1970's indicate a very fluid group, with few clearly-defined, consistent standards for membership.

After the formal organization of the SSA in the early 1970's, the group became a more organized body, with an emphasis on providing services such as after-school programs and vocational training through the Abenaki Self-Help Association, Incorporated (ASHAI), the group's social-welfare organization. The group has also introduced some elements of Western Abenaki and pan-Indian culture into their gatherings, and has actively sought to establish relations with other non-federally recognized groups and recognized Indian tribes (both in Canada and the United States). These developments notwithstanding, the group has not displayed a level of community that would meet criterion 83.7(b) from 1975 to the present. The social and cultural elements are of recent introduction, and there is not enough information to indicate that these events are of more than symbolic value to the group as a whole, rather than to a few involved members. Although the SAA group has organized

events that allow its members to meet and socialize, the petitioner has not demonstrated that a significant portion of its membership regularly associate with each other. The lack of documentation also makes it difficult to determine who among the membership has participated in the group's various activities.

The SSA petitioner has not demonstrated that a distinct community of the petitioner's ancestors existed in Franklin County, Vermont, during the 19th century, and has not satisfied the requirements for criterion 83.7(b) at any time before 1975. Further, the group has not provided sufficient evidence of community to establish that it meets criterion 83.7(b) since 1975. Therefore, the petitioner has not met the requirements of criterion 83.7(b).

The SSA petitioner does not meet criterion 83.7(c), which requires that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The SSA petitioner claims it expressed political influence mainly through ''family bands'' before the formation of its council in the middle of the 1970's. The available evidence from potential antecedent entities, however, indicates that the historical Western Abenaki actually had a well-developed political organization during the colonial period consisting of a ''civil chief'' and a ''war chief''. The ''civil chief'' presided over a ''great council'' composed of the ''war chief'' and the ''elders'' of the families. At the Saint Francis (Odanak) village in Quebec during the 1700's, the ''council'' contained a ''grand chief'' and several other ''chiefs''. The names and political activities of most of these leaders are not well known. However, historical records reveal two well-documented political figures among the Western Abenaki before 1800—Chiefs Grey Lock and Joseph-Louis Gill. Grey Lock gained prominence in the first half of the 18th century, and Joseph-Louis Gill in the latter half. Yet, as described previously under criterion 83.7(b), the available evidence does not demonstrate the current petitioner or its claimed ancestral families descended as a group from any Western Abenaki tribe either in Quebec and/or Vermont. Thus, evidence of political activity for Western Abenaki chiefs like Grey Lock and Joseph-Louis Gill (or an unnamed Abenaki ''chief'' identified in a 1765 lease as the late husband of a widow named ''Charlotte'') during the colonial period does not demonstrate political influence among the SSA's claimed ancestors. The petitioner has also not provided other evidence of what its specific claimed ancestors might have been doing as a group to exercise political influence before 1800.

The evidence presented for the 19th century is also inadequate. The petitioner has not submitted evidence to demonstrate what its claimed ancestors were doing between 1800 and 1875 to exercise political influence or authority across the group, particularly as many of the people identified as the ancestors of the petitioner were living in various towns across Quebec, Canada, during this time. For 1875 to 1900, the petitioner claimed that individuals such as Nazaire St. Francis, Sr., and Cordelia (Freemore) Brow served as informal leaders of a group of their claimed ancestors in the ''Back Bay'' area of the Town of Swanton, Vermont; however, the petitioner has not demonstrated that any of these individuals exercised authority over a group of the petitioner's claimed ancestors. For the first 75 years of the 20th century, the petitioner has presented little evidence demonstrating informal leadership among any portion of the petitioner's claimed ancestors. Information describing Nazaire St. Francis, Jr., Gene Cote, and Cordelia (Freemore) Brow as informal leaders must be supplemented with additional information if the petitioner wishes to substantiate its claims. The petitioner has not demonstrated informal or formal political authority among a group of its claimed ancestors at any time before 1975, and therefore, does not satisfy the requirements for criterion 83.7(c) for this time period.

During the 1970's, SSA appears to have become politically active after its formal organization. In addition to ASHAI, the group also formed a ''tribal council.'' Under the leadership of ''chiefs'' Homer St. Francis and Leonard Lampman, the group began their petition for Federal acknowledgment, instituted some social and cultural programs, and engaged the state of Vermont in a number of legal battles. However, the petition lacks evidence to demonstrate that participation in the group's political processes was widespread across the membership of the group. The lack of sign-in sheets from meetings is problematic because it is difficult to demonstrate who exactly was involved in the group's various meetings. Further, the lack of 17 years of minutes from ASHAI and the lack of 11 years of ''tribal council'' meeting minutes (as well as redacted ASHAI and council minutes spanning 8 and 9 years respectively) makes it difficult to understand what issues were important to the group and who was participating in the group's political organization. The petitioner has not demonstrated that the organization formed after 1975 has a bilateral relationship between the membership and the elected (or appointed) governing body, in which the leadership acknowledges and responds to the concerns of the membership. Rather, the evidence indicates that political influence is limited to the actions of a small number of members pursuing an agenda with a minimal amount of input from the membership. Therefore, the petitioner has not satisfied the requirements of criterion 83.7(c) since 1975.

The SSA petitioner meets criterion 83.7(d), which requires the petitioner to submit its governing document, including its membership criteria. The petitioner submitted a copy of its constitution, which defines its procedures by which it governs its affairs and its members, and which requires members to document descent from (1) an Abenaki family listed on the 1765 James Robertson lease; or (2) Abenaki ancestors as determined by the petitioner's governing body.

The SSA petitioner does not meet criterion 83.7(e), which requires that the petitioner's members descend from a historical Indian tribe or from tribes that combined and functioned as a single autonomous political entity. Eight current members (less than 1 percent of the group) have documented descent from a historical individual identified in the 19th century as a member of the St. Francis Abenaki tribe at Odanak, Quebec, Canada, but have not documented descent from historic individuals identified as members of the Missisquoi Abenaki. None of the petitioner's remaining 1,163 members have documented descent from any of the presumed Abenaki persons listed on the 1765 James Robertson lease or from any persons identified on any other list, census, or primary or reliable secondary document as members of a historical Missisquoi Abenaki or historical Western Abenaki Indian tribe, or any other historical tribal entity. Therefore, the petitioner does not satisfy the requirements of criterion 83.7(e).

Criterion 83.7(e) also requires that the petitioner submit an official membership list of all known current members, and that the petitioner's governing body provide a separate certification of that membership list. The petitioner's official membership list of August 9, 2005, which needs to be separately certified by the petitioner's governing body, contained 2,506 entries, but only 1,171 individuals on that list were members who had submitted signed application forms and provided documentation required by the petitioner.

The SSA petitioner meets criterion 83.7(f), which requires that a petitioning group be comprised principally of persons who are not members of any acknowledged North American Indian tribe. The petitioner has indicated that a number of current members are not listed on the group's current membership list. Thus, this conclusion for criterion 83.7(f) does not apply to those individuals whose names were not submitted.

The SSA petitioner meets criterion 83.7(g) because there is no evidence in the record that the petitioner or its members have been explicitly terminated or forbidden a Federal relationship by an act of Congress.

Based on this preliminary factual determination, the Department proposes not to extend Federal Acknowledgment as an Indian Tribe under 25 CFR Part 83 to the petitioner known as the St. Francis/Sokoki Band of Abenakis of Vermont.

As provided by 25 CFR 83.1(h) of the regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request.

Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., Washington, DC 20240, Attention: Office of Federal Acknowledgment, Mail Stop 34B–SIB.

Comments on the proposed finding should be submitted within 180 calendar days from the date of publication of this notice. The period for comment on a proposed finding may be extended for up to an additional 180 days at the AS–IA's discretion upon a finding of good cause (83.10(i)). Comments by interested and informed parties must be provided to the petitioner as well as to the Federal government (83.10(h)). After the close of the 180-day comment period, and any extensions, the petitioner has 60 calendar days to respond to third-party comments (83.10(k)). This period may be extended at the AS–IA's discretion, if warranted by the extent and nature of the comments.

After the expiration of the comment and response periods described above, the Department will consult with the petitioner concerning establishment of a schedule for preparation of the final determination. The AS–IA will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1), at a time that is consistent with that schedule.

Dated: November 9, 2005.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. 05–22756 Filed 11–16–05; 8:45 am]

BILLING CODE 4310–GI–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–06–1610—PH–241A]

Notice of Resource Advisory Committee Meeting Cancellation

AGENCY: Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Cancellation of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) Meeting.

SUMMARY: The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) meeting scheduled for November 15 and 16, 2005 is cancelled.

DATES: Two days of meetings were scheduled for November 15 and 16, 2005, at the GSENM Visitor Center, Conference Room, 745 HWY 89 East, Kanab, Utah.

FOR FURTHER INFORMATION CONTACT: Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4310, or email *larry_crutchfield@blm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the GSENMAC was scheduled to meet on November 15 and 16, 2005, in Kanab, Utah, at the GSENM Visitor Center, 745 HWY 89 East, Kanab, Utah. The meeting has been cancelled and will be rescheduled at a later date.

Dated: November 10, 2005.

Dave Hunsaker,

Monument Manager, Grand Staircase-Escalante National Monument.

[FR Doc. 05–22787 Filed 11–16–05; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, UTU 18726

November 9, 2005.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Section 371(a) of the Energy Policy Act of 2005, the lessee, Del-Rio Resources, Inc., timely filed a petition for reinstatement of oil and gas lease UTU18726 in Uintah County, Utah. The lessee paid the required rental accruing from the date of termination, June 1, 2002.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $5 per acre and 16⅔ percent, respectively. The lessee paid the $500 administration fee for the reinstatement of the lease and $155 cost for publishing this notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 [30 U.S.C. 188(e)]. We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5 per acre;
- The increased royalty of 16⅔ percent; and
- The $155 cost of publishing this notice.

FOR FURTHER INFORMATION CONTACT: David H. Murphy, Acting Chief, Branch of Fluid Minerals at (801) 539–4122.

David H. Murphy,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 05–22776 Filed 11–16–05; 8:45am]

BILLING CODE 4310–DK–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0063

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request

for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 19, 2005 in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov*, or by facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*. Please reference 1029–0063 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information found at 30 CFR part 870, Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form it implements, the OSM–1, Coal Reclamation Fee Report. This request consolidates these requirements with the excess moisture deduction provisions found in section 870.18, approved separately by OMB under control number 1029–0090. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0063 for part 870 and the OSM–1 form.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on August 30, 2005 (70 FR 51364). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR 870.

OMB Control Number: 1029–0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

Bureau Form Number: OSM–1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 11,192.

Total Annual Burden Hours: 2,462.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

Dated: November 2, 2005.

Dennis G. Rice,

Acting Chief, Division of Regulatory Support

[FR Doc. 05–22794 Filed 11–16–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Final)]

Artists' Canvas from China

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1091 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of artists' canvas, provided for in subheadings 5901.90.20.00 and 5901.90.40.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, 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 and C (19 CFR part 207).

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of artists' canvas from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 1, 2005, by Tara Materials, Inc., Lawrenceville, GA.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat.'' 70 FR 67412, November 7, 2005.

consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 14, 2006, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 28, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 23, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations may be required to attend a prehearing conference to be held at 9:30 a.m. on March 22, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 21, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 4, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before April 4, 2006. On April 19, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 21, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, 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). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 14, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–22800 Filed 11–16–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–041]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: November 30, 2005 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. Nos. 731–TA–385 and 386 (Second Review) (Granular Polytetrafluoroethylene (PTFE) Resin from Italy and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 13, 2005.)
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: November 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–22899 Filed 11–15–05; 4:05 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Census of Juveniles in Residential Placement.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 161 page 48982 on August 22, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 19, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of previously approved collection.

(2) *Title of the Form/Collection:* Census of Juveniles in Residential Placement.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. Other: State, Local or Tribal Government, not-for-profit institutions, business or other for-profit. The data collection will gather individual level information on juveniles (persons under 18) who are placed in a residential facility due to contact with the justice system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete the questionnaire in approximately 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 11,650 hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 10, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–22764 Filed 11–16–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: 2005 Census of Publicly Funded Forensic Crime Laboratories.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 161, page 48981 on August 22, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 19, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* 2005 Census of Publicly Funded Forensic Crime Laboratories.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: The form number is CFCL–1, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence. The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, and the number, types, and costs of analyses completed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 375 respondents will complete a three hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,125 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 10, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–22765 Filed 11–16–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 9, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Office of the Secretary, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Secretary.

Type of Review: Extension of currently approved collection.

*Title:*Information Collection Plan for GovBenefits Online.

OMB Number: 1290–0003.

Frequency: On occasion.

Type of Response: Reporting .

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 6,367,428.

Number of Annual Responses: 6,367,428.

Estimated Time Per Response: 2 minutes.

Total Burden Hours: 191,023.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The President's Management Agenda for E-Government (February 27, 2002) sets forth a strategy for simplifying the delivery of services to citizens. The President's agenda outlines a Federal EGovernment Enterprise Architecture that will transition the management and delivery of government services from a bureaucracy-centered to a citizen-centered paradigm. To this end, the Department of Labor serves as the managing partner of the Administration's ''GovBenefits'' strategy for assisting citizens in identifying and locating information on benefits sponsored by the Federal government and State governments. This tool greatly reduces the burden on citizens attempting to locate services available from many different government agencies by providing one-stop access to information on obtaining those services.

Respondents answer a series of questions to the extent necessary for locating relevant information on Federal benefits. Responses are used by the respondent to expedite the identification and retrieval of sought after information and resources pertaining to the benefits sponsored by the Federal Government.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E5–6361 Filed 11–16–05; 8:45 am]

BILLING CODE 4510–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Louisiana

This notice announces a change in benefit period eligibility under the EB Program for Louisiana.

Summary

The following change has occurred since the publication of the last notice regarding the State's EB status:

- October 30, 2005. Louisiana triggered ''on'' EB. Louisiana's 13-week insured unemployment rate for the week ending October 15, 2005, rose

above the 5.0 percent threshold necessary to be triggered ''on'' to EB effective for the week beginning October 30, 2005.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State Workforce Agency in their locality.

Signed at Washington, DC, on November 7, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 05–22797 Filed 11–16–05; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Davis Family, LLC., Le Sueur, Minnesota.

Principal Product: The loan, guarantee, or grant applicant plans to build an extension to an existing plant to manufacture quartz slabs for countertops, flooring and walls. The NAICS industry for this enterprise is 327991 (cut stone and stone product manufacturing.

DATES: All interested parties may submit comments in writing no later than December 1, 2005. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC this 9th day of November, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E5–6362 Filed 11–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Savitaben, Inc., Gainsville, Georgia.

Principal Product: The loan, guarantee, or grant applicant plans to construct a five-story, 122-room Holiday Inn. The NAICS industry for this enterprise is 72111 Hotels (except casino hotels).

DATES: All interested parties may submit comments in writing no later than December 1, 2005. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

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Signed at Washington, DC, this 9th day of November, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E5–6363 Filed 11–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: The Remedial Education Provisions of the Fair Labor Standards Act. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 17, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *E-mail bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, sets minimum wage, overtime pay, youth employment and certain recordkeeping standards. These requirements generally apply to employees engaged in interstate commerce or in the production of goods for interstate commerce, as well as to employees in certain enterprises (including employees of a public agency); however, the Act provides exemptions from some of its standards for employees in certain types of employment.

The FLSA generally requires employers to pay overtime hours (*i.e.,* time in excess of forty hours in a workweek) worked by employees covered by the Act at time and one-half the employee's regular rate of pay. FLSA section 7(q) provides a partial overtime exemption that allows an employer to employ any employee who lacks a high school diploma or whose reading level or basic skills is at or below the eighth grade level for up to ten overtime hours per week without paying the usually required half-time premium, if the employee is receiving remedial education during such overtime hours. The employer-provided remedial education must be designed to provide up to eighth grade level basic skills or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate and may not include job-specific training. The employer must also compensate for time spent in such remedial education at no less than the employee's regular rate of pay. Regulations, 29 CFR Part 516, Records to be Kept by Employers, contain the basic recordkeeping requirements for employers of employees subject to FLSA protections. In addition to the basic recordkeeping requirements, Regulations 29 CFR 516.34 requires employers using this partial overtime exemption to indicate the hours an employee engages in exempt remedial education each workday and total hours each workweek. The employer may either state the hours separately or make a notation on the payroll. The subject information collection relates only to the section 516.34 requirements. This information collection is currently approved for use through July 31, 2006.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to review and determine employer compliance with the applicable section of the Fair Labor Standards Act (FLSA). These recordkeeping requirements for employers utilizing the partial overtime exemption for remedial education are necessary to ensure employees are paid in compliance with the remedial education provisions of the FLSA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: The Remedial Education Provisions of the Fair Labor Standards Act.

OMB Number: 1215–0175

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Type of Response: Recordkeeping.

Total Respondents: 15,000.

Total Annual responses: 30,000.

Estimated Total Burden Hours: 5,000.

Estimated Time Per Response: 1 minute per week for 10 weeks (10 minutes per year).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 10, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. E5–6360 Filed 11–16–05; 8:45 am]

BILLING CODE 4510–P

LEGAL SERVICES CORPORATION

Development of Strategic Directions 2006–2010

AGENCY: Legal Services Corporation.

ACTION: Development of Strategic Directions—Request for Comments.

SUMMARY: LSC is in the process of developing Strategic Directions for the years 2006–2010. Toward that end, the Legal Services Corporation is soliciting comments on a Draft Strategic Directions 2006–2010 document.

DATES: Written comments must be received on or before December 19, 2005.

ADDRESSES: Written comments may be submitted by mail, fax or email to Charles Jeffress at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov.*

SUPPLEMENTARY INFORMATION: In 2000, the Legal Services Corporation (LSC) Board of Directors adopted Strategic Directions 2000–2005. LSC is now in the process of developing Strategic Directions for the years 2006–2010. This notice is being published in the **Federal Register** requesting public comment for the Board's consideration prior to final adoption. The draft LSC Strategic Directions 2006–2010 document is available at the LSC Electronic Public Reading Room on the LSC Web site at: *http://www.lsc.gov/FOIA/foia_epr.htm.* Comments should be submitted as set forth above.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. 05–22803 Filed 11–16–05; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

3. *Current OMB approval number:* 3150–0024.

4. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

5. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

6. *An estimate of the number of annual responses:* 1,287 (1,150 responses + 137 recordkeepers).

7. *The number of annual respondents:* 137.

8. *The number of hours needed annually to complete the requirement or request:* 758 (288 hours for reporting [.25 hours per response] and 470 hours for recordkeeping [3.4 hours per recordkeeper]).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not Applicable.

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 17, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0024), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of November, 2005.

Brenda Jo. Shelton,

NRC Clearance Officer.

[FR Doc. E5–6367 Filed 11–16–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36058]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Lifenet's Facility in Virginia Beach, VA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5366, fax (610) 337–5269; or by e-mail: *drl1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I.Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to LifeNet for Materials License No. 45–25601–01, to authorize release of its facility located at 1457 Miller Store Road in Virginia Beach, Virginia, for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's facility located at 1457 Miller Store Road in Virginia Beach, Virginia, facility for unrestricted use. LifeNet was authorized by NRC from 2002 to use radioactive materials for research and development purposes at the site. On September 12, 2005, LifeNet requested that NRC release the facility for unrestricted use. LifeNet has conducted surveys of the facility and provided

information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by LifeNet. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated LifeNet's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment Related to an Amendment of U.S. Nuclear Regulatory Commission Materials License No. 45–25601–01 (ML053130104); and letter dated September 12, 2005, requesting release of facility and enclosing Decommissioning Survey Report for LifeNet (ML052640482). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania, this 9th day of November, 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety Region I.

[FR Doc. E5–6366 Filed 11–16–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27144; 812–13121]

The Integrity Funds and Integrity Money Management, Inc.; Notice of Application

November 10, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: The requested order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: The Integrity Funds (the ''Trust'') and Integrity Money Management, Inc. (the ''Adviser'').

FILING DATE: The application was filed on September 7, 2004 and amended on October 14, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 5, 2005, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, c/o Robert E. Walstad, Integrity Mutual Funds, 1 Main Street North, Minot, ND 58703.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551–6868, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust currently offers eight series (each a ''Fund,'' and collectively, the ''Funds''), each of which has its own investment objectives, policies and restrictions.[1]

2. The Adviser, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to each Fund pursuant to an investment advisory agreement with the

[1] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company and its series that: (a) Are advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) are managed in a manner consistent with the applicant; and (c) comply with the terms and conditions in the application (included in the term ''Funds''). The Trust is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

Trust (''Advisory Agreement''), that was approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the shareholders of each Fund. Under the terms of each Advisory Agreement, the Adviser provides each Fund with investment research, advice and supervision, and furnishes an investment program for each Fund consistent with the investment objectives, policies and limitations of the Fund. For its services, the Adviser receives a fee from each Fund based on the average daily net assets of the Fund. Under each Advisory Agreement, the Adviser may delegate investment advisory responsibilities to one or more subadvisers (''Subadvisers'') who have discretionary authority to invest all or a portion of the Fund's assets pursuant to a separate subadvisory agreement (''Subadvisory Agreement''). Each Subadviser is or will be an investment adviser registered under the Advisers Act. For its services to a Fund, the Adviser pays a Subadviser a monthly fee at an annual rate based on the average daily net assets of the Fund or a percentage of the net advisory fee paid to the Adviser by the Fund. The fees of the Subadvisers, at rates negotiated between the Subadvisers and the Adviser, are paid by the Adviser (and not by the applicable Fund) out of the fees paid by the applicable Fund to the Adviser.

3. Applicants request relief to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser, subject to the oversight by the Board, to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser and the Board from acting promptly when a change in Subadvisers would benefit a Fund. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f–2 under the Act.

4. Applicants note that the Commission recently adopted certain fund governance standards on June 23, 2004.[2] Applicants agree that each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7) under the Act by the compliance date. Applicants also note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[3]

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the followingconditions:

1. Before a Fund may rely on the order requested, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. The Board will satisfy the fund governance standards as set forth inrule 0–1(a)(7) under the Act by the compliance date for the rule. Prior to the compliance date, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be contained in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (i) set the Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or a part of the Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate

[2] See Investment Company Act Release No. 26520 (July 27, 2004).

[3] Investment Company Act Release No. 26230 (Oct. 23, 2003).

the performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objectives, policies, and restrictions.

8. No trustee or officer of the Trust, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6354 Filed 11–16–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28060]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 9, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 2, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 2, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Gulf States, Inc. (70–10158)

Entergy Gulf States, Inc. (''EGSI''), 350 Pine Street, Beaumont, Texas, 77701, a wholly-owned public utility subsidiary of Entergy Corporation (''Entergy''), a registered holding company under the Act, has filed a post-effective amendment to its original application/declaration (''Amended Application'') under sections 6(a) and 7 of the Act and rules 53 and 54 under the Act.

I. Current Order

By order dated December 29, 2003 (Holding Company Act Release No. 27786) (''Current Order'') EGSI was authorized, among other things, to engage in a program of external financing and related transactions. Specifically, EGSI is authorized to issue and sell, or arrange for the issuance and sale of, securities of the types set forth below having an aggregate value (calculated by principal amount in the case of debt and par value or initial offering price in the case of securities other than debt) (A) not to exceed $2 billion ($1.06 billion of which has been issued): (1) First mortgage bonds, including first mortgage bonds of the medium term note series; (2) unsecured long-term debt; and/or (3) preferred stock, preference stock and/or, directly or indirectly through one or more special purpose subsidiaries, other forms of preferred or equity-linked securities; and/or (B) not to exceed $500 million (all of which remains unissued) tax-exempt bonds, including the possible issuance and pledge of up to $560 million (all of which remains unissued) first mortgage bonds, including first mortgage bonds of the medium term note series, as collateral security for such tax exempt bonds (the aggregate principal amount of which collateral securities was not included in the $2 billion referenced above).

II. Requested Authority

The recent hurricanes, Katrina and Rita, caused extensive damage to EGSI's transmission and distribution systems and power plants. At its peak, Hurricane Rita left 66% of ESGI's customers without service. Hurricane Rita took out of service 82% of EGSI's Texas transmission lines and 38% of the transmission lines in southwest Louisiana, 54% of EGSI's Texas substations and 39% of EGSI's Louisiana substations, and 12 of its 14 fossil units that operate in the area affected by the hurricane. In addition, many thousands of utility poles and wire spans and transformers were damaged by Hurricane Rita.

The economic impact of these hurricanes on EGSI has been two-fold. EGSI has incurred significant cost of repairs to its transmission and distribution systems, as well as its generation facilities and it is still experiencing a shortfall in its cash receipts compared to normal levels. At the same time, EGSI continues to have significant cash requirements, primarily due to payment obligations under fuel and power purchase contracts and storm restoration costs as it endeavors to restore service throughout its territory and to maintain the safety and security of its operations. EGSI estimates that as of October 4, 2005, the total restoration costs for the repair or replacement of its electric facilities damaged by Hurricane Rita are in the range of $365 million to $500 million. With respect to Hurricane Katrina, as of October 19, 2005, EGSI estimates the total restoration costs to be in the range of $29 million to $42 million.

EGSI requests approval to enter into arrangements for, and to make borrowings with maturities between one and five years under, secured credit facilities from one or more banks through February 8, 2006 (''Secured Bank Debt'').[1] As indicated above, the Current Order does not authorize EGSI to make secured bank borrowings.

III. Description of Proposed Financing Program

The proposed Secured Bank Debt (when combined with the currently authorized first mortgage bonds, including first mortgage bonds of the medium term note series, unsecured long-term debt, and preferred stock, preference stock and/or equity interests) will not exceed the $940 million that remains authorized but unissued under the Current Order's original authorization of $2 billion (in each case, exclusive of authorization with respect to the issuance of tax-exempt bonds and related collateral securities). EGSI proposes to establish bank lines, as necessary, providing for the issuance of Secured Bank Debt.

In connection with the incurrence of Secured Bank Debt, EGSI requests

[1] The Energy Policy Act of 2005 repealed the Public Utility Holding Company Act of 1935, effective February 8, 2006.

authority to issue and pledge up to an aggregate principal amount of $963.5 million of first mortgage bonds as collateral securities (''Bank Collateral Securities''),[2] which $963.5 million is not included in the $940 million referenced above or in the Current Order's authorized amount of $560 million of collateral securities related to tax-exempt bonds. Loans under these lines (which terminate no later than five years from the establishment of the facility) will have maturities of at least one year from the date of each borrowing.

The effective cost of capital on Secured Bank Debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided in no event will the effective cost of money exceed 500 basis points over the London Interbank Offered Rate for the relevant interest rate period.

EGSI (70–10158) proposes to issue Bank Collateral Securities pursuant to its Indenture of Mortgage, dated as of September 1, 1926, to JPMorgan Chase Bank, N.A. as successor Trustee, as amended and supplemented (''Mortgage). The Bank Collateral Securities would be issued on the basis of unfunded net property additions and/or previously retired bonds, as permitted and authorized by the Mortgage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6359 Filed 11–16–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52757; File No. SR–NASD–2005–125]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut Facility

November 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility (''Brut''). Nasdaq states that it implemented the proposed rule change on November 1, 2005.

The text of the proposed rule change is below. Proposed new language is in *italics.* Proposed deletions are in [brackets].

* * * * *

7010. System Services

(a)–(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1) The following charges shall apply to the use of the order execution services of the Nasdaq Market Center and Nasdaq's Brut Facility by members for Nasdaq-listed securities subject to the Nasdaq UTP Plan and for Exchange-Traded Funds listed on a *national securities exchange*[the American Stock Exchange; provided, however; that Directed Orders are not available for such Exchange-Traded Funds]. The term ''Exchange-Traded Funds'' shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420(i), (j), and (l), respectively.

ORDER ENTRY

Non-Directed Orders and Preferenced Orders	No charge.

ORDER EXECUTON

Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center and/or Nasdaq's Brut Facility:	
Charge to member entering order:	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
Greater than 10 million	$0.0027 per share executed (but no more than $108 per trade for trades in securities executed at $1.00 or less per share).
Greater than 2,000,000 but less than or equal to 10,000,000	$0.0028 per share executed (but no more than $112 per trade for trades in securities executed at $1.00 or less per share).
2,000,000 or less	$0.0030 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity:	

[2] This amount of first mortgage bonds is calculated to reflect the maximum aggregate principal amount of Secured Bank Debt issuable of $940 million, plus 3 month's interest at an assumed rate of 10%.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

ORDER EXECUTON—Continued

Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
Greater than 20 million	$0.0025 per share executed (but no more than $100 per trade for trades in securities executed at $1.00 or less per share).
Greater than 2,000,000 but less than or equal to 20,000,000	$0.0022 per share executed (but no more than $88 per trade for trades in securities executed at $1.00 or less per share).
Less than or equal to 2,000,000	$0.0020 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center:	
Charge to member entering order:	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
500,000 or less	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).
500,001 or more	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share, and no more than $10,000 per month).
Routed Orders	
Any order entered by a member that is routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility and that does not attempt to execute in Nasdaq's Brut Facility prior to routing.	$0.004 per share executed.
Any other order entered by a member that is routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility.	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month and average daily shares accessed through and/or routed from the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month (excluding orders routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility that do not attempt to execute in Nasdaq's Brut Facility prior to routing):	
Greater than 20 million shares of liquidity provided and greater than 40 million shares accessed and/or routed.	$0.0025 per share executed.
Greater than 10 million but less than or equal to 20 million shares of liquidity provided and any amount accessed or routed, OR greater than 20 million shares of liquidity provided and 40 million or fewer shares accessed and/or routed.	$0.0027 per share executed.
Greater than 2,000,000 but less than or equal to 10,000,000 shares of liquidity provided and any amount accessed and/or routed.	$0.0028 per share executed.
Less than or equal to 2,000,000 shares of liquidity provided and any amount accessed and/or routed.	$0.0030 per share executed.

ORDER CANCELLATION

Non-Directed and Preferenced Orders	No charge.

(2)–(4) No change.

(5) There shall be no charges or credits for order entry, execution, routing, or cancellation by members accessing the Nasdaq Market Center or Nasdaq's Brut Facility to buy or sell exchange-listed securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans, other than: (A) the charges in Rule 7010(i)(1) for Exchange-Traded Funds[listed on the American Stock Exchange], (B) charges described in Rule 7010(d), (C) a fee of $0.0004 per share executed for orders delivered by Nasdaq's Brut Facility to an exchange using the exchange's proprietary order delivery system if such orders do not attempt to execute in Nasdaq's Brut Facility or the Nasdaq Market Center prior to routing to the exchange, and (D) a fee of $0.009 per share executed for any limit order delivered by Nasdaq's Brut Facility to the New York Stock Exchange (''NYSE'') using the NYSE's proprietary order delivery system if such an order is not an on-close order, is not executed in the opening, and remains at the NYSE for more than 5 minutes.

(6) No change.

(j)–(v) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to modify the fee schedule applicable to execution and routing of orders in exchange-traded funds (''ETFs'') listed on exchanges other than the American Stock Exchange (''Amex''). The change proposed by this filing applies to NASD members that use the Nasdaq Market Center and Brut; in SR–NASD–2005–126, Nasdaq is proposing to make the same change applicable to non-members that use Brut. Nasdaq states that currently, execution and routing of Nasdaq-listed stocks and Amex-listed ETFs is subject to the fee schedule in NASD Rule 7010(i)(1), whereas execution and routing of other exchange-listed securities, including other exchange-listed ETFs, is generally not subject to per order routing and execution charges. Because an increasing number of ETFs are being listed on exchanges other than the Amex, however, Nasdaq states that it has concluded that it is necessary to apply the same fee schedule to all ETFs, to ensure that its fees are commensurate with the volumes of shares being routed and executed through its systems.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq states that the proposed change reflects the increased extent to which ETFs are being listed on exchanges other than the Amex and would result in the application of the same fee schedule to all ETFs, regardless of where they are listed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Nasdaq states that written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.[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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–125. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–125 and should be submitted on or before December 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6355 Filed 11–16–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52758; File No. SR-NASD-2005-126]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Modify the Pricing for Non-Members Using Nasdaq's Brut Facility

November 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 26, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at

[5] The proposed rule change would also delete obsolete language regarding Directed Orders found in NASD Rule 7010(i)(1), to reflect the recent termination of Nasdaq's Directed Order functionality.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the same time is granting accelerated approval of the proposed rule change.

I.Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for non-members using Nasdaq's Brut Facility (''Brut''). Nasdaq requests approval to implement the proposed rule change retroactively as of November 1, 2005. The text of the proposed rule change is below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

* * * * *

7010. System Services

(a)–(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1)–(5) No change.

(6) The fees applicable to non-members using Nasdaq's Brut Facility shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035, SR–NASD–2005–048, [and]SR–NASD–2005–071, and *SR–NASD–2005–125,* and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, SR–NASD–2005–049, [and]SR–NASD–2005–072, *and SR–NASD–2005–126.*

(j)–(v) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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

In SR–NASD–2005–125, which applies to NASD members, Nasdaq has modified the fee schedule applicable to execution and routing of orders in exchange-traded funds (''ETFs'') listed on exchanges other than the American Stock Exchange (''Amex''). In this filing, Nasdaq is proposing to apply the same modification to non-NASD members that use Nasdaq's Brut Facility.

Nasdaq states that, prior to NASD–2005–125, execution and routing of Nasdaq-listed stocks and Amex-listed ETFs has been subject to the fee schedule in NASD Rule 7010(i)(1), whereas execution and routing of other exchange-listed securities, including other exchange-listed ETFs, had generally not been subject to per order routing and execution charges. Because an increasing number of ETFs are being listed on exchanges other than the Amex, however, Nasdaq states that it has concluded that it is necessary to apply the same fee schedule to all ETFs, to ensure that its fees are commensurate with the volumes of shares being routed and executed through its systems.

2.Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[3] in general, and with Section 15A(b)(5) of the Act,[4] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change applies to non-members that use Nasdaq's Brut Facility a fee change that is being implemented for NASD members that use the Nasdaq Market Center and/or Nasdaq's Brut Facility. Accordingly, Nasdaq believes that the proposed rule change promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities. Nasdaq states that the proposed change reflects the increased extent to which ETFs are being listed on exchanges other than the Amex and would result in the application of the same fee schedule to all ETFs, regardless of where they are listed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Nasdaq states that written comments were neither solicited nor received.

[3] 15 U.S.C. 78*o*–3.

[4] 15 U.S.C. 78*o*–3(b)(5).

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–NASD–2005–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–126. 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 Nasdaq's Office of the Secretary. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–126 and should be submitted on or before December 8, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 self-regulatory

organization.[5] Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[6] which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq's Brut Facility to be implemented as of November 1, 2005. This proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective October 26, 2005, pursuant to SR–NASD–2005–125 and that Nasdaq stated it would implement on November 1, 2005.

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of the notice thereof in the **Federal Register.** The Commission notes that the proposed fees for non-NASD members are identical to those in SR–NASD–2005–125, which implemented those fees for NASD members and which became effective as of October 26, 2005. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[7] to approve the proposed change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2005–126), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6356 Filed 11–16–05; 8:45 am]

BILLING CODE 8010–01–P

[5] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5230]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: FY 2006 Eurasia/South Asia Teaching Excellence and Achievement Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/X–06–02.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline, January 12, 2006.

Executive Summary: The Fulbright Teacher Exchange Branch in the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State, announces an open competition for an assistance award in the amount of $2,750,000 to support the FY 2006 Eurasia/South Asia Teaching Excellence and Achievement Program, a series of concurrent six- to seven-week professional enrichment programs in the U.S. for outstanding secondary-level teachers from selected countries in Eurasia and South Asia, followed by subsequent programs involving U.S. teachers with the Eurasian and South Asian teachers in their countries.

Applicant organizations should be prepared to conduct recruitment and accommodate participants from the following countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Afghanistan, Bangladesh, India, Pakistan, and Sri Lanka. During the course of this two-year program, approximately 136 teachers of English as a Foreign Language (EFL) and the social sciences in groups of 20 to 25 teachers in each cohort will take part in U.S.-based professional development institutes to learn new teaching methodologies and approaches to curriculum development through workshops, seminars and, where possible, team-teaching in secondary-level classes with U.S. mentor teachers.

Approximately 36 outstanding U.S. teachers will subsequently travel to Eurasia and South Asia to take part in shorter programs with their Eurasian/South Asian counterparts.

To build on the achievements of the exchange visits, small grants will be awarded to individual foreign and U.S. teacher alumni in support of follow-on projects.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: Overview: The Eurasia/South Asia Teaching Excellence and Achievement Program will expand the impact of the former Teaching Excellence Awards Program by bringing outstanding secondary school teachers from Eurasia and South Asia to the United States to augment their subject area teaching skills and knowledge of the U.S. The goals of the program are: (1) To contribute to the improvement and status of teaching in the participating countries; (2) to create resident experts on the U.S. in schools across the regions; (3) to develop long-lasting partnerships and mutual understanding between American and international teachers and their students; and (4) to provide opportunities for under-served foreign populations, especially women, to develop their leadership skills.

Proposals should outline three distinct program components:

A. A total of six six- to seven-week U.S.-based institutes (each comprising a group of 20 to 25 teachers from Eurasia and South Asia), three of which should occur concurrently in summer or fall of 2006, and three of which should occur concurrently in summer or fall of 2007;

B. Visits of four cohorts of U.S. teachers (two cohorts to each region) during the 2006–07 and 2007–08 academic years to reciprocate the visits of the Eurasian and South Asian teachers to the U.S.; and

C. Follow-on grants.

Applicant organizations should propose a calendar that will include a coherent sequence of program components for each of the two program years. Although the number of participants may be greater in the second year than the first, each year's

program should include both participating regions.

A. Professional Development Institutes

The institutes should be based at competitively selected Schools of Education at U.S. universities. The assignment of teachers to U.S. host campuses will be made based on the similarity of candidates' qualifications and their English proficiency. The grantee organization should administer an open sub-grant competition among U.S. schools of education to host a cohort of international teachers. Institutions that perform well in the first year may host a cohort of teachers in the second year as well.

In the first year of program activity, the grantee organization should arrange a three-day orientation program in Washington, DC, for all three cohorts of international teachers. Then, the international participants will travel to the U.S. host universities for the six-to seven-week institute. The program will conclude with a three-day end-of-program conference and debriefing session at one of the host universities for all of the international and U.S. participant teachers in the first year's cohort. This schedule should repeat in the second year of activity. In each year of program activity, the institutes should provide:

(1) English language instruction, if necessary;

(2) Intensive training in the Teaching of English as a Foreign Language (or in the teaching of one of the social sciences, depending on the specializations of the participants) and teaching methodologies;

(3) Training in the use of computers for Internet and word processing and as tools for teaching EFL or other coursework;

(4) Consultations with leading U.S. teacher training and curriculum development specialists and practitioners and, to the extent possible, school visits and collaborations with U.S. teachers on teaching and observing a variety of teaching methods (inquiry, active classroom, group projects, etc.);

(5) Individual and group work periods for research and curriculum writing activities;

(6) Involvement with Americans at civic and volunteer organizations, at school board meetings, parent-teacher conferences or other community and cultural activities, and through short home stays.

Participants in the institutes should be younger teaching professionals with five or more years of experience and strong written and oral English skills. Teachers will be selected primarily from the discipline of English as a Foreign Language, with teachers of social sciences (including social studies, civics, and history) also eligible.

Both for Eurasia and South Asia, applicant organizations should propose creative, cost-efficient recruitment and selection strategies involving a combination of partner organizations, branch offices, or other cooperating agencies to attract qualified teachers to the program. The recruitment strategy should attract a sufficient number of applicants to ensure a pool of highly qualified candidates, while limiting the number that will not be accepted. We anticipate 200 nominations from international partner organizations for each year of the program cycle. Applicant organizations are invited to suggest, based on their experience and knowledge, appropriate grant-to-applicant ratios that should be targeted in the recruitment effort. Applicants should identify field offices or other local partner organizations and individuals with whom they propose to collaborate, and should describe in detail previous projects undertaken by the organization(s) or individual(s). Please include letters of project commitment from all partners. A sub-grant agreement and an accompanying budget are required if an applicant partners with another organization. Please include this documentation with your proposal submission.

In Eurasia and South Asia the grantee organization, together with all local partners, should collaborate with the Regional English Language Officers (RELO) for Eurasia and South Asia, who are based at the U.S. Embassies in Kiev, Tashkent, and New Delhi. The RELOs will be encouraged to participate in reviewing applications, interviewing and nominating candidates, and the approval and monitoring of follow-up activities.

In all cases, the top candidates' applications will be submitted to the grantee organization, which should organize external peer review panels to help determine the final selection of candidates in collaboration with ECA. ECA's role is to ensure that these programs help support U.S. foreign policy goals.

B. Reciprocal Visits

The program will provide two-week reciprocal visits to Eurasia and South Asia for a total of 36 U.S. teachers during the course of the program. The visits should feature the sharing of best practices, team-teaching with counterparts abroad, teacher-training, seminars on regional educational topics, and opportunities to learn from regional master teachers about teaching styles, curriculum, and educational issues in the host country. The grantee organization should invite applications from outstanding and, preferably, award-winning U.S. teachers and, in consultation with the Fulbright Teacher Exchange Branch (ECA/A/S/X), should select approximately thirty-six for participation over the course of two program cycles. These U.S. teachers will join their Eurasian and South Asian counterparts for the U.S.-based conference and debriefing session in the summer or fall preceding their reciprocal visits to Eurasia or South Asia in fall 2006/winter 2007 or fall 2007/winter 2008. The grantee organization should work with ECA/A/S/X and international counterparts to identify and arrange host placements in Eurasia and South Asia for the U.S. teachers.

C. Follow-On Programming

The third component, which will take place after the international participants return home, is follow-on programming. International teachers will be eligible to apply for small grants after the program ends, to purchase essential materials for their schools, to offer follow-on training for other teachers, and to conduct other activities that will build on the exchange visits. The development and approval of follow-on grants must be coordinated by the grantee organization with the relevant non-governmental organizations, Fulbright Commissions, U.S. Embassies in Eurasia and South Asia (including RELOs, where appropriate), and the Fulbright Teacher Exchange Branch. The possible range of follow-on programs across Eurasia and South Asia includes organizing teacher training workshops (in such areas as EFL or tolerance education), donating books and school supplies, and opening a teacher resource center. Applicant organizations' proposals should allot a total of $40,000 ($20,000 after each program cycle) to fund approximately 10 or 12 small grants.

The Bureau will work with the recipient of this cooperative agreement award on administrative and program issues and questions as they arise over the duration of the award.

Program Planning and Implementation

Applicant organizations are requested to submit a narrative outlining a comprehensive strategy for the administration and implementation of the Eurasia/South Asia Teaching Excellence and Achievement Program. The narrative should include a proposed design for the institutes and the reciprocal visits by U.S. teachers, a

strategy for selecting university hosts and for cooperating with them through subgrants, a plan for recruiting, selecting, and placing applicants from Eurasia and South Asia for the U.S. institutes, a plan for monitoring the teachers' academic and professional programs, a plan to identify U.S. teachers and the Eurasian/South Asian teachers who will host them, a plan to assess and improve the program based on experience with the first program cycle, and a proposal for alumni programming follow-on support. Employees of the grantee organization will be named Alternate Responsible Officers and will be responsible for issuing DS–2019 forms to participants on behalf of the Teacher Exchange Branch (ECA/A/S/X) and performing all actions to comply with the Student and Exchange Visitor Information System (SEVIS).

The comprehensive program strategy should reflect a vision for the Program as a whole, interpreting the goals of the Teaching Excellence and Achievement Program with creativity and providing innovative ideas for the Program. The strategy should include a description of how the various components of the Program will be integrated to build upon and reinforce one another. Pending availability of funds, this grant should begin on March 1, 2006, and will run through June 30, 2008.

In a cooperative agreement, ECA's Fulbright Teacher Exchange Branch (ECA/A/S/X) will be substantially involved in program activities above and beyond routine grant monitoring. ECA/A/S/X activities and responsibilities for this program are as follows:

- Formulation of program policy;
- Clearing texts and program guidelines for publication;
- Establishing which countries are eligible and the number of participants from each country;
- Approval of recruitment mechanisms;
- Review and approval of university-based programs and enhancement activities for the teachers such as the Washington, DC, orientation and the end-of-program conference/debriefing;
- Oversight of selection of U.S. and international teacher participants and alumni awards.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2006.

Approximate Total Funding: $2,750,000.

Approximate Number of Awards: 1.

Approximate Average Award: Pending availability of funds, $2,750,000. This would include $1,500,000 in FY 2005 ECA resources and $1,250,000 in FY 2006 ECA resources, pending a FY 2006 appropriation.

Anticipated Award Date: Pending availability of funds, March 1, 2006.

Anticipated Project Completion Date: June 30, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, applicants must maintain written records to support all costs, which are claimed as their contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates issuing one award in an amount up to $2,750,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact Patricia Mosley of the Fulbright Teacher Exchange Branch, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202)453–8897, fax (202)453–8890, e-mail: *MosleyPJ@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–06–02 when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that

your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

An employee of the Bureau will be named the Responsible Officer for the program; employees of the grantee organization will be named Alternate Responsible Officers and will be responsible for issuing DS–2019 forms to participants and performing all actions to comply with the Student and Exchange Visitor Information System (SEVIS).

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3.d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3.d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants and partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, how and when you intend to measure these outcomes (performance indicators), and how these outcomes relate to the above goals. The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions of teachers to apply knowledge in home schools and community; interpretation and explanation of experiences and new knowledge gained to school administrators and other colleagues; continued contacts between participants and others.

4. Institutional changes influencing policy improvement, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when

particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

ECA/A/S/X and the Bureau's Office of Policy and Evaluation will work with the recipient of this cooperative agreement to develop appropriate evaluation goals and performance indicators.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3.d.4. Describe your plans for staffing: Please provide a staffing plan which outlines the responsibilities of each staff person and explains which staff member will be accountable for each program responsibility. Wherever possible please streamline administrative processes.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3.e.1. Applicants must submit a comprehensive budget for the program. The budget should not exceed $2,750,000 for program and administrative costs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets for host campus and foreign teacher involvement in the program. Applicants should provide separate sub-budgets for the summer institutes, reciprocal visits by U.S. teachers, and the follow-on grant component.

The summary and detailed administrative and program budgets should be accompanied by a narrative which provides a brief rationale for each line item including a methodology for estimating appropriate average maintenance allowance levels and tuition costs for the participants, the number that can be accommodated at the levels proposed. The total administrative costs funded by the Bureau must be reasonable and appropriate.

IV.3.e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times. *Application Deadline Date:* Thursday, January 12, 2006.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–06–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal narrative should exhibit originality, substance, precision, and relevance to the Bureau's mission as well as the objectives of the Eurasia/South Asia Teaching Excellence and Achievement Program. It should include an effective program plan and demonstrate how the distribution of administrative resources will ensure adequate attention to program administration, including host institution selection.

2. *Multiplier effect/impact:* The proposed administrative strategy should maximize the program's potential to build on the participants' training upon their return to their countries.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content, resource materials and follow-up activities).

4. *Institutional Capacity and Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Follow-on and Alumni Activities:* Proposals should provide a plan for continued follow-on activity (both with

and without Bureau support) ensuring that the Teaching Excellence and Achievement Program training is not an isolated event. Activities should include tracking and maintaining updated lists of all alumni and facilitating follow-up activities for alumni.

6. *Project Evaluation:* Proposals should include a plan and methodology to evaluate the Teaching Excellence and Achievement Program's degree of success in meeting program objectives, both as the activities unfold, at the end of the first program iteration, and at their conclusion. Draft survey questionnaires or other techniques plus description of methodologies to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded, or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants.; http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

Quarterly financial reports; Annual program reports for the first and second year of the agreement; and final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Michael Kuban, Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8878, fax: 202–453–8890, *KubanMM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the title and number ECA/A/S/X–06–02. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 9, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–22804 Filed 11–16–05; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2006 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. section 3241). Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2006 apply to compensation paid in calendar year 2006.

FOR FURTHER INFORMATION CONTACT: Ligeia M. Donis, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–0047 (not a toll-free number).

TIER 2 TAX RATES: The tier 2 tax rate for 2006 under section 3201(b) on employees is 4.4 percent of compensation. The tier 2 tax rate for 2006 under section 3221(b) on employers is 12.6 percent of compensation. The tier 2 tax rate for 2006 under section 3211(b) on employee representatives is 12.6 percent of compensation.

Dated: November 4, 2005.

Nancy Marks,

Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

[FR Doc. E5–6352 Filed 11–16–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. 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 Monday, December 12, 2005, at 2 p.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

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 5 Taxpayer Advocacy Panel will be held Monday, December 12, 2005, at 2 p.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 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) 297–1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: November 10, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–6353 Filed 11–16–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held on December 6–8, 2005 in the Monticello Room at the Crowne Plaza Hotel, 1480 Crystal Drive, Arlington, Virginia. The sessions will begin at 9 a.m. each day. The sessions will end at 2 p.m. on December 6, 5 p.m. on December 7 and 1 p.m. on December 8. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On December 6, the Committee will hold discussions with key staff members of the Veterans Health Administration and the VA Office of Human Resources and Administration regarding healthcare challenges and successes, as well as hiring practices for minority veterans. Additionally, the Committee will meet with staff of the National Guard Bureau regarding transition concerns for returning combat wounded Operation Enduring Freedom/Operation Iraqi Freedom Service members.

On December 7, the Committee will meet with staff members of the Veterans Benefits Administration regarding benefit services and delivery of benefits to minority veterans. The Committee will also discuss burial benefits delivery for minority veterans with staff members of the National Cemetery Administration.

On December 8, the Committee will engage in discussions with the Executive Director of the Veterans Disability Benefits Commission and the Director of the VA Office of Small and Disadvantaged Business Utilization.

The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

For additional information about the meeting, please contact Ms. Elizabeth Olmo at (202) 273–6708.

Dated: November 8, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–22761 Filed 11–16–05; 8:45 am]

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Federal Register

Thursday,
November 17, 2005

Part II

Department of Agriculture

7 CFR Part 1

Department of the Interior

43 CFR Part 45

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 221

Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 45

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 221

[Docket No. 051103290–5290–01; I.D. 101105D]

RINs 0596–AC42; 1094–AA51; 0648–AU01

Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses

AGENCIES: Office of the Secretary, Agriculture; Office of the Secretary, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Interim final rules with request for comments.

SUMMARY: As required by the Energy Policy Act of 2005 (EPAct), the Departments of Agriculture, the Interior, and Commerce are jointly establishing procedures for a new category of expedited trial-type hearings. The hearings will resolve disputed issues of material fact with respect to conditions or prescriptions that one or more of the Departments develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act. The three Departments are also establishing procedures for the consideration of alternative conditions and prescriptions submitted by any party to a license proceeding, as provided in EPAct.

Three substantively identical rules are being promulgated—one for each agency—with a common preamble. The rules are effective immediately, so that interested parties may avail themselves of the new hearing right and alternatives process created by the EPAct, but the Departments are requesting comments on ways the rules can be improved.

DATES: These rules are effective on November 17, 2005.

Comments: You should submit your comments by January 17, 2006.

ADDRESSES: You may submit comments, identified by any of the Regulation Identifier Numbers (RINs) shown above (0596–AC42, 1094–AA51, or 0648–AU01), by one of the methods listed below. Comments submitted to any one of the three Departments will be shared with the others, so it is not necessary to submit comments to all three Departments.

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

2. E-mail to any one of the following:

a. Department of Agriculture: *gsmith08@fs.fed.us;* include ''RIN 0596–AC42'' in the subject line of the message;

b. Department of the Interior: *DOIHydro_Comments@ios.doi.gov;* include ''RIN 1094–AA51'' in the subject line of the message; or

c. Department of Commerce: *NMFS.Hydro@noaa.gov;* include ''RIN 0648–AU01'' in the subject line of the message.

3. Facsimile to any of the following:

a. Department of Agriculture: 202–205–1604;

b. Department of the Interior: 202–208–4867; or

c. Department of Commerce: 301–713–4305.

4. Mail or hand delivery to any of the following:

a. Deputy Chief, National Forest Systems, c/o WO Lands Staff, Department of Agriculture, Mail stop 1124, 1400 Independence Avenue SW., Washington, DC 20250–1124;

b. Office of Policy Analysis, Office of the Secretary, Mail Stop 4426–MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240; or

c. Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Greg Smith, Director of Lands, Forest Service, U.S. Department of Agriculture, 202–205–1769; or Larry Finfer, Office of Policy Analysis, Department of the Interior, 202–208–5978; or Melanie Harris, Office of Habitat Conservation, National Marine Fisheries Service, 301–713–4300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comments

If you wish to comment on these interim final rules, you may submit your comments by any of the methods listed in the **ADDRESSES** section above. We will consider all comments received by the deadline stated in the **DATES** section above. Based on the comments received and the initial results of implementation, we will consider promulgation of revised final rule within 18 months of the effective date of this rule.

Please make your comments as specific as possible and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the rules that you are addressing.

We will make comments available for public review during regular business hours. To review the comments, you may contact any of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section above. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law.

In some circumstances we may withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

A. *Energy Policy Act of 2005 (EPAct).* The rules that Agriculture, Interior, and Commerce are publishing today implement section 241 of EPAct, Public Law 109–58, which the President signed into law on August 8, 2005. EPAct, which passed by wide margins in both Houses, was the product of years of Congressional hearings, amendments, and debates. The issues underlying section 241 were extensively considered by the 109th Congress and several previous Congresses.

Section 241 amends sections 4(e) and 18 of the Federal Power Act (FPA), 16 U.S.C. 797(e), 811, to provide that any party to a license proceeding is entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, of any disputed issues of material fact with respect to any agency's mandatory conditions or prescriptions. Section 241 further mandates that, within 90 days of the date of enactment of EPAct, the three Departments establish jointly, by rule and in consultation with FERC,

procedures for the expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses.

Section 241 of EPAct also adds a new section 33 to the FPA that allows the license applicant or any other party to the license proceeding to propose an alternative condition or prescription. The Secretary of the agency involved must accept the proposed alternative if the Secretary determines, based on substantial evidence provided by a party to the license proceeding or otherwise available to the Secretary, (a) that the alternative condition provides for the adequate protection and utilization of the reservation, or that the alternative prescription will be no less protective than the fishway initially proposed by the Secretary, and (b) that the alternative will either cost significantly less to implement or result in improved operation of the project works for electricity production.

New FPA section 33 further provides that, following the consideration of alternatives, the Secretary must file with FERC a statement explaining his or her reasons for accepting or rejecting any alternatives and the basis for any modified conditions or prescriptions to be included in the license. If FERC finds that the modified conditions or prescriptions would be inconsistent with the purposes of the FPA or other applicable law, it may refer the matter to its Dispute Resolution Service (DRS). The DRS is to consult with the Secretary and FERC and issue a non-binding advisory within 90 days, following which the Secretary is to make a final written determination on the conditions or prescriptions.

This preamble explains how the Departments will comply with EPAct's requirements for trial-type hearings and for the receipt and analysis of alternative conditions and prescriptions. As explained further below, these new rights are being made available immediately to any license applicant or other party to a license proceeding for which the license has not already been issued as of the effective date of these rules.

B. *FERC's licensing process for hydroelectric power projects.* On August 25, 2003, FERC published a final rule amending its regulations at 18 CFR part 5 for licensing hydroelectric power projects to establish a new licensing process known as the integrated licensing process (ILP). 68 FR 51070. The amendments were the culmination of efforts by FERC, other Federal and State agencies, Indian Tribes, licensees, and members of the public to develop a more efficient and timely licensing process, while ensuring that licenses provide appropriate resource protections required by the FPA and other applicable laws. 68 FR 51070. Two other processes, the traditional licensing process (TLP) and the alternative licensing process (ALP), are also available; but the ILP is the default process and FERC's permission must be obtained to use the TLP or ALP. *Id.*

The FPA's resource protection provisions include sections 4(e), 10(a)(1), 10(j), and 18, 16 U.S.C. 797(e), 803(a)(1), 803(j), and 811. Section 10(a)(1) provides that hydropower licenses must be best adapted to a comprehensive plan for improving or developing the affected waterways for all beneficial public uses, and must include provisions for the protection of fish and wildlife and other beneficial public uses. Section 10(j) provides that Interior and Commerce may make recommendations to FERC on conditions for the protection, mitigation, and enhancement of fish and wildlife affected by the project. FERC must include those conditions in the license unless it finds that they would be inconsistent with the purposes and requirements of the FPA or other applicable law, and that conditions selected by FERC will adequately protect, mitigate damages to, and enhance fish and wildlife.

Under FPA section 4(e), licenses for projects located within Federal reservations must include conditions mandated by the Department that manages the reservation, which in most cases is Agriculture or Interior. Section 4(e) also requires FERC to give environmental values, including fish and wildlife and recreation, equal consideration with hydropower development. Under section 18, licenses must also include fishways if they are prescribed by Interior or Commerce. As provided in section 1701(b) of the Energy Policy Act of 1992, Public Law 102–486, ''the items which may constitute a 'fishway' under section 18 for the safe and timely upstream and downstream passage of fish shall be limited to physical structures, facilities, or devices necessary to maintain all life stages of such fish, and project operations and measures related to such structures, facilities, or devices which are necessary to ensure the effectiveness of such structures, facilities, or devices for such fish.''

The ILP is a multi-year process—involving more than 20 sequential steps, most with associated deadlines—that constitutes a logical progression of information development, exchange, and analysis involving FERC, other Federal and State agencies, Indian Tribes, the license applicant, and members of the public. The ILP brings together activities that previously were conducted over a much longer time frame, including consultation, studies, dispute resolution, scoping and document preparation under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), and water quality certification.

There are two main phases to the process: (1) A pre-application phase involving activities before the filing with FERC of a license application, and (2) a post-application phase. The process begins with the applicant's filing with FERC a notice of intent (NOI) to file an application for an original, new, or subsequent license. 18 CFR 5.5. The NOI must be filed 5–5½ years before the existing license expires. 18 CFR 5.5(d). Along with the NOI, the applicant must file a pre-application document providing available information on engineering, economics, and the existing environment, including data or studies relevant to the environment and known and potential impacts of the proposed project on various resources. 18 CFR 5.6.

Other steps in the pre-application phase include FERC's issuance of a scoping document, holding of a scoping meeting, and issuance of a process plan and schedule. 18 CFR 5.8. During these steps, resource issues and the need for information and studies are identified, and the scoping of issues under NEPA is initiated. 18 CFR 5.8.

Eventually, the applicant files a proposed study plan, the plan is assessed through meetings and comments, and the applicant files a revised study plan for FERC's approval. 18 CFR 5.11–.13. After FERC's approval, the plan may be subject to a study dispute resolution process if disputes arise. 18 CFR 5.14. Approximately 1 year elapses from issuance of the NOI to final approval of a study plan.

Studies are then conducted, reviewed, and modified if necessary. 18 CFR 5.13–.15. Studies may extend for more than one season. After completion of the studies, the applicant files a preliminary licensing proposal, which is subject to comment and additional information requests. 18 CFR 5.16.

At least 2 years before the existing license expires, the application must be filed with FERC. 18 CFR 5.17(a). Within 14 days of that filing, FERC must issue public notice of the filing and a preliminary schedule for expeditious processing of the application, including dates for the following steps: Filing of preliminary conditions and prescriptions by the Departments; issuance of an environmental

assessment (EA), a draft EA, or a draft environmental impact statement (EIS); filing of comments on any draft EIS or EA; filing of mandatory conditions or prescriptions by the agencies in response to any draft EIS or EA; and issuance of any final EIS or EA. 18 CFR 5.19(a).

When FERC determines that the application meets various requirements, that the approved studies have been completed, that any deficiencies in the application have been cured, and that no other additional information is needed, it will issue a notice of acceptance and readiness for environmental analysis (REA). 18 CFR 5.22. That notice must include a request for preliminary conditions and prescriptions from the Departments. 18 CFR 5.22.

Comments, protests, recommendations, and preliminary conditions and prescriptions must be filed with FERC within 60 days after the REA. 18 CFR 5.23(a). All reply comments must be filed within 105 days of the REA. 18 CFR 5.23(a). If FERC determines that an EIS or a draft and final EA will be prepared, FERC will issue a draft EIS or EA no later than 180 days from the deadline for responses to the REA. 18 CFR 5.25(a). The draft EIS or EA must include, for comment, any preliminary conditions or prescriptions. 18 CFR 5.25(b).

Comments to the draft EIS or EA must be filed within 30 or 60 days after issuance of the draft, as specified by FERC. 18 CFR 5.25(c). Modified mandatory conditions and prescriptions must be filed within 60 days after the deadline for filing comments, and FERC will issue a final EIS or EA within 90 days after the deadline for filing the modified mandatory conditions and prescriptions. 18 CFR 5.25(d)–(e). FERC will then issue the license order including any mandatory conditions and prescriptions. 18 CFR 5.29(h).

C. *Authority for mandatory conditions and prescriptions under the Federal Power Act.* Provisions of the FPA, 16 U.S.C. 791–823c, vest in the Departments the authority to provide conditions and/or prescriptions to be included in licenses issued by FERC for hydroelectric generating facilities (see also 18 CFR parts 4, 5, and 16).

Under section 18 of the FPA, 16 U.S.C. 811, Interior, acting through the Fish and Wildlife Service (FWS), and Commerce, acting through the National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA), may prescribe fishways to provide for the safe, timely, and effective passage of fish.

Under section 4(e) of the FPA, 16 U.S.C. 797(e), Agriculture and Interior may establish conditions necessary for the adequate protection and utilization of reservations. The term ''reservations,'' as used in the FPA, includes certain lands and facilities under the jurisdiction of the U.S. Forest Service within Agriculture, and various components of Interior (namely, FWS, the National Park Service, the Bureau of Land Management, the Bureau of Reclamation, or the Bureau of Indian Affairs).

Through these statutory provisions, the FPA authorizes the Departments to set conditions or prescriptions for the protection of public and Tribal resources that may be affected when navigable waterways or Federal reservations are used for hydroelectric projects licensed by FERC.

The Departments' conditions and prescriptions must be incorporated by FERC into any hydropower license it issues under the FPA. This authority has been recognized and upheld by the Federal courts, including the Supreme Court. See *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765 (1984); *American Rivers* v. *FERC*, 201 F.3d 1186 (9th Cir. 1999); *Bangor Hydro-Electric Co.* v. *FERC*, 78 F.3d 659 (D.C. Cir. 1996). After a license has been issued, the license, including the Departments' conditions and prescriptions, is subject to rehearing before FERC and subsequent judicial review under the FPA's appeal procedures. The FPA gives the Federal appeals courts exclusive jurisdiction over such appeals. 16 U.S.C. 825l(b).

D. *Mandatory Conditions Review Process (MCRP).* On January 19, 2001, Interior and Commerce established, through an interagency policy, the MCRP. The MCRP provided license applicants and interested parties an opportunity to review and comment on the two Departments' preliminary conditions and prescriptions for specific hydropower licenses. In addition, commenters were encouraged to provide additional information regarding the Departments' conditions and prescriptions. The MCRP was crafted to work within FERC's deadlines and its process under NEPA, while affording interested parties an opportunity to comment on the record concerning the two Departments' conditions and prescriptions.

Before finalizing the MCRP, Interior and Commerce provided a public comment period on a draft MCRP. 65 FR 77889 (Dec. 13, 2000). Many commenters proposed that the Departments provide, in addition to review and comment, an opportunity for an evidentiary hearing or an administrative appeal. The Departments decided not to adopt such procedures at that time.

After 3 years of experience using the MCRP, each of the Departments issued proposed rules to codify the MCRP with clarifications. 69 FR 54602 (Sept. 9, 2004) (Interior); 69 FR 54615 (Sept. 9, 2004) (Commerce). Interior also proposed to add a new administrative appeals process to follow review and comment under the MCRP. Interior again considered but decided not to adopt an evidentiary hearing process, out of concern that there was insufficient time in the FERC licensing process to accommodate it. 69 FR 54603.

Neither Department has yet issued a final rule codifying the MCRP. Given the new procedures mandated by EPAct, which effectively subsume or supersede the MCRP, there no longer appears to be a need for such a rule or to continue implementing the MCRP.

E. *How the trial-type hearing and alternatives process will fit into the FERC licensing timeframe.* As noted in the **SUMMARY** section above, to comply with EPAct's mandate, the Departments are promulgating three substantively identical rules, one for each Department, with this common preamble. Like the now superseded MCRP, the new hearing process established by these rules has been carefully crafted to work within FERC's time frame and NEPA process, while affording interested parties an opportunity to present evidence on disputed issues of material fact with respect to the Departments' conditions and prescriptions.

Key steps in FERC's time frame, as related to our hearings and alternatives processes, are as follows. This assumes that, in a contested case, FERC will issue either a draft EA or a draft EIS under 18 CFR 5.25, rather than an EA not preceded by a draft under 18 CFR 5.24.

1. FERC issues its REA notice.

2. Responses to the REA, including the Departments' preliminary conditions and prescriptions, are due 60 days later.

3. FERC issues its draft NEPA document (EA or EIS) within 180 days after the deadline for responses to the REA.

4. Comments on the draft NEPA document are due 30–60 days later.

5. The Departments' modified conditions and prescriptions are due 60 days after the deadline for comments on the draft NEPA document.

6. FERC issues a final NEPA document within 90 days after the

deadline for the modified conditions and prescriptions.

7. FERC issues the license order with any conditions and prescriptions.

Under these rules on trial-type hearings and alternative conditions and prescriptions, the following actions will occur within the steps listed above for FERC's licensing process. The hearing and alternatives processes are separate and distinct, but they have a few common points of reference, as noted below.

1. FERC issues its REA notice, starting the 60-day period for responses.

2. By the end of the 60-day period, the Departments will submit any preliminary conditions and prescriptions they have developed.

2a. The parties will have 30 days to request a hearing on any disputed issues of material fact. The parties will have the same 30 days to submit alternative conditions and prescriptions.

2b. The parties will have 15 days after hearing requests are due to file a notice of intervention and response with regard to any other party's hearing request.

2c. The Departments will have 30 days after responses are due to determine whether to stipulate to some or all of the facts alleged to be in dispute and to file an answer to the hearing request. During the same period, the Departments will consider whether any proposed alternative condition or prescription could preclude the need for a hearing.

2d. If there is still a need for a hearing, the Departments will refer the case to an administrative law judge (ALJ).

2e. Within 90 days, the ALJ will conduct the hearing process on any disputed issues of material fact. The process will include an initial prehearing conference, discovery, an evidentiary hearing for the parties to present their evidence and cross-examine witnesses, the submission of post-hearing briefs, and issuance of a final decision.

3. FERC will issue its draft NEPA document, which will include for comment the Departments' preliminary conditions and prescriptions and any alternatives proposed by the parties.

4. The parties and the Departments will submit their comments on the draft NEPA document, using the facts as found by the ALJ.

4a. The Departments will consider and analyze comments received on their preliminary conditions and prescriptions, the ALJ's decision on disputed issues of material fact, comments received on the draft NEPA document, and any alternative conditions and prescriptions.

5. The Departments will issue their modified conditions and prescriptions and file their analysis of the alternatives within 60 days of the close of the comment period on FERC's draft NEPA document.

5a. FERC will evaluate the modified conditions and prescriptions in light of the purposes of the FPA and other applicable law. If it finds they are inconsistent, FERC may refer the matter to the DRS.

5b. The DRS will consult with the Departments and FERC and issue a non-binding advisory within 90 days.

5c. The Departments will consider the DRS advisory and issue a final written determination on the conditions and prescriptions.

6. FERC will issue its final NEPA document.

7. FERC will issue the license order with any mandatory conditions and prescriptions.

This approach has several benefits for the parties, FERC, and the Departments. It provides for the submission of alternative conditions and prescriptions in time for FERC to include them in its draft NEPA document and for the Departments to consider them along with any hearing requests and responses from other parties. This will enable each Department to consider at an early stage whether it wants to accept a proposed alternative and possibly avoid the need for a hearing under these rules. Having the hearing requests, responses, and alternatives together will also assist the Departments in deciding whether to stipulate to some facts alleged to be in dispute or otherwise try to narrow the issues to be heard.

Moreover, since the hearing process will be completed by the time FERC issues its draft NEPA document, the parties will have the benefit of the ALJ's decision in preparing their comments on that document. The Departments will likewise have the ALJ's decision to use in analyzing the alternatives and developing their modified conditions and prescriptions within FERC's time frame.

In many cases, this sequence and timing will need to be adjusted with respect to any license application that is currently pending before FERC, if the license applicant or another party wants a trial-type hearing or wants to submit an alternative condition or prescription. A number of pending applications are already past the early steps listed above. In such cases, the Departments will work with FERC and the parties to fit the hearing and alternatives processes into the remaining steps.

F. *Overview of the hearing process.* As noted previously, section 241 of EPAct provides that ''[t]he license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact'' with respect to any Department's conditions or prescriptions. ''All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted by the relevant resource agency * * *.'' The three Departments are required to ''establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses * * *.''

In the Departments' experience, full administrative adjudications involving prehearing conferences, discovery, motions, one or more evidentiary hearings, briefing, and a decision often take over a year to complete, especially if the case involves multiple parties and complex technical issues. Shortening this process to 90 days will be a significant challenge for the parties and the ALJ, and will require adherence to fairly stringent procedural limits and deadlines.

Under these rules, the 90-day period for the hearing process will commence when the case is referred to an ALJ for a hearing, and will end when the ALJ issues his or her decision. During that period, at least one prehearing conference will be held; discovery will be conducted as approved by the ALJ or agreed to by the parties; evidence, including direct written testimony and oral cross-examination, will be presented at a hearing; post-hearing briefs will be filed; and a decision will be issued by the ALJ.

As described in section II.E. above, before the case is referred for a hearing, each Department will have filed with FERC its preliminary conditions or prescriptions, with supporting rationale and an index to the administrative record of supporting documents. Any party to the FERC license proceeding may then file with the appropriate Department a request for hearing, identifying the material facts that are disputed regarding the preliminary conditions or prescriptions. Other parties to the license proceeding may then submit responses to any hearing request and intervene in the hearing process.

The Department involved will review the parties' submissions to determine whether to stipulate to any facts as stated by the parties, object that any issue raised by a party either is not

factual (*i.e.*, is a legal conclusion or a policy determination) or is not material, or agree that the issues raised are factual, material, and disputed. Unless all disputed issues have been resolved, the Department will refer the case to an ALJ for a hearing.

If two or more Departments file preliminary conditions and/or prescriptions and receive hearing requests, they will consult with each other to determine whether the requests should be consolidated for hearing. In accordance with EPAct, a single hearing will be held for all conditions issued by one Department (section 241(a)) or for all prescriptions issued by one Department (section 241(b)). While EPAct does not mandate the consolidation of hearing requests in other circumstances, the Departments expect to consolidate the cases if there are common issues of fact. In that event, one ALJ would be designated to conduct the consolidated hearing on behalf of the Departments involved.

G. *Overview of the alternatives process.* While the specific alternatives process added by section 241 of EPAct is new, for years the Departments have received and considered alternatives from license parties on an informal basis, and have revised preliminary conditions and prescriptions as new information was received. Under the new process, whether or not a license party requests a hearing, it may submit one or more conditions or prescriptions for consideration by the appropriate Department as an alternative to any preliminary conditions or prescription that the Department has filed. The alternatives are due 30 days after the deadline for the Departments to file their preliminary conditions and prescriptions, which will allow FERC to include the alternatives in its draft NEPA document.

If any party has requested a hearing on disputed issues of material fact with respect to a preliminary condition or prescription, the ALJ's decision will generally be issued shortly before FERC issues its draft NEPA document. The Departments will use the comment period on the draft NEPA document to review their preliminary conditions and prescriptions in light of the findings of fact from the ALJ.

Within 60 days of the end of the comment period on FERC's draft NEPA document, each Department will formally analyze the alternative conditions and/or prescriptions it has received, together with the ALJ's findings of fact, comments received on the preliminary conditions and prescriptions, and comments received on FERC's draft NEPA document. The Department will then issue its modified conditions or prescriptions and file the written statement required by FPA section 33(a)(4) or (b)(4).

The written statement must explain the basis for the modified conditions or prescriptions and, if the Department did not accept an alternative condition or prescription, its reasons for not doing so. As provided in section 33, the statement must demonstrate that the Department gave equal consideration to the effects of its modified conditions or prescriptions and any alternatives not accepted ''on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality) * * *.''

The requirement for ''equal consideration'' has been construed under FPA section 4(e) to mean that each factor must be considered equally with the others, *i.e.*, given '' 'full and genuine consideration * * *' '' *State of California* v. *FERC*, 966 F.2d 1541, 1550 (9th Cir. 1992), quoting from legislative history at 123 Cong. Rec. S. 15107. ''Equal consideration'' is not the same as ''equal treatment''; rather the agency ''must balance the public interest in all of its stated dimensions, give equal consideration to conflicting interests, and reach a reasoned factual decision.'' *Id.; accord Conservation Law Found.* v. *FERC,* 216 F.3d 41 (D.C. Cir. 2000); *see also U.S. Dept. of Interior* v. *FERC*, 952 F.2d 538 (D.C. Cir. 1992).

III. Section-by-Section Analysis

There are three different versions of the regulations that follow for the trial-type hearing and alternatives process, one version each for Agriculture, Interior, and Commerce. The structure and content of the regulations are the same, but there are minor variations to account for differences in the names of the Departments and their organizational components. The three versions also vary somewhat in their references to conditions and prescriptions, since Agriculture does not develop prescriptions under FPA section 18 and Commerce does not develop conditions under FPA section 4(e), while Interior may do either or both.

For each section discussed below, the CFR title, section number, and heading for each Department are shown, 7 CFR for Agriculture, 43 CFR for Interior, and 50 CFR for Commerce.

General Provisions

7 CFR 1.601 What is the purpose of this subpart, and to what license proceedings does it apply?

43 CFR 45.1 What is the purpose of this part, and to what license proceedings does it apply?

50 CFR 221.1 What is the purpose of this part, and to what license proceedings does it apply?

Paragraph (a) of this section explains the basic purpose of the trial-type hearing regulations. It further explains that, if two or more Departments consolidate hearing requests involving the same license application, the regulations of one Department may govern the steps preceding the referral of the case to an ALJ, while the (substantively identical) regulations of another Department may govern the steps following the referral of the case to an ALJ. Paragraph (b) explains the basic purpose of the alternative process regulations.

Paragraph (c) covers situations in which a Department does not exercise its authority to submit conditions or prescriptions for inclusion in the license, but reserves the authority to do so during the term of the license, e.g., if conditions change or the Department obtains additional information. If the Department notifies FERC that it is reserving its authority, the hearing and alternatives processes under these rules will be available to the license parties if and when the Department subsequently exercises its reserved authority. The license parties cannot request a hearing regarding the reservation of authority itself, or submit alternatives to such reservation.

Paragraph (d) provides that these regulations apply to any hydropower license proceeding for which the license has not been issued as of the effective date of these rules and for which the Department involved has developed or develops one or more preliminary conditions, conditions, preliminary prescriptions, or prescriptions. A cross reference to 7 CFR 1.604, 43 CFR 45.4, or 50 CFR 221.4 is included for license applications that are pending as of the effective date of these rules.

7 CFR 1.602 What terms are used in this subpart?

43 CFR 45.2 What terms are used in this part?

50 CFR 221.2 What terms are used in this part?

This section defines the meaning of various terms used in the regulations. Most of the definitions provided are self-explanatory, but a few deserve further discussion.

''Intervention'' is defined as a process by which a person who did not request a hearing under 7 CFR 1.621, 43 CFR 45.21, or 50 CFR 221.21 can participate as a party in the hearing by filing a notice of intervention and response

under 7 CFR 1.622, 43 CFR 45.22, or 50 CFR 221.22. A person who has intervened in the license proceeding before FERC is not automatically an intervenor in the hearing process under these regulations; but anyone who has intervened in the license proceeding is eligible to intervene in the hearing process.

''Material fact'' is defined as ''a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any preliminary condition or prescription.'' To use a fishway prescription as an example, issues of material fact could include but are not limited to issues such as whether the river has historically been a cold or warm water fishery or whether fish have historically been found above or below the dam. Such issues, if disputed and material to the prescription involved in a given case, appear well suited to the trial-type hearing mandated by EPAct. On the other hand, legal or policy issues would not qualify as issues of material fact.

''Party'' is defined to mean a party to the hearing process under these regulations, as distinguished from a ''license party,'' which is a party to the FERC license proceeding. A ''party'' includes a license party that requests a hearing under section 7 CFR 1.621, 43 CFR 45.21, or 50 CFR 221.21, a license party that files a notice of intervention and response under section 7 CFR 1.622, 43 CFR 45.22, or 50 CFR 221.22, and the Departmental component that has filed a preliminary condition or prescription in the license proceeding. If two or more hearing requests are consolidated under 7 CFR 1.623, 43 CFR 45.23, and 50 CFR 221.23, the term ''party'' will also include any other Departmental component involved in the hearing.

7 CFR 1.603 How are time periods computed?

43 CFR 45.3 How are time periods computed?

50 CFR 221.3 How are time periods computed?

Paragraph (a) of this section describes the method for computing time periods under the regulations. Paragraph (b) covers requests for extensions of time. It provides that no extension of time can be granted to file a request for a hearing under section 7 CFR 1.621, 43 CFR 45.21, or 50 CFR 221.21; a notice of intervention and response under section 7 CFR 1.622, 43 CFR 45.22, or 50 CFR 221.22; an answer under section 7 CFR 1.624, 43 CFR 45.24, or 50 CFR 221.24; or any document under the alternatives process. This limitation is necessary to ensure timely completion of the hearing and alternatives processes and because, as a practical matter, there will be no ALJ available who could rule on a motion for extension of time for these documents. Extensions of time to file other documents under the hearing process may be granted by the ALJ, but only for good cause.

7 CFR 1.604 What deadlines apply to pending applications?

43 CFR 45.4 What deadlines apply to pending applications?

50 CFR 221.4 What deadlines apply to pending applications?

This section contains special applicability provisions for cases in which preliminary conditions, conditions, preliminary prescriptions, or prescriptions have already been filed as of the effective date of these rules, but the license has not been issued. Normally, parties will have 30 days from the Departments' filing of preliminary conditions and prescriptions to request a hearing or submit alternatives. 7 CFR 1.621, 1.671; 43 CFR 45.21, 45.71; 50 CFR 221.21, 221.71. But in cases currently pending before FERC, the Departments may have already filed their preliminary conditions, conditions, preliminary prescriptions, or prescriptions by the effective date of these rules.

Under this section, hearing requests and alternatives in such cases will be due 30 days after the effective date of these rules. Any notice of intervention and response will be due 15 days thereafter, consistent with 7 CFR 1.622, 43 CFR 45.22, and 50 CFR 221.22. Within the next 75 days, the Departments will consult with each other to determine whether to consolidate any hearing requests they may have received, and with FERC to determine a time frame for each hearing process. Depending on how far along each license proceeding has progressed, FERC may need to suspend or extend the remaining steps to accommodate the hearing process and alternatives analysis required by EPAct.

If, within the first 30 days after the effective date of these rules, hearing requests are filed in a number of cases with pending applications, it may not be possible for the Departments and their ALJ offices to handle them all simultaneously. Thus, the time frames worked out with FERC may provide for a staggering of the requested hearing processes, with priority being given to cases where the applications are closest to issuance. In that case, the Departments will not necessarily file answers on all hearing requests simultaneously. They will, however, issue notices to the parties in each case informing them of the time frame for the hearing process and the deadline for the answer. Once the answer is filed in any case, the rest of the hearing process will follow the normal schedule set out in these rules.

If no hearing request is received but alternatives are proposed within 30 days of the effective date of these rules, the Departments will consult with each other to determine whether they have related conditions or prescriptions and alternatives that should be considered at the same time, and they will consult with FERC to determine a time frame for the alternatives process. They will then issue notices to the license parties, informing them of the time frame for the Departments' filing of modified conditions and prescriptions under 7 CFR 1.672(b), 43 CFR 45.72(b), and 50 CFR 221.72(b).

Hearing Process

Representatives

7 CFR 1.610 Who may represent a party, and what requirements apply to a representative?

43 CFR 45.10 Who may represent a party, and what requirements apply to a representative?

50 CFR 221.10 Who may represent a party, and what requirements apply to a representative?

This section identifies who may represent an individual, partnership, corporation, governmental unit, or other entity. It also provides that each representative must file a notice of appearance and may be disqualified by the ALJ for misconduct or other good cause.

Document Filing and Service

7 CFR 1.611 What are the form and content requirements for documents under §§ 6.610 through 1.660?

43 CFR 45.11 What are the form and content requirements for documents under this subpart?

50 CFR 221.11 What are the form and content requirements for documents under this subpart?

This section specifies the format, caption, signature, and contact information requirements for documents filed under the hearing process. These requirements apply to documents prepared as part of the hearing process, such as a hearing request, notice of intervention and response, answer, motion, reply, discovery request, discovery response, written testimony, or brief. They do not apply to supporting materials prepared separately, such as studies, reports, articles, etc., that the parties may submit as attachments to their hearing process documents.

7 CFR 1.612 Where and how must documents be filed?

43 CFR 45.12 Where and how must documents be filed?

50 CFR 221.12 Where and how must documents be filed?

This section establishes requirements for the filing of documents. Each Department has designated an office where documents must be filed before a case has been referred for docketing and assignment to an ALJ. After the referral, documents are to be filed with the appropriate ALJ's office. Documents may be filed by hand delivery, overnight delivery, or fax and are considered filed when received.

7 CFR 1.613 What are the requirements for service of documents?

43 CFR 45.13 What are the requirements for service of documents?

50 CFR 221.13 What are the requirements for service of documents?

This section provides that any request for a hearing and any notice of intervention and response must be served on FERC and all parties to the FERC license proceeding. All other filed documents and all documents issued by the ALJ must be served on the parties to the hearing. Service generally may be made by hand delivery, overnight delivery, fax, or e-mail. A certificate of service is required.

Initiation of Hearing Process

7 CFR 1.620 What supporting information must the Forest Service provide with its preliminary conditions?

43 CFR 45.20 What supporting information must a bureau provide with its preliminary conditions or prescriptions?

50 CFR 221.20 What supporting information must NMFS provide with its preliminary conditions or prescriptions?

Under this section, when a component of any Department files a preliminary condition or prescription with FERC, it must provide a supporting rationale, along with an index to its administrative record that identifies the studies or other documents relied upon.

7 CFR 1.621 How do I request a hearing?

43 CFR 45.21 How do I request a hearing?

50 CFR 221.21 How do I request a hearing?

This section provides that any party to the FERC license proceeding may request a hearing on disputed issues of material fact with respect to a preliminary condition or prescription by filing a request with the designated Departmental office. The request must be filed within 30 days after the deadline for filing preliminary conditions or prescriptions with FERC (or for pending applications that are already past that point in the FERC licensing process, within 30 days of the effective date of these regulations). A hearing request must contain a list of the factual issues that the requester disputes; the basis for the requester's opinion that the facts, as stated by the Departmental component, are unfounded or erroneous; citations to any studies or other documents relied upon, and copies of any such documents that are not already in the record of the license proceeding. The requester must also provide a list of the witnesses and exhibits it intends to use at the hearing; this list will assist other parties in planning their discovery.

7 CFR 1.622 How do I file a notice of intervention and response?

43 CFR 45.22 How do I file a notice of intervention and response?

50 CFR 221.22 How do I file a notice of intervention and response?

Under this section, any other party to the FERC license proceeding may file a response to the hearing request and a notice of intervention in the hearing. The response and notice must be filed with the designated Departmental office within 15 days after a request for hearing is served. This deadline corresponds to the ILP deadline for filing reply comments to the preliminary conditions or prescriptions, i.e., 105 days after the REA notice. 18 CFR 5.23(a).

The response may not raise new disputed issues of material fact, since the deadline for doing so (under section 7 CFR 1.621, 43 CFR 45.21, or 50 CFR 221.21) will have passed. But the party filing a response may agree with the facts as stated either by the Departmental component or the hearing requester (or a mix of the two). In any event, the response must explain the party's position with respect to the information provided by the requester. The party may either rely on the information provided by the Departmental component or the requester or may provide additional information. The party must also provide a list of the witnesses and exhibits it intends to use at the hearing.

7 CFR 1.623 When will hearing requests be consolidated?

43 CFR 45.23 When will hearing requests be consolidated?

50 CFR 221.23 When will hearing requests be consolidated?

This section provides that the Departments will confer on any hearing requests they receive, decide whether to consolidate them for hearing under designated criteria, and if so, decide which Department's ALJ will conduct the hearing. As explained previously, all hearing requests with respect to any conditions from the same Department will be consolidated for hearing, as will all hearing requests with respect to any prescriptions from the same Department.

In other circumstances—conditions and prescriptions from the same Department, conditions from more than one Department, prescriptions from more than one Department, etc.— the Departments may consolidate the hearings if there are common issues of material fact or consolidation is otherwise appropriate. Consolidation will often benefit both the Departments and the parties by avoiding duplication of effort and the risk of inconsistent results.

7 CFR 1.624 How will the Forest Service respond to any hearing requests?

43 CFR 45.24 How will the bureau respond to any hearing requests?

50 CFR 221.24 How will NMFS respond to any hearing requests?

Under this section in the Agriculture and Interior regulations, the Departmental component that filed the preliminary condition or prescription at issue must file an answer to any hearing request within 45 days after the deadline for filing any hearing requests (approximately 30 days after the deadline for filing any notice of intervention and response). The Commerce regulation is slightly different, since Commerce does not have a separate office where NMFS would file an answer. Rather, NMFS will determine under 50 CFR 221.24 whether to file an answer; if it decides to do so, the answer would be included in the referral to the appropriate ALJ's office under 50 CFR 221.25.

For all three Departments, the answer must state whether the Departmental component is willing to stipulate to the facts as alleged by the requester, believes that any issue raised is not factual or not material, or agrees that the issue is disputed, factual, and material. The Departmental component must also indicate whether the hearing request will be consolidated under section 7 CFR 1.623, 43 CFR 45.23, or 50 CFR 221.23 with any other hearing requests, and must provide a list of the witnesses and exhibits the Departmental component intends to use at the hearing.

7 CFR 1.625 What will the Forest Service do with any hearing requests?

43 CFR 45.25 What will DOI do with any hearing requests?

50 CFR 221.25 What will NMFS do with any hearing requests?

This section in the Agriculture and Interior regulations states that, within 5 days after receipt of the answer, the designated Departmental office will

refer the case to the appropriate Department's ALJ office for a hearing and will notify the parties and FERC of the referral. The Commerce regulation combines the 45-day answer period and the 5-day referral period from the Agriculture and Interior regulations, and states that NMFS will refer the case for a hearing within 50 days after the deadline for filing any hearing requests and will notify the parties and FERC of the referral.

7 CFR 1.626 What regulations apply to a case referred for a hearing?

43 CFR 45.26 What regulations apply to a case referred for a hearing?

50 CFR 221.26 What regulations apply to a case referred for a hearing?

This section explains that the hearing will be conducted under the regulations of whichever Department is providing the ALJ to preside over the hearing. For example, a hearing that was requested under 7 CFR 1.621 or 50 CFR 221.21 may be conducted under 43 CFR 45.30 *et seq.*, if multiple hearing requests are consolidated and assigned to an Interior ALJ.

General Provisions Related to Hearings

7 CFR 1.630 What will the Office of Administrative Law Judges do with a case referral?

43 CFR 45.30 What will the Hearings Division do with a case referral?

50 CFR 221.30 What will DOC's designated ALJ office do with a case referral?

This section provides that, within 5 days after issuance of the referral notice, the appropriate ALJ's office will docket the case, assign an ALJ, and issue a docketing notice. The ALJ will simultaneously issue a notice setting the time, place, and method for the initial prehearing conference under section 7 CFR 1.640, 43 CFR 45.40, and 50 CFR 221.40.

7 CFR 1.631 What are the powers of the ALJ?

43 CFR 45.31 What are the powers of the ALJ?

50 CFR 221.31 What are the powers of the ALJ?

This section states that the ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, including the power to rule on motions, authorize discovery, regulate the course of hearings, and issue a decision on the disputed issues of material fact.

7 CFR 1.632 What happens if the ALJ becomes unavailable?

43 CFR 45.32 What happens if the ALJ becomes unavailable?

50 CFR 221.32 What happens if the ALJ becomes unavailable?

This section contains standard provisions for appointment of a successor ALJ, if the ALJ originally assigned becomes unavailable or unable to perform his or her duties. Given the short time period covered by the hearing process, it is expected that these provisions will rarely be used.

7 CFR 1.633 Under what circumstances may the ALJ be disqualified?

43 CFR 45.33 Under what circumstances may the ALJ be disqualified?

50 CFR 221.33 Under what circumstances may the ALJ be disqualified?

This section contains standard provisions for disqualification of the ALJ for personal bias or other cause.

7 CFR 1.634 What is the law governing ex parte communications?

43 CFR 45.34 What is the law governing ex parte communications?

50 CFR 221.34 What is the law governing ex parte communications?

This section contains standard provisions prohibiting most ex parte communications with the ALJ, consistent with the Administrative Procedure Act. Ex parte inquiries concerning case status or procedural requirements are generally permitted.

7 CFR 1.635 What are the requirements for motions?

43 CFR 45.35 What are the requirements for motions?

50 CFR 221.35 What are the requirements for motions?

Under this section, any party may apply for an order or ruling by presenting a motion to the ALJ in writing or at the hearing. Other parties may respond within 10 days, unless another regulation or the ALJ imposes a different response deadline. The expedited nature of the hearings under these rules will not allow for an extensive motions practice, as may occur in other administrative and judicial litigation. In particular, the rules do not provide for motions for summary decision (comparable to motions for summary judgment under FRCP 56), since the ALJ will have already determined in the initial prehearing conference that disputed issues of material fact require a hearing.

Prehearing Conferences and Discovery

7 CFR 1.640 What are the requirements for prehearing conferences?

43 CFR 45.40 What are the requirements for prehearing conferences?

50 CFR 221.40 What are the requirements for prehearing conferences?

Paragraph (a) of this section provides for an initial prehearing conference to be conducted about 20 days after issuance of the referral notice under section 7 CFR 1.625, 43 CFR 45.25, or 50 CFR 221.25 (approximately 15 days after issuance of the docketing notice under section 7 CFR 1.630, 43 CFR 45.30, or 50 CFR 221.30). This conference will be critical to the overall hearing process.

Theoretically, an initial prehearing conference could be held within a few days after the assignment of an ALJ, but in fact the parties will need the additional time to develop and file their discovery requests and objections and otherwise prepare for the conference. Under section 7 CFR 1.641(d), 43 CFR 45.41(d), or 50 CFR 221.41(d), the parties must file their discovery motions within 7 days after issuance of the referral notice under section 7 CFR 1.625, 43 CFR 45.25, or 50 CFR 221.25, or approximately 12 days after the Department files its answer. While the parties can start developing their discovery requests sooner, they will not know until the Department files its answer under section 7 CFR 1.624, 43 CFR 45.24, or 50 CFR 221.24 what issues remain in dispute and what witnesses and exhibits the Department intends to present at the hearing. (The parties also cannot file discovery motions with the ALJ before any ALJ has been assigned to the case under section 7 CFR 1.630, 43 CFR 45.30, or 50 CFR 221.30, which occurs just 2 days before the discovery motions are due.) Under section 7 CFR 1.641(e), 43 CFR 45.41(e), or 50 CFR 221.41(e), the parties must file any objections to another party's discovery motion within 7 days after service of a discovery motion.

Prior to the initial prehearing conference, the parties' representatives are required to make a good faith effort to meet (most likely by telephone) and attempt to reach agreement on discovery and the schedule of remaining steps in the hearing process. Department counsel are encouraged to take the lead in scheduling the meeting of the parties, if other representatives do not do so. Agreements reached at the meeting of the parties will serve to expedite the initial prehearing conference and may allow the parties to initiate discovery before the conference.

The initial prehearing conference may be held in person, by conference call, or by other appropriate means. It will be used to identify, narrow and clarify the disputed issues of material fact; to rule on the parties' motions for discovery (and objections thereto) and to set a deadline for the completion of discovery; to discuss the evidence on which each party intends to rely at the hearing; to set the deadline for

submission of written testimony under section 7 CFR 1.652, 43 CFR 45.52, or 50 CFR 221.52; and to set the date, time, and place of the hearing. The conference may also be used to discuss limiting and grouping witnesses to avoid duplication; to discuss stipulations of fact and of the content and authenticity of documents; to consider requests that the ALJ take official notice of public records or other matters; to discuss the submission of documents in electronic form; and to consider any other matters that may aid in the disposition of the case.

Under paragraph (b) of this section, the ALJ may schedule other prehearing conferences as needed. Under paragraph (g), within 2 days of the conclusion of any conference, the ALJ will issue an order setting forth any agreements reached by the parties and any rulings made by the ALJ.

7 CFR 1.641 How may parties obtain discovery of information needed for the case?

43 CFR 45.41 How may parties obtain discovery of information needed for the case?

50 CFR 221.41 How may parties obtain discovery of information needed for the case?

This section provides that parties may obtain discovery by agreement of the parties or by filing a motion within 7 days after issuance of the referral notice under section 7 CFR 1.625, 43 CFR 45.25, or 50 CFR 221.25. Any proposed discovery request must be attached to the motion. Other parties may file objections within 7 days after service of a discovery motion. The ALJ will rule on the motions and objections during or promptly after the initial prehearing conference.

Under the Federal Rules of Civil Procedure (FRCP), the parties may initiate discovery on their own, without needing permission from the judge or agreement from other parties, and discovery often takes months to complete. Local court rules typically set limits on discovery; but generally ample time is available for the parties to propound discovery, seek protective orders, submit responses and objections, file motions to compel, etc. The expedited nature of the trial-type hearing under these regulations cannot accommodate such a protracted discovery process. As a result, the initial prehearing conference will be used as necessary to regulate the course of discovery and deal with disputes ''up front'' to the extent possible.

Paragraph (a) of this section lists the following methods of discovery, as limited by this section, as available to the parties: interrogatories, depositions, and requests for documents or tangible things or for entry on land. The other main discovery tool under the FRCP, requests for admission, has been omitted as unnecessary in the context of these hearings. The parties will have just completed their exchange of hearing requests, responses, and answers, specifying what facts they agree to or dispute; and the ALJ will use the initial prehearing conference to further identify, narrow, and clarify the disputed issues and encourage stipulations. Under these circumstances, little if anything would be gained by the use of requests for admission.

The ALJ will authorize discovery requested by a party only if the ALJ determines that the criteria in paragraph (b) of this section have been met. These criteria include that the discovery will not unreasonably delay the hearing process; that the scope of the discovery is not unduly burdensome; that the discovery method to be used is the least burdensome method available; and that the information sought is not already in the record of the license proceeding or otherwise obtainable by the party.

These criteria are needed to keep the discovery process within reasonable bounds, in light of the tight time constraints applicable to the hearing. The criteria reflect the facts that the FERC license proceeding has been underway for over 3 years by this point; the parties have been dealing with each other extensively throughout that period; the great bulk of the relevant information has already been filed in the record of that proceeding; and the parties will have identified any additional information they may have in their hearing requests, responses, and answers. Consequently, there should be very little new information that the parties would need to uncover through an unfettered discovery process, even if there was time for it.

Paragraphs (f) and (g) of this section contain standard limitations on a party's ability to discover materials prepared by another party for the hearing or facts known or opinions held by another party's expert. Paragraph (h) limits depositions to witnesses who will be unavailable to testify at the hearing. This limitation will further reduce the time needed for discovery and the burden on the parties, who could otherwise face the prospect of multiple depositions at multiple locations around the country during a very limited time period, while simultaneously responding to interrogatories, requests for documents, etc. There is also less need to depose witnesses who will be presented at the hearing, since under section 7 CFR 1.652, 43 CFR 45.52, or 50 CFR 221.52, the direct testimony of such witnesses must be submitted in writing, generally 10 days before the hearing.

Paragraph (h)(3) provides that a party may depose a senior Department employee only if the party shows that the employee's testimony is necessary to provide significant information that is not available from any other source or by less burdensome means and that the deposition would not significantly interfere with the employee's ability to perform his or her government duties. This limitation is based on case law under the FRCP, *e.g.*, *Jones* v. *Hirschfeld,* 219 F.R.D. 71 (S.D.N.Y. 2003); *Alexander* v. *Federal Bureau of Investigation,* 186 F.R.D. 1 (D.D.C. 1998).

Under paragraph (i) of this section, all discovery agreed to by the parties or approved by the ALJ must be completed within 25 days after the initial prehearing conference, unless the ALJ sets a different deadline.

7 CFR 1.642 When must a party supplement or amend information it has previously provided?

43 CFR 45.42 When must a party supplement or amend information it has previously provided?

50 CFR 221.42 When must a party supplement or amend information it has previously provided?

Paragraph (a) of this section states that a party must supplement or amend its discovery responses if it learns that a prior response is incorrect or incomplete.

Paragraph (b) gives the parties 5 days after the completion of discovery to update their witness and exhibit lists. If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why the witness or exhibit was not included on the original list filed under section 7 CFR 1.621, 43 CFR 45.21, or 50 CFR 221.21; 7 CFR 1.622, 43 CFR 45.22, or 50 CFR 221.22; or 7 CFR 1.624, 43 CFR 45.24, or 50 CFR 221.24. Paragraph (c) provides for sanctions for a party's failure to disclose information as required, unless the failure was substantially justified or is harmless.

7 CFR 1.643 What are the requirements for written interrogatories?

43 CFR 45.43 What are the requirements for written interrogatories?

50 CFR 221.43 What are the requirements for written interrogatories?

If the ALJ grants a motion for the use of interrogatories, this section provides that the other party must file its answers within 15 days. If the information requested could be obtained from a review of documents, the other party may provide access to the documents,

rather than compiling the information for the requesting party.

7 CFR 1.644 What are the requirements for depositions?

43 CFR 45.44 What are the requirements for depositions?

50 CFR 221.44 What are the requirements for depositions?

If the ALJ grants a motion to depose a person, this section provides that the party taking the deposition must arrange and pay for the reporter. Other standard provisions relating to the taking, transcription, and signing of a deposition are detailed. If approved by the ALJ, a deposition may be taken by conference call or may be video recorded.

7 CFR 1.645 What are the requirements for requests for documents or tangible things or entry on land?

43 CFR 45.45 What are the requirements for requests for documents or tangible things or entry on land?

50 CFR 221.45 What are the requirements for requests for documents or tangible things or entry on land?

If the ALJ grants a motion to use requests for production of documents or tangible things or entry on land, this section provides that the other party must file a response within 15 days.

7 CFR 1.646 What sanctions may the ALJ impose for failure to comply with discovery?

43 CFR 45.46 What sanctions may the ALJ impose for failure to comply with discovery?

50 CFR 221.46 What sanctions may the ALJ impose for failure to comply with discovery?

This section states that, if a party fails to comply with an order approving discovery, the ALJ may impose appropriate sanctions, such as not allowing the party to introduce evidence that was improperly withheld or inferring that the information withheld would have been adverse to the party.

7 CFR 1.647 What are the requirements for subpoenas and witness fees?

43 CFR 45.47 What are the requirements for subpoenas and witness fees?

50 CFR 221.47 What are the requirements for subpoenas and witness fees?

This section contains standard provisions regarding the issuance, service, and enforcement of a subpoena, to the extent authorized by law; payment of witness fees; and motions to quash. A limitation on subpoenaing senior Department employees is included, comparable to 7 CFR 1.641(h)(3), 43 CFR 45.41(h)(3), or 50 CFR 221.41(h)(3) discussed above.

Hearing, Briefing, and Decision

7 CFR 1.650 When and where will the hearing be held?

43 CFR 45.50 When and where will the hearing be held?

50 CFR 221.50 When and where will the hearing be held?

This section states that the hearing will be held at the time and place set during the prehearing conference, generally within 15 days after the completion of discovery, unless the ALJ orders otherwise.

7 CFR 1.651 What are the parties' rights during the hearing?

43 CFR 45.51 What are the parties' rights during the hearing?

50 CFR 221.51 What are the parties' rights during the hearing?

This section acknowledges the parties' rights at the hearing to present direct and rebuttal evidence; to make objections, motions, and arguments; and to cross-examine witnesses.

7 CFR 1.652 What are the requirements for presenting testimony?

43 CFR 45.52 What are the requirements for presenting testimony?

50 CFR 221.52 What are the requirements for presenting testimony?

Paragraph (a) of this section requires the parties to submit any direct testimony in writing within 5 days after the date set for completion of discovery (generally 10 days before the hearing). Submission of written direct testimony in advance will assist the parties in preparing their cases and will expedite the hearing process, given the short time available for both discovery and the hearing.

Under paragraph (b), cross-examination and re-direct will be conducted orally at the hearing. Under paragraph (c), the ALJ may allow a witness to testify by conference call.

7 CFR 1.653 How may a party use a deposition in the hearing?

43 CFR 45.53 How may a party use a deposition in the hearing?

50 CFR 221.53 How may a party use a deposition in the hearing?

This section contains standard provisions for the admissibility of a deposition of a witness who is unavailable to testify at the hearing.

7 CFR 1.654 What are the requirements for exhibits, official notice, and stipulations?

43 CFR 45.54 What are the requirements for exhibits, official notice, and stipulations?

50 CFR 221.54 What are the requirements for exhibits, official notice, and stipulations?

This section contains standard provisions on marking and offering exhibits, asking the ALJ to take official notice of public documents, and using stipulations regarding facts or the authenticity of documents.

7 CFR 1.655 What evidence is admissible at the hearing?

43 CFR 45.55 What evidence is admissible at the hearing?

50 CFR 221.55 What evidence is admissible at the hearing?

This section contains standard provisions on the admissibility of written, oral, documentary, or demonstrative evidence that is relevant, reliable, and probative, and not privileged or unduly repetitious or cumulative. As is typical in administrative proceedings, the rules of evidence used in Federal courts do not apply, and hearsay evidence is admissible. However, the Federal Rules of Evidence may be used as guidance by the ALJ and the parties in determining what evidence is relevant, reliable, probative, and not privileged. Evidentiary objections will be ruled on by the ALJ.

7 CFR 1.656 What are the requirements for transcription of the hearing?

43 CFR 45.56 What are the requirements for transcription of the hearing?

50 CFR 221.56 What are the requirements for transcription of the hearing?

This section contains standard provisions on transcripts and reporter's fees, including correction of the transcript.

7 CFR 1.657 What is the standard of proof?

43 CFR 45.57 What is the standard of proof?

50 CFR 221.57 What is the standard of proof?

In accordance with the holding in *Steadman* v. *SEC,* 450 U.S. 91 (1981), this section establishes that the standard of proof is a preponderance of the evidence.

Comments are sought on the separate question of who bears the burden of proof.

7 CFR 1.658 When will the hearing record close?

43 CFR 45.58 When will the hearing record close?

50 CFR 221.58 When will the hearing record close?

This section states that the hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise. No evidence may be submitted once the record closes.

7 CFR 1.659 What are the requirements for post-hearing briefs?

43 CFR 45.59 What are the requirements for post-hearing briefs?

50 CFR 221.59 What are the requirements for post-hearing briefs?

Under this section, each party may file an initial post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline. Reply briefs may be filed only if requested by the ALJ. Form and content requirements for briefs are specified.

7 CFR 1.660 What are the requirements for the ALJ's decision?

43 CFR 45.60 What are the requirements for the ALJ's decision?

50 CFR 221.60 What are the requirements for the ALJ's decision?

This section provides that the ALJ must issue a decision within 30 days after the close of the hearing or 90 days after issuance of the referral notice, whichever occurs first. The decision must contain findings of fact on all disputed issues of material fact; incidental conclusions of law necessary to make the findings of fact (e.g., rulings on materiality); and reasons for the findings and conclusions. The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected because that is a matter for the exercise of the Departments' judgment in light of the ALJ's findings and other available information (including any alternative conditions or prescriptions and supporting information submitted by the parties).

Under paragraph (c) of this section, the ALJ will serve the decision on each party to the hearing and forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

Paragraph (d) provides that the ALJ's decision will be final, with respect to the disputed issues of material fact, for any Department involved in the hearing. The ALJ's decision must be considered in deciding whether to accept an alternative in accordance with 7 CFR 1.673, 43 CFR 45.73, or 50 CFR 221.73. In a normal adjudication under the Administrative Procedure Act, an ALJ issues an initial or recommended decision that is subject to appeal or review within the agency. 5 U.S.C. 557(b). Even under section 557(b), however, an agency can limit the issues it will review on appeal, including denying any appeal from findings of fact. Attorney General's Manual on the Administrative Procedure Act 84 (1947); 3 Kenneth Culp Davis, Administrative Law Treatise § 17.14 (2d ed. 1980).

Here, the ALJ is not issuing a normal decision, which under section 557(c) includes findings of fact, conclusions of law on substantive issues, and an ''appropriate rule, order, sanction, relief, or denial thereof.'' Rather, the ALJ is providing findings of fact, without substantive legal rulings or any order, sanction, etc. The ALJ's decision will not resolve, even provisionally, the overall dispute among the parties over the preliminary conditions and prescriptions. At most, the ALJ is providing a definitive view of the facts underlying the dispute, to be used by the parties in submitting their comments, the Departments in analyzing alternatives and developing modified conditions and prescriptions, and FERC in finalizing its NEPA document.

Practical considerations also militate against any appeal of the ALJ's decision. Section 241 of EPAct requires that the trial-type hearing be conducted within 90 days and within FERC's time frame for the license proceeding, and there is not enough time available to also include an appeals process, with additional briefing, analysis, and decision by an appellate body. Moreover, in the case of a consolidated hearing, it is not clear what appellate body would consider the appeal, or whether each Department involved would need to review the ALJ's decision separately, with the potential for inconsistent results.

Paragraph (d) of this section further provides that, to the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b). Even though, with respect to the disputed issues of material fact, the ALJ's decision will be final for the Departments involved, it will not be ripe for judicial review until the Departments complete their process of modifying conditions and prescriptions and FERC issues the license order.

Alternatives Process

7 CFR 1.670 How must documents be filed and served under §§ 1.670 through 1.673?

43 CFR 45.70 How must documents be filed and served under this subpart?

50 CFR 221.70 How must documents be filed and served under this subpart?

This section contains filing and service requirements for documents relating to the alternatives process. There are no special requirements for format, caption, or signature, as there are for documents relating to the hearing process.

7 CFR 1.671 How do I propose an alternative?

43 CFR 45.71 How do I propose an alternative?

50 CFR 221.71 How do I propose an alternative?

Under paragraph (a) of this section, any license party may propose an alternative within 30 days of the deadline for the Departments to file their preliminary conditions and prescriptions. Paragraph (b) specifies what must be included in a proposal for an alternative. The license party must include a description of the alternative and an explanation of how the alternative meets the criteria set out in FPA section 33.

7 CFR 1.672 What will the Forest Service do with a proposed alternative?

43 CFR 45.72 What will the bureau do with a proposed alternative?

50 CFR 221.72 What will NMFS do with a proposed alternative?

Within 60 days after the close of the comment period on FERC's NEPA document, the Department must analyze the alternatives it has received, and file with FERC its modified conditions or prescription. Based on the information available to it, the Department could adopt as a modified condition or prescription its original preliminary condition or prescription, an alternative, or a new condition or prescription. The Department must also file its analysis of the modified condition or prescription and of any proposed alternatives.

Of course, a party that proposed an alternative may in some cases choose to withdraw the alternative in response to the ALJ's findings. In that case, no comparison between the preliminary condition or prescription and the withdrawn alternative would be necessary.

7 CFR 1.673 How will the Forest Service analyze a proposed alternative and formulate its modified condition?

43 CFR 45.73 How will the bureau analyze a proposed alternative and formulate its modified condition or prescription?

50 CFR 221.73 How will NMFS analyze a proposed alternative and formulate its modified condition?

Paragraph (a) of this section provides that, in deciding whether to adopt a proposed alternative, the Department must consider all available evidence, including information from any license party and FERC, comments received on the Department's preliminary condition or prescription and on FERC's NEPA document, findings of fact from the ALJ, and the information provided in support of the alternative under 7 CFR 1.671, 43 CFR 45.71, or 50 CFR 221.71.

Consistent with FPA section 33, paragraph (b) states that the Department must adopt a proposed alternative if it will either cost significantly less to implement or result in improved operation of the project works for electricity production, and if it will

either provide for the adequate protection and utilization of the reservation under FPA section 4(e) or be no less protective than the fishway developed by the Department.

Paragraphs (c) and (d) specify what information the Department must file with FERC along with its modified condition or prescription. This includes a written statement demonstrating that the Department gave equal consideration to the effects of the modified condition or prescription and any alternative not adopted on energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; and the preservation of other aspects of environmental quality.

7 CFR 1.674 Has OMB approved the information collection provisions of §§ 1.670 through 1.673?

43 CFR 45.74 Has OMB approved the information collection provisions of this subpart?

50 CFR 221.74 Has OMB approved the information collection provisions of this subpart?

This section informs the public of the Departments' compliance with the Paperwork Reduction Act of 1995 and of the control number that the Office of Management and Budget (OMB) has issued for information collection related to the alternatives process.

IV. Consultation With FERC

Pursuant to EPAct's requirement that the agencies promulgate these rules ''in consultation with the Federal Energy Regulatory Commission,'' the agencies have consulted with FERC regarding the content of these rules.

V. Procedural Requirements

A. *Decision to issue interim final rules with request for comments.* These regulations are being published as interim final rules with request for comments, and without prior notice and comment, under 5 U.S.C. 553(b)(A) and (B). Under section 553(b)(A), interpretative rules and rules of agency procedure or practice, like the regulations in these interim final rules, do not require a notice of proposed rulemaking.

Moreover, under section 553(b)(B), the Departments for good cause find that prior notice and comment are impracticable and contrary to the public interest. Section 241 of EPAct requires the Departments to promulgate these rules jointly, in consultation with FERC, within 90 days of enactment of the statute. It would not be possible to meet that deadline if the Departments had to publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule, especially given the need for interagency coordination at each step of the process. In addition to meeting the statutory mandate, the Departments find that it is in the public interest to promulgate these regulations promptly, so that (a) parties in hydropower license proceedings can avail themselves of the new trial-type hearing right and alternatives process established in EPAct and (b) delays in the FERC licensing process can be avoided or minimized.

B. *Decision to make the rules effective upon publication.* Under 5 U.S.C. 553(d)(3), the Departments for good cause find that these rules should be made effective upon publication in the **Federal Register**, rather than after the usual 30-day period. This finding is based on the same reasons that support the finding of good cause under section 553(b)(B), explained above. As noted previously, there are a number of license applications currently pending before FERC to which EPAct's trial-type hearing right and alternatives process apply. Section 241 of EPAct requires the Departments to fit the hearing process into FERC's time frame for the license proceeding, and delaying the effective date of these rules would only increase the number of cases in which the FERC licensing time frame would need to be adjusted to accommodate a hearing request and/or the alternatives process.

C. *Regulatory Planning and Review (E.O. 12866).* The rules in this document are significant. Although these rules will not have an adverse effect or an annual effect of $100 million or more on the economy, OMB has determined that the procedures for an expedited trial-type hearing on disputed issues of material fact represent a novel approach to public participation and administrative review and have interagency implications. Therefore, OMB has reviewed these rules under Executive Order 12866.

1. These rules will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required.

The Departments expect about 47 requests for hearing per year under the rules, each requiring about 800 hours of additional work by the requesters and 600 hours for other parties to the hearing process. The Departments expect about 351 alternative conditions and prescriptions to be proposed per year under the rules, each requiring about 200 hours of additional work by the proponent and 120 hours for other parties to the alternatives process. Staff costs for 47 hearing requests and 351 alternatives per year are estimated at $5 million and hence clearly fall well short of $100 million. This conclusion also holds in a worst-case analysis: if a hearing was requested and an alternative was proposed for every set of preliminary conditions or prescriptions, there would be about 97 hearings per year and 701 alternatives to analyze. Furthermore, because the decision to request a hearing or propose an alternative is entirely at the discretion of the party, any cost to the party will be incurred only when the party decides that the cost will be justified by the benefits of the process.

2. These rules will not create inconsistencies with or interfere with other agencies' actions. Agencies other than the three Departments and FERC will not be affected by the hearing process authorized by the rules; and the rules have been crafted to avoid any inconsistencies or interference with the actions of the three Departments and FERC.

3. These rules will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These rules pertain only to the hearing procedures implementing recent amendments to the FPA, not to entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. The assessment of OMB is that the rules raise novel policy issues, in that the expedited trial-type hearing process represents a novel approach to public participation and administrative review.

D. *Regulatory Flexibility Act.* The Departments certify that these rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

These rules will not affect a substantial number of small entities. According to the Small Business Administration, for NAICS code 221111, hydroelectric power generation, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Although the regulated community of FERC licensees does include a substantial number of small entities, the number of affected entities in a given year is likely to be small, perhaps three to six per year.

More important, the effect of the rules on small entities will not be significant. Any entity affected by these rules will have already been heavily involved in a FERC hydropower licensing proceeding, submitting and commenting on

information in the record of that proceeding. These rules merely provide an additional administrative procedure, should the entity choose to use it, to obtain a definitive ruling on disputed issues of material fact with respect to conditions and prescriptions to be included in the license. Any cost to the entity will be incurred only when it decides that the cost will be justified by the benefits of the process. For these reasons, the rules will not have a significant economic effect.

E. *Small Business Regulatory Enforcement Fairness Act.* These rules are not major under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2).

1. As explained above, these rules will not have an annual effect on the economy of $100 million or more.

2. These rules will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. A hearing process for disputed issues of material fact with respect to the Departments' conditions and prescriptions will not affect costs or prices.

3. These rules will not have significant, adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Implementing recent amendments to the FPA by establishing the hearing procedures in these rules should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

F. *Unfunded Mandates Reform Act.* In accordance with the Unfunded Mandates Reform Act, 2 U.S.C 1531 *et seq.*, The Departments find that:

1. These rules will not have a significant or unique effect on State, local, or Tribal governments or the private sector.

2. These rules will not produce an unfunded Federal mandate of $100 million or more on State, local, or Tribal governments in the aggregate or on the private sector in any year; i.e., they do not constitute a ''significant regulatory action'' under the Unfunded Mandates Reform Act. State, local, and Tribal governments routinely file comments on the Departments' licensing conditions under the existing MCRP policy. The new opportunity for a hearing will be available to a State, local, or Tribal government only if it is a party to the license proceeding and chooses to participate in the hearing process. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act is not required.

G. *Takings (E.O. 12630).* In accordance with Executive Order 12630, the Departments conclude that these rules will not have significant takings implications. The conditions and prescriptions included in hydropower licenses relate to operation of hydropower facilities on resources not owned by the applicant, i.e., public waterways and/or reservations. Therefore, these rules will not result in a taking of private property, and a takings implication assessment is not required.

H. *Federalism (E.O. 13132).* In accordance with Executive Order 13132, the Departments find that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on States from establishing hearing procedures for disputed issues of material fact regarding Departmental conditions and prescriptions. The rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rules will not preempt State law. Therefore, a Federalism Assessment is not required.

I. *Civil Justice Reform (E.O. 12988).* In accordance with Executive Order 12988, the Departments have determined that these rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order. The rules provide clear language as to what is allowed and what is prohibited. Litigation regarding FERC hydropower licenses currently begins with a rehearing before FERC and then moves to Federal appeals court. By offering a trial-type hearing on disputed issues of material fact with respect to conditions and prescriptions developed by the Departments, the rules will likely result in a decrease in the number of proceedings that are litigated.

J. *Paperwork Reduction Act.* With respect to the hearing process, these rules are exempt from the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), because they will apply to the conduct of agency administrative proceedings involving specific individuals and entities. 44 U.S.C. 3518(c); 5 CFR 1320.4(a)(2). However, with respect to the alternatives process, these rules contain provisions that would collect information from the public, and therefore require approval from OMB under the PRA. According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in these rules on an emergency basis and approved it under OMB control number 1094–0001. This approval expires May 31, 2006.

The purpose of the information collection in this rulemaking is to provide an opportunity for license parties to propose an alternative condition or prescription. Responses to this information collection are voluntary. We estimate that an average of 351 alternatives will be submitted per year over the next 3 years. We estimate that the average burden for preparing and submitting an alternative will be 200 hours; thus, the total information collection burden of this rulemaking is about 70,200 hours per year.

Because this information collection was approved on an emergency basis, the OMB approval will expire in 6 months. We will be requesting a 3-year extension from OMB for this collection in accordance with the normal process for renewing an information collection approval. The first step in this renewal process is to request, via a **Federal Register** notice, public comments on the information collection. We are hereby doing so. In particular, we request your comments on (1) whether the collection of information is necessary and appropriate for its intended purpose; (2) the accuracy of our estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden on the respondents of the collection of information, including the possible use of automated collection techniques or other forms of information technology.

Please submit your comments by January 17, 2006 using one of the methods listed in the **ADDRESSES** section above.

If you would like a copy of our submission to OMB that requested emergency approval of this information collection, which includes the OMB Form 83–I and supporting statement, please contact Larry Finfer as listed in the **FOR FURTHER INFORMATION CONTACT** section above. A copy will be sent to you at no charge.

K. *National Environmental Policy Act.* The Departments have analyzed their respective rules in accordance with NEPA, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Departments' internal NEPA guidance. CEQ regulations, at 40 CFR 1508.4, define a ''categorical

exclusion'' as a category of actions that a department has determined ordinarily do not, individually or cumulatively, have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3.

Each Department has determined that these rules are categorically excluded from further environmental analysis under NEPA in accordance with its own authorities, listed below. These rules promulgate regulations of an administrative and procedural nature relating to trial-type hearings and the submission and analysis of alternatives as mandated under FPA, as amended by EPAct. They do not individually or cumulatively have a significant impact on the human environment and, therefore, neither an EA nor an EIS under NEPA is required. The relevant authorities for each Department are as follows:

Agriculture: 7 CFR 1b.3(b); Forest Service Handbook 1909.15, 31.12.

Interior: 516 Departmental Manual 2, Appendices 1–2.

Commerce: NOAA Administrative Order 216–6, sections 5.05 and 6.03c3(i).

L. *Government-to-Government relationship with Indian Tribes.* In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' 59 FR 22951 (May 4, 1994), supplemented by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000), the Departments have assessed the impact of these rules on Tribal trust resources and have determined that they do not directly affect Tribal resources. The rules are procedural and administrative in nature. However, conditions and actions associated with an actual hydropower licensing proposal may directly affect Tribal resources; therefore the Departments will consult with Tribal governments when developing section 4(e) conditions and section 18 prescriptions needed to address the management of those resources.

M. *Effects on the Nation's Energy Supply.* In accordance with Executive Order 13211, the Departments find that these rules will not have substantial direct effects on energy supply, distribution, or use, including shortfall in supply or price increase. Recent analysis by FERC has found that, on average, installed capacity increased through licensing by 4.06 percent, and the average annual generation loss, attributable largely to increased flows to protect aquatic resources, was 1.59 percent. (Report on Hydroelectric Licensing Policies, Procedures, and Regulations: Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000, prepared by the staff of the Federal Energy Regulatory Commission, May 2001.) Since the licensing process itself has such a modest energy impact, these rules, which affect only the Departments' administrative review procedures, are not expected to have a significant impact under the Executive Order (i.e., reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity).

N. *Clarity of These Regulations.* Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make these rules easier to understand, including answers to the following questions: (1) Are the requirements in the rules clearly stated? (2) Do the rules contain technical language or jargon that interferes with their clarity? (3) Does the format of the rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the rules be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example, **§ 1.602 What terms are used in this subpart?**) (5) Is the description of the rules in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rules? (6) What else could we do to make the rules easier to understand?

List of Subjects in 7 CFR Part 1, 43 CFR Part 45, 50 CFR Part 221

Administrative practice and procedure, Fisheries, Hydroelectric power, Indians—lands, National forests, National parks, National wildlife refuge system, Public land, Waterways, Wildlife.

Dated: November 9, 2005.

David P. Tenny,

Deputy Undersecretary—Natural Resources and Environment, U.S. Department of Agriculture.

Dated: November 8, 2005.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget, U.S. Department of the Interior.

Dated: November 8, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

■ For the reasons set forth in the preamble, the Departments of Agriculture, the Interior, and Commerce amend titles 7, 43, and 50 of the Code of Federal Regulations as set forth below.

Department of Agriculture

7 CFR Subtitle A

PART 1—ADMINISTRATIVE REGULATIONS

■ 1. The Department of Agriculture adds subpart O to part 1, title 7, to read as follows:

Subpart O—Conditions in FERC Hydropower Licenses

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Sec.

1.601 What is the purpose of this subpart, and to what license proceedings does it apply?
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1.611 What are the form and content requirements for documents under §§ 1.611 through 1.660?
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1.640 What are the requirements for prehearing conferences?
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1.646 What sanctions may the ALJ impose for failure to comply with discovery?
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1.656 What are the requirements for transcription of the hearing?
1.657 What is the standard of proof?
1.658 When will the hearing record close?
1.659 What are the requirements for post-hearing briefs?
1.660 What are the requirements for the ALJ's decision?

Alternatives Process

1.670 How must documents be filed and served under §§ 1.670 through 1.673?
1.671 How do I propose an alternative?
1.672 What will the Forest Service do with a proposed alternative?
1.673 How will the Forest Service analyze a proposed alternative and formulate its modified conditions?
1.674 Has OMB approved the information collection provisions of §§ 1.670 through 1.673?

Authority: 16 U.S.C. 797(e), 811, 823d.

General Provisions

§ 1.601 What is the purpose of this subpart, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in §§ 1.601 through 1.660 contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions that the Department of Agriculture, Forest Service (Forest Service) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions is granted by FPA section 4(e), 16 U.S.C. 797(e), which authorizes the Secretary of Agriculture to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC).

(2) The hearing process under this subpart does not apply to recommendations that the Forest Service may submit to FERC under FPA section 10(a), 16 U.S.C. 803(a).

(3) The FPA also grants the Department of the Interior the authority to develop mandatory conditions and prescriptions, and the Department of Commerce the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where the Forest Service USDA and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 1.623:

(i) A hearing conducted under this subpart will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this subpart will be conducted by one of the other Departments, pursuant to 43 CFR 45.1 *et seq.* or 50 CFR 221.1 *et seq.*, as applicable.

(4) The regulations in §§ 1.601 through 1.660 will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 1.660(a).

(b) *Alternatives process.* The regulations in §§ 1.670 through 1.673 contain rules of procedure applicable to the submission and consideration of alternative conditions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by the Forest Service under section 4(e).

(c) *Reservation of authority.* Where the Forest Service notifies FERC that it is reserving its authority to develop one or more conditions during the term of the license, the hearing and alternatives processes under this subpart for such conditions will be available if and when the Forest Service exercises its reserved authority. The Forest Service will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

(d) *Applicability.* (1) This subpart applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary conditions or conditions have been or are filed with FERC.

(2) If the Forest Service has already filed one or more preliminary conditions or conditions as of November 17, 2005, the special applicability provisions of § 1.604 also apply.

§ 1.602 What terms are used in this subpart?

As used in this subpart:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under this subpart.

Alternative means a condition that a license party other than the Forest Service or another Department develops as an alternative to a preliminary condition from the Forest Service or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

Forest Service means the USDA Forest Service.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Hearing Clerk means the Hearing Clerk, USDA, 1400 Independence Ave., SW., Washington, DC 20250; phone: 202–720–4443, facsimile: 202–720–9776.

Intervention means a process by which a person who did not request a

hearing under § 1.621 can participate as a party to the hearing under § 1.622.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

NFS means Deputy Chief, National Forest Systems, Forest Service. The service and mailing address under this subpart is NFS, Washington Office (WO) Lands Staff, Mail Stop 1124, 1400 Independence Avenue, SW., Washington, DC 20250–0003, telephone 202–205–1248, facsimile number 202–205–1604.

Office of Administrative Law Judges (OALJ) is the office within USDA in which ALJs conduct hearings under the regulations in this subpart.

Party means, with respect to USDA's hearing process:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 1.621; or

(ii) Either 43 CFR 45.21 or 50 CFR 221.21, with respect to a hearing process consolidated under § 1.623;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 1.622; or

(ii) Either 43 CFR 45.22 or 50 CFR 221.22, with respect to a hearing process consolidated under § 1.623;

(3) The Forest Service, if it has filed a preliminary condition; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 1.623.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state, tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 1.610.

Reservation has the same meaning as the term ''reservations'' in FPA sec. 3(2), 16 U.S.C. 796(2).

Secretary means the Secretary of Agriculture or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

USDA means the United States Department of Agriculture.

You refers to a party other than a Department.

§ 1.603 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 1.621, a notice of intervention and response under § 1.622, an answer under § 1.624, or any document under §§ 1.670 through 1.673.

(2) An extension of time to file any other document under this subpart may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 1.635 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 1.660.

§ 1.604 What deadlines apply to pending applications?

(a) *Applicability.* (1) This section applies to any case in which the Forest Service has filed a preliminary condition or condition with FERC before November 17, 2005 and FERC has not issued a license as of that date.

(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this subpart.

(b) *Hearing process.* (1) Any request for a hearing under § 1.621 must be filed with NFS by December 19, 2005.

(2) Any notice of intervention and response under § 1.622 must be filed by January 3, 2006.

(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, the Forest Service must do the following by March 17, 2006:

(i) Comply with the requirements of § 1.623;

(ii) Determine jointly with any other Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for the Forest Service to file an answer under § 1.624; and

(iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for the Forest Service to file an answer.

(c) *Alternatives process.* (1) Any alternative under § 1.671 must be filed with NFS by December 19, 2005.

(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, the Forest Service must do the following by February 15, 2006:

(i) Determine jointly with any other Department that has received a related alternative, after consultation with FERC, a time frame for the filing of a modified condition under § 1.672(b); and

(ii) Issue a notice to the license party that has submitted the alternative, specifying the time frame for the filing of a modified condition.

(3) Upon receipt of an alternative under paragraph (c)(1) of this section, if a hearing request is also filed under paragraph (b)(1) of this section, the Forest Service will follow the provisions of paragraph (b)(3) of this section.

Hearing Process

Representatives

§ 1.610 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may

authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a federal, state, tribal, county, district, territorial, or local government or component.

(c) *Appearance.* A representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 1.611;

(2) Include the name and address of the person on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

Document Filing and Service

§ 1.611 What are the form and content requirements for documents under §§ 1.610 through 1.660?

(a) *Form.* Each document filed in a case under §§ 1.610 through 1.660 must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page;

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 10 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under §§ 1.610 through 1.660 must begin with a caption that sets forth:

(1) The name of the case under §§ 1.610 through 1.660 and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under §§ 1.610 through 1.660 relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under §§ 1.610 through 1.660 must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 1.612 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under §§ 1.610 through 1.660 must be filed with the appropriate office, as follows:

(1) Before NFS refers a case for docketing under § 1.625, any documents must be filed with NFS. NFS's address, telephone number, and facsimile number are set forth in § 1.602.

(2) NFS will notify the parties of the date on which it refers a case for docketing under § 1.625. After that date, any documents must be filed with:

(i) The Hearing Clerk, if USDA will be conducting the hearing. The Hearing Clerk's address, telephone number, and facsimile number are set forth in § 1.602; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing under § 1.625. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from the Forest Service.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document;

(ii) By sending the original document by express mail or courier service for delivery on the next business day; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document is sent by regular mail on the same day.

(2) Parties are encouraged, but not required, to supplement any filing by providing the appropriate office with an electronic copy of the document on diskette or compact disc.

(c) *Date of filing.* A document under §§ 1.610 through 1.660 is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under §§ 1.610 through 1.660 does not comply with the requirements of §§ 1.610 through 1.660 or any applicable order, it may be rejected. If the defect is minor, the party may be notified of the defect and given a chance to correct it.

§ 1.613 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under §§ 1.610 through 1.660 must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 1.621 must be served on FERC and each license party, using one of the methods of service in paragraph (c) of this section.

(2) A complete copy of any notice of intervention and response under § 1.622 must be:

(i) Served on FERC, the license applicant, any person who has filed a request for hearing under § 1.621, and the Forest Service, using one of the methods of service in paragraph (c) of this section; and

(ii) Sent to any other license party using regular mail.

(3) A complete copy of any other filed document must be served on each party, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the Hearing Clerk or ALJ.* A complete copy of any notice, order, decision, or other document issued by the Hearing Clerk or the ALJ under §§ 1.610 through 1.660 must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day; or

(4) By sending the document, including all attachments, by electronic mail if:

(i) A copy of the document is sent by regular mail on the same day; and

(ii) The party acknowledges receipt of the document by close of the next business day.

(d) *Acknowledgment of service.* Any party who receives a document under §§ 1.610 through 1.660 by electronic mail must promptly send a reply electronic mail message acknowledging receipt.

(e) *Certificate of service.* A certificate of service must be attached to each document filed under §§ 1.610 through 1.660. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 1.620 What supporting information must the Forest Service provide with its preliminary conditions?

(a) *Supporting information.* (1) When the Forest Service files preliminary conditions with FERC, it must include a rationale for the conditions and an index to the Forest Service's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, the Forest Service must:

(i) File them with FERC at the time it files the preliminary conditions; and

(ii) Provide paper or electronic copies to the license applicant.

(b) *Service.* In addition to serving a copy of its preliminary conditions on each license party, the Forest Service must provide a copy to the Hearing Clerk if and when a request for a hearing is filed with respect to the preliminary conditions.

§ 1.621 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any condition filed by the Forest Service, you must:

(1) Be a license party; and

(2) File with NFS a written request for a hearing within 30 days after the deadline for the Departments to file preliminary conditions with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence; and

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by the Forest Service under § 1.620(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous;

(iii) The basis for your opinion that any factual dispute is material; and

(iv) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 1.622 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with NFS a notice of intervention and a written response to any request for a hearing within 15 days after the date of service of the request for a hearing.

(2) A license party filing a notice of intervention and response may not raise issues of material fact beyond those raised in the hearing request.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 1.621(b).

(1) If you agree with the information provided by the Forest Service under § 1.620(a) or by the requester under § 1.621(b), your response may refer to the Forest Service's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 1.621(b).

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 1.623 When will hearing requests be consolidated?

(a) *Initial Department coordination.* If the Forest Service has received a copy of a hearing request, it must contact the other Departments within 10 days after the deadline for filing hearing requests under § 1.621 and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Department has also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Within 25 days after the deadline for filing hearing requests under § 1.621, if the Forest Service has received a hearing request, it must:

(1) Consult with any other Department that has also received a hearing request; and

(2) Decide jointly with the other Department:

(i) Whether to consolidate the cases for hearing under paragraphs (c)(3)(ii) through (c)(3)(iv) of this section; and

(ii) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any conditions from the same Department will be consolidated for hearing.

(2) All hearing requests with respect to any prescriptions from the same Department will be consolidated for hearing.

(3) Any or all of the following may be consolidated for hearing, if the Departments involved determine that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to any condition and any prescription from the same Department;

(ii) Two or more hearing requests with respect to conditions from different Departments;

(iii) Two or more hearing requests with respect to prescriptions from different Departments; or

(iv) Two or more hearing requests with respect to any condition from one Department and any prescription from another Department.

§ 1.624 How will the Forest Service respond to any hearing requests?

(a) *General.* Within 45 days after the deadline in § 1.621(a)(2), the Forest Service may file with the Hearing Clerk an answer to any hearing request under § 1.621.

(b) *Content.* If the Forest Service files an answer:

(1) For each of the numbered factual issues listed under § 1.621(b)(1), the answer must explain the Forest Service's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That the Forest Service is willing to stipulate to the facts as alleged by the requester;

(ii) That the Forest Service believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That the Forest Service believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That the Forest Service agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 1.623 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(c) *Witnesses and exhibits.* The Forest Service's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the Forest Service must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the Forest Service must specify whether it is in the license proceeding record

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If the Forest Service elects not to file an answer to a hearing request:

(1) The Forest Service is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The Forest Service may file a list of witnesses and exhibits with respect to the request only as provided in § 1.642(b); and

(3) The Forest Service must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 1.623.

§ 1.625 What will the Forest Service do with any hearing requests?

(a) *Case referral.* Within 5 days after receipt of the Forest Service's answer, NFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by USDA, NFS will refer the case to the OALJ.

(2) If the hearing is to be conducted by another Department, NFS will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) A copy of any preliminary condition under § 1.620;

(2) The original of any hearing request under § 1.621;

(3) The original of any notice of intervention and response under § 1.622;

(4) The original of any answer under § 1.624; and

(5) An original referral notice under paragraph (c) of this section.

(c) *Notice.* At the time NFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The date on which NFS is referring the case for docketing.

(d) *Delivery and service.* (1) NFS must refer the case to the appropriate Department hearings component by one of the methods identified in § 1.612(b)(1)(i) and (b)(1)(ii).

(2) NFS must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 1.613(c)(1) and (c)(2).

§ 1.626 What regulations apply to a case referred for a hearing?

(a) If NFS refers the case to OALJ, these regulations will continue to apply to the hearing process.

(b) If NFS refers the case to the Department of the Interior's Office of Hearing and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point.

(c) If NFS refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point.

General Provisions Related to Hearings

§ 1.630 What will OALJ do with a case referral?

Within 5 days after issuance of the referral notice under § 1.625(c), 43 CFR 45.25(c), or 50 CFR 221.25(c):

(a) The Hearing Clerk must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 1.640. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 1.631 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, consistent with the requirements of § 1.660(a), including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas to the extent authorized by law;

(c) Rule on motions;

(d) Authorize discovery as provided for in §§ 1.641 through 1.647;

(e) Hold hearings and conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Exclude any person from a hearing or conference for misconduct or other good cause;

(i) Issue a decision consistent with § 1.660(b) regarding any disputed issues of material fact relating to the Forest Service's or other Department's condition or prescription that has been referred to the ALJ for hearing; and

(j) Take any other action authorized by law.

§ 1.632 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 1.631, the OALJ shall designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 1.633 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 1.634 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 1.635 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearing Clerk issues a docketing notice under § 1.630.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of §§ 1.610 through 1.613 with respect to form, content, filing, and service; and

(iii) Not exceed 10 pages.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this subpart or by order of the ALJ, any other party may file a response to a written motion within 10 days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 1.640 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under § 1.630, on or about the 20th day after issuance of the referral notice under § 1.625(c).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 1.641 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set the deadline for submission of written testimony under § 1.652; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in

the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 1.641 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories;

(2) Depositions as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after issuance of the referral notice under § 1.625(c).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose a witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference, unless the ALJ sets a different deadline.

§ 1.642 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 5 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§ 1.621(c), 1.622(c), or 1.624(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§ 1.621(c), 1.622(c), or 1.624(c).

(c) *Failure to disclose.* (1) A party that fails to disclose information required under §§ 1.621(c), 1.622(c), or 1.624(c), or paragraphs (a) or (b) of this section, will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) Before or during the hearing, a party may object to the admission of evidence under paragraph (c)(1) of this section.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 1.643 What are the requirements for written interrogatories?

(a) *Motion.* Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under § 1.641(c).

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 1.641(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 1.644 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 1.641(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 1.641(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements.* If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(3) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 1.653.

§ 1.645 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 1.641(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 1.641(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the

order under paragraph (a) of this section.

§ 1.646 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 1.642(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 1.647 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may file a motion requesting the ALJ to issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may subpoena a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed to do so is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to federal employees who are called as witnesses by the Forest Service or another Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires evidence during discovery that is not discoverable; or

(iii) Requires evidence during a hearing that is privileged or irrelevant.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 1.650 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 1.640, generally within 15 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 1.651 What are the parties' rights during the hearing?

Consistent with the provisions of this subpart, each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present direct and rebuttal evidence;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 1.652 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony must be prepared and submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 1.647 directing a witness to testify by telephonic conference call.

§ 1.653 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 1.644 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 1.654 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of any Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 1.655 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 1.642(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

§ 1.656 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Forest Service will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Forest Service on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 1.657 What is the standard of proof?

The standard of proof is a preponderance of the evidence.

§ 1.658 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 1.656 (b).

§ 1.659 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 1.660 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 1.658; or

(2) 90 days after issuance of the referral notice under § 1.625(c), 43 CFR 45.25(c), or 50 CFR 221.25(c).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and

(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) *Finality.* The ALJ's decision under this section will be final, with respect to the disputed issues of material fact, for any Department involved in the hearing. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b).

Alternatives Process

§ 1.670 How must documents be filed and served under §§ 1.670 through 1.673?

(a) *Filing.* (1) For the alternatives process, documents must be filed using one of the methods set forth in § 1.612(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this section must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be served on each license party and FERC, using:

(i) One of the methods of service in § 1.613(c); or

(ii) Regular mail.

(2) The provisions of § 1.613 (d) and (e) regarding acknowledgment and certificate of service apply to service under this section.

§ 1.671 How do I propose an alternative?

(a) *General.* To propose an alternative, you must:

(1) Be a license party; and

(2) File a written proposal with NFS within 30 days after the deadline for the Forest Service to file preliminary conditions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition;

(2) An explanation of how the alternative will provide for the adequate protection and utilization of the reservation;

(3) An explanation of how the alternative, as compared to the preliminary condition, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (e.g., regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 1.672 What will the Forest Service do with a proposed alternative?

If any license party proposes an alternative to a preliminary condition under § 1.671(a)(1), the Forest Service must do the following within 60 days after the deadline for filing comments to FERC's NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under § 1.673; and

(b) File with FERC:

(1) Any condition that the Forest Service adopts as its modified condition; and

(2) Its analysis of the modified condition and any proposed alternatives under § 1.673(c).

§ 1.673 How will the Forest Service analyze a proposed alternative and formulate its modified condition?

(a) In deciding whether to adopt a proposed alternative, the Forest Service must consider evidence and supporting material provided by any license party or otherwise available to the Forest Service, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on the Forest Service's preliminary condition;

(3) Any ALJ decision on disputed issues of material fact issued under § 1.660 with respect to the preliminary condition;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 1.671.

(b) The Forest Service must adopt a proposed alternative if the Forest Service determines, based on substantial evidence provided by any license party or otherwise available to the Forest Service, that the alternative:

(1) Will, as compared to the Forest Service's preliminary condition:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will provide for the adequate protection and utilization of the reservation.

(c) When the Forest Service files with FERC the condition that the Forest Service adopts as its modified condition under §§ 1.672(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition; and

(ii) If the Forest Service is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that the Forest Service gave equal consideration to the effects of the condition adopted and any alternative not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 1.674 Has OMB approved the information collection provisions of §§ 1.670 through 1.673?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

Department of the Interior

43 CFR Subtitle A

■ 2. The Department of the Interior adds part 45, title 43, to read as follows:

PART 45—CONDITIONS AND PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

Subpart A—General Provisions

Sec.

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45.2 What terms are used in this part?
45.3 How are time periods computed?
45.4 What deadlines apply to pending applications?

Subpart B—Hearing Process

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Document Filing and Service

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45.12 Where and how must documents be filed?
45.13 What are the requirements for service of documents?

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45.21 How do I request a hearing?
45.22 How do I file a notice of intervention and response?
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Authority: 16 U.S.C. 797(e), 811, 823d.

Subpart A—General Provisions

§ 45.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions and prescriptions that the Department of the Interior (DOI) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions and prescriptions is granted by FPA sections 4(e) and 18, 16 U.S.C. 797(e) and 811, which authorize the Secretary of the Interior to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC) and to prescribe fishways.

(2) The hearing process under this part does not apply to recommendations that DOI may submit to FERC under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j).

(3) The FPA also grants the Department of Agriculture the authority to develop mandatory conditions, and the Department of Commerce the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where DOI and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 45.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 *et seq.* or 50 CFR 221.1 *et seq.*, as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 45.60(a).

(b) *Alternatives process.* The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative conditions and prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by DOI under section 4(e) or a fishway prescribed by DOI under section 18.

(c) *Reservation of authority.* Where DOI notifies FERC that it is reserving its authority to develop one or more conditions or prescriptions during the term of the license, the hearing and alternatives processes under this part for such conditions or prescriptions will be available if and when DOI exercises its reserved authority. DOI will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

(d) *Applicability.* (1) This part applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary

conditions, conditions, preliminary prescriptions, or prescriptions have been or are filed with FERC.

(2) If DOI has already filed one or more preliminary conditions, conditions, preliminary prescriptions, or prescriptions as of November 17, 2005, the special applicability provisions of § 45.4 also apply.

§ 45.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a condition or prescription that a license party other than a bureau or Department develops as an alternative to a preliminary condition or prescription from a bureau or Department, under FPA sec. 33, 16 U.S.C. 823d.

Bureau means any of the following organizations within DOI that develops a preliminary condition or prescription: the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, or National Park Service.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

DOI means the Department of the Interior, including any bureau, unit, or office of the Department, whether in Washington, DC, or in the field.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Hearings Division means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, 139 E. South Temple, Suite 600, Salt Lake City, Utah 84111, telephone 801–524–5344, facsimile number 801–524–5539.

Intervention means a process by which a person who did not request a hearing under § 45.21 can participate as a party to the hearing under § 45.22.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

OEPC means the Office of Environmental Policy and Compliance, Department of the Interior, 1849 C Street, NW., Mail Stop 2342, Washington, DC 20240, telephone 202–208–3891, facsimile number 202–208–6970.

Party means, with respect to DOI's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 45.21; or

(ii) Either 7 CFR 1.621 or 50 CFR 221.21, with respect to a hearing process consolidated under § 45.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 45.22; or

(ii) Either 7 CFR 1.622 or 50 CFR 221.22, with respect to a hearing process consolidated under § 45.23;

(3) Any bureau that has filed a preliminary condition or prescription; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 45.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state, tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 45.10.

Reservation has the same meaning as the term ''reservations'' in FPA sec. 3(2), 16 U.S.C. 796(2).

Secretary means the Secretary of the Interior or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 45.3 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 45.21, a notice of intervention and response under § 45.22, an answer under § 45.24, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 45.35 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 45.60.

§ 45.4 What deadlines apply to pending applications?

(a) *Applicability.* (1) This section applies to any case in which a bureau has filed a preliminary condition, condition, preliminary prescription, or prescription with FERC before November 17, 2005 and FERC has not issued a license as of that date.

(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this part.

(b) *Hearing process.* (1) Any request for a hearing under § 45.21 must be filed with OEPC by December 19, 2005.

(2) Any notice of intervention and response under § 45.22 must be filed by January 3, 2006.

(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, the bureau must do the following by March 17, 2006:

(i) Comply with the requirements of § 45.23;

(ii) Determine jointly with any other bureau or Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for the bureau to file an answer under § 45.24; and

(iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for the bureau to file an answer.

(c) *Alternatives process.* (1) Any alternative under § 45.71 must be filed with OEPC by December 19, 2005.

(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, the bureau must do the following by February 15, 2006:

(i) Determine jointly with any other bureau or Department that has received a related alternative, after consultation with FERC, a time frame for the filing of a modified condition or prescription under § 45.72(b); and

(ii) Issue a notice to the license party that has submitted the alternative, specifying the time frame for the filing of a modified condition or prescription.

(3) Upon receipt of an alternative under paragraph (c)(1) of this section, if a hearing request is also filed under paragraph (b)(1) of this section, the bureau will follow the provisions of paragraph (b)(3) of this section.

Subpart B—Hearing Process

Representatives

§ 45.10 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a federal, state, tribal, county, district, territorial, or local government or component.

(c) *Appearance.* A representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 45.11;

(2) Include the name and address of the person on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

Document Filing and Service

§ 45.11 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under this subpart must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page;

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 10 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under this subpart must begin with a caption that sets forth:

(1) The name of the case under this subpart and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under this subpart relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under this subpart must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 45.12 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before OEPC refers a case for docketing under § 45.25, any documents must be filed with OEPC. OEPC's address, telephone number, and facsimile number are set forth in § 45.2.

(2) OEPC will notify the parties of the date on which it refers a case for docketing under § 45.25. After that date, any documents must be filed with:

(i) The Hearings Division, if DOI will be conducting the hearing. The Hearings Division's address, telephone number, and facsimile number are set forth in § 45.2; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing under § 45.25. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from OEPC.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document;

(ii) By sending the original document by express mail or courier service for delivery on the next business day; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document is sent by regular mail on the same day.

(2) Parties are encouraged, but not required, to supplement any filing by providing the appropriate office with an

electronic copy of the document on diskette or compact disc.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected. If the defect is minor, the party may be notified of the defect and given a chance to correct it.

§ 45.13 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 45.21 must be served on FERC and each license party, using one of the methods of service in paragraph (c) of this section.

(2) A complete copy of any notice of intervention and response under § 45.22 must be:

(i) Served on FERC, the license applicant, any person who has filed a request for hearing under § 45.21, and any bureau, using one of the methods of service in paragraph (c) of this section; and

(ii) Sent to any other license party using regular mail.

(3) A complete copy of any other filed document must be served on each party, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the Hearings Division or ALJ.* A complete copy of any notice, order, decision, or other document issued by the Hearings Division or the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day; or

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day.

(d) *Certificate of service.* A certificate of service must be attached to each document filed under this subpart. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 45.20 What supporting information must a bureau provide with its preliminary conditions or prescriptions?

(a) *Supporting information.* (1) When any bureau files a preliminary condition or prescription with FERC, it must include a rationale for the condition or prescription and an index to the bureau's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, the bureau must:

(i) File them with FERC at the time it files the preliminary condition or prescription;

(ii) Provide copies to the license applicant; and

(iii) In the case of a condition developed by the Bureau of Indian Affairs, provide copies to the affected tribe.

(b) *Service.* In addition to serving a copy of its preliminary condition or prescription on each license party, the bureau must provide a copy to OEPC if and when a request for a hearing is filed with respect to the preliminary condition or prescription.

§ 45.21 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any condition or prescription filed by a bureau, you must:

(1) Be a license party; and

(2) File with OEPC a written request for a hearing within 30 days after the deadline for the Departments to file preliminary conditions or prescriptions with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence; and

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by the bureau under § 45.20(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous;

(iii) The basis for your opinion that any factual dispute is material; and

(iv) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 45.22 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with OEPC a notice of intervention and a written response to any request for a hearing within 15 days after the date of service of the request for a hearing.

(2) A license party filing a notice of intervention and response may not raise issues of material fact beyond those raised in the hearing request.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 45.21(b).

(1) If you agree with the information provided by the bureau under § 45.20(a) or by the requester under § 45.21(b), your response may refer to the bureau's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 45.21(b).

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 45.23 When will hearing requests be consolidated?

(a) *Initial Department coordination.* Any bureau that has received a copy of a hearing request must contact the other bureaus and Departments within 10 days after the deadline for filing hearing requests under § 45.21 and determine:

(1) Whether any of the other bureaus or Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other bureau or Department has also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Within 25 days after the deadline for filing hearing requests under § 45.21, any bureau or Department that has received a hearing request must:

(1) Consult with any other bureau or Department that has also received a hearing request; and

(2) Decide jointly with the other bureau or Department:

(i) Whether to consolidate the cases for hearing under paragraphs (c)(3)(ii) through (c)(3)(iv) of this section; and

(ii) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any conditions from the same Department will be consolidated for hearing.

(2) All hearing requests with respect to any prescriptions from the same Department will be consolidated for hearing.

(3) Any or all of the following may be consolidated for hearing, if the bureaus and Departments involved determine that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to any condition and any prescription from the same Department;

(ii) Two or more hearing requests with respect to conditions from different Departments;

(iii) Two or more hearing requests with respect to prescriptions from different Departments; or

(iv) Two or more hearing requests with respect to any condition from one Department and any prescription from another Department.

§ 45.24 How will the bureau respond to any hearing requests?

(a) *General.* Within 45 days after the deadline in § 45.21(a)(2), the bureau may file with OEPC an answer to any hearing request under § 45.21.

(b) *Content.* If the bureau files an answer:

(1) For each of the numbered factual issues listed under § 45.21(b)(1), the answer must explain the bureau's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That the bureau is willing to stipulate to the facts as alleged by the requester;

(ii) That the bureau believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That the bureau believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That the bureau agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 45.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(c) *Witnesses and exhibits.* The bureau's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the bureau must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the bureau must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If the bureau elects not to file an answer to a hearing request:

(1) The bureau is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The bureau may file a list of witnesses and exhibits with respect to the request only as provided in § 45.42(b); and

(3) The bureau must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 45.23.

§ 45.25 What will DOI do with any hearing requests?

(a) *Case referral.* Within 5 days after receipt of the bureau's answer, OEPC will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by DOI, OEPC will refer the case to the Hearings Division.

(2) If the hearing is to be conducted by another Department, OEPC will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) A copy of any preliminary condition or prescription under § 45.20;

(2) The original of any hearing request under § 45.21;

(3) The original of any notice of intervention and response under § 45.22;

(4) The original of any answer under § 45.24; and

(5) An original referral notice under paragraph (c) of this section.

(c) *Notice.* At the time OEPC refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The date on which OEPC is referring the case for docketing.

(d) *Delivery and service.* (1) OEPC must refer the case to the appropriate Department hearings component by one

of the methods identified in § 45.12(b)(1)(i) and (b)(1)(ii).

(2) OEPC must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 45.13(c)(1) and (c)(2).

§ 45.26 What regulations apply to a case referred for a hearing?

(a) If OEPC refers the case to the Hearings Division, the regulations in this subpart will continue to apply to the hearing process.

(b) If OEPC refers the case to the United States Department of Agriculture's Office of Administrative Law Judges, the regulations at 7 CFR 1.601 *et seq.* will apply from that point on.

(c) If OEPC refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point on.

General Provisions Related to Hearings

§ 45.30 What will the Hearings Division do with a case referral?

Within 5 days after issuance of the referral notice under § 45.25(c), 7 CFR 1.625(c), or 50 CFR 221.25(c):

(a) The Hearings Division must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 45.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 45.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, consistent with the requirements of § 45.60(a), including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas to the extent authorized by law;

(c) Rule on motions;

(d) Authorize discovery as provided for in this subpart;

(e) Hold hearings and conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Exclude any person from a hearing or conference for misconduct or other good cause;

(i) Issue a decision consistent with § 45.60(b) regarding any disputed issues of material fact relating to any bureau's or other Department's condition or prescription that has been referred to the ALJ for hearing; and

(j) Take any other action authorized by law.

§ 45.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 45.31, the Hearings Division shall designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 45.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 45.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 45.35 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearings Division issues a docketing notice under § 45.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and

(iii) Not exceed 10 pages.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part or by order of the ALJ, any other party may file a response to a written motion within 10 days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 45.40 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under § 45.30, on or about the 20th day after issuance of the referral notice under § 45.25(c).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 45.41 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set the deadline for submission of written testimony under § 45.52; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 45.41 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories;

(2) Depositions as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after issuance of the referral notice under § 45.25(c).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose a witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference, unless the ALJ sets a different deadline.

§ 45.42 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 5 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§ 45.21(c), 45.22(c), or 45.24(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§ 45.21(c), 45.22(c), or 45.24(c).

(c) *Failure to disclose.* (1) A party that fails to disclose information required under §§ 45.21(c), 45.22(c), or 45.24(c), or paragraphs (a) or (b) of this section, will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclosed.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) Before or during the hearing, a party may object to the admission of evidence under paragraph (c)(1) of this section.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 45.43 What are the requirements for written interrogatories?

(a) *Motion.* Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under § 45.41(c).

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 45.44 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 45.41(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements.* If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(3) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the

deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 45.53.

§ 45.45 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 45.41(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 45.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 45.42(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 45.47 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may file a motion requesting the ALJ to issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may subpoena a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed to do so is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to federal employees who are called as witnesses by a bureau or other Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires evidence during discovery that is not discoverable; or

(iii) Requires evidence during a hearing that is privileged or irrelevant.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 45.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 45.40, generally within 15 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 45.51 What are the parties' rights during the hearing?

Consistent with the provisions of this subpart, each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present direct and rebuttal evidence;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 45.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct

hearing testimony must be prepared and submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 45.47 directing a witness to testify by telephonic conference call.

§ 45.53 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 45.44 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 45.54 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of any Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 45.55 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 45.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

§ 45.56 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Hearings Division will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Hearings Division on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 45.57 What is the standard of proof?

The standard of proof is a preponderance of the evidence.

§ 45.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 45.56(b).

§ 45.59 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 45.60 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 45.58; or

(2) 90 days after issuance of the referral notice under § 45.25(c), 7 CFR 1.625(c), or 50 CFR 221.25(c).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and

(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) *Finality.* The ALJ's decision under this section will be final, with respect to the disputed issues of material fact, for any Department involved in the hearing. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825l(b).

Subpart C—Alternatives Process

§ 45.70 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 45.12(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be served on each license party and FERC, using:

(i) One of the methods of service in § 45.13(c); or

(ii) Regular mail.

(2) The provisions of § 45.13(d) and (e) regarding acknowledgment and certificate of service apply to service under this subpart.

§ 45.71 How do I propose an alternative?

(a) *General.* To propose an alternative, you must:

(1) Be a license party; and

(2) File a written proposal with OEPC within 30 days after the deadline for the bureau to file preliminary conditions or prescriptions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to the bureau's preliminary condition or prescription;

(2) An explanation of how the alternative:

(i) If a condition, will provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, will be no less protective than the fishway prescribed by the bureau;

(3) An explanation of how the alternative, as compared to the preliminary condition or prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (e.g., regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 45.72 What will the bureau do with a proposed alternative?

If any license party proposes an alternative to a preliminary condition or prescription under § 45.71(a)(1), the bureau must do the following within 60 days after the deadline for filing comments to FERC's NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under § 45.73; and

(b) File with FERC:

(1) Any condition or prescription that the bureau adopts as its modified condition or prescription; and

(2) Its analysis of the modified condition or prescription and any proposed alternatives under § 45.73(c).

§ 45.73 How will the bureau analyze a proposed alternative and formulate its modified condition or prescription?

(a) In deciding whether to adopt a proposed alternative, the bureau must consider evidence and supporting material provided by any license party or otherwise available to the bureau, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on the bureau's preliminary condition or prescription;

(3) Any ALJ decision on disputed issues of material fact issued under § 45.60 with respect to the preliminary condition or prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 45.71.

(b) The bureau must adopt a proposed alternative if the bureau determines, based on substantial evidence provided by any license party or otherwise available to the bureau, that the alternative:

(1) Will, as compared to the bureau's preliminary condition or prescription:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will:

(i) If a condition, provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, be no less protective than the bureau's preliminary prescription.

(c) When the bureau files with FERC the condition or prescription that the bureau adopts as its modified condition or prescription under §§ 45.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition or prescription; and

(ii) If the bureau is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that the bureau gave equal consideration to the effects of the condition or prescription adopted and any alternative not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 45.74 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

Department of Commerce

50 CFR Chapter II

■ 3. The Department of Commerce adds part 221, title 50, to read as follows:

PART 221—PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

Subpart A—General Provisions

Sec.

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221.57 What is the standard of proof?
221.58 When will the hearing record close?
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Subpart C—Alternatives Process

221.70 How must documents be filed and served under this subpart?
221.71 How do I propose an alternative?
221.72 What will NMFS do with a proposed alternative?
221.73 How will NMFS analyze a proposed alternative and formulate its modified prescription?

§ 221.74 Has OMB approved the information collection provisions of this subpart?

Authority: 16 U.S.C. 797(e), 811, 823d.

Subpart A—General Provisions

§ 221.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory prescriptions that the Department of Commerce, acting through the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) may develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these prescriptions is granted by FPA section 18, 16 U.S.C. 811, which authorizes the Secretary of Commerce to prescribe fishways.

(2) The hearing process under this part does not apply to recommendations that the Department of Commerce may submit to FERC under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j).

(3) The FPA also grants the Department of Agriculture and Interior the authority to develop mandatory conditions, and the Department of the Interior the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where the Department of Commerce and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 221.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 *et seq.* or 43 CFR 45.1 *et seq.*, as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 221.60(a).

(b) *Alternatives process.* The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a fishway prescribed by NMFS under section 18.

(c) *Reservation of authority.* Where NMFS notifies FERC that it is reserving its authority to develop one or more prescriptions during the term of the license, the hearing and alternatives processes under this part for such prescriptions will be available if and when NMFS exercises its reserved authority. NMFS will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

(d) *Applicability.* (1) This part applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary prescriptions or prescriptions have been or are filed with FERC.

(2) If NMFS has already filed one or more preliminary prescriptions or prescriptions as of November 17, 2005, the special applicability provisions of § 221.4 also apply.

§ 221.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a prescription that a license party other than NMFS or another Department develops as an alternative to a preliminary prescription from NMFS or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Department of Commerce's designated ALJ office means the ALJ office that is assigned to preside over the hearings process for NMFS.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq*.

Intervention means a process by which a person who did not request a hearing under § 221.21 can participate as a party to the hearing under § 221.22.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of NMFS's six Regional Administrators, as appropriate.

Office of Habitat Conservation means the NMFS Office of Habitat Conservation. Address: Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Telephone 301–713–4300. Facsimile number 301–713–4305.

Party means, with respect to NMFS's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 221.21; or

(ii) Either 7 CFR 1.621 or 43 CFR 45.21, with respect to a hearing process consolidated under § 221.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 221.22; or

(ii) Either 7 CFR 1.622 or 43 CFR 45.22, with respect to a hearing process consolidated under § 221.23;

(3) NMFS, if it has filed a preliminary prescription; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 221.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state, tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 221.10.

Secretary means the Secretary of Commerce or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 221.3 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 221.21, a notice of intervention and response under § 221.22, an answer under § 221.24, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 221.35 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 221.60.

§ 221.4 What deadlines apply to pending applications?

(a) *Applicability.* (1) This section applies to any case in which NMFS has filed a preliminary prescription or prescription with FERC before November 17, 2005 and FERC has not issued a license as of that date.

(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this part.

(b) *Hearing process.* (1) Any request for a hearing under § 221.21 must be filed with the Office of Habitat Conservation by December 19, 2005.

(2) Any notice of intervention and response under § 221.22 must be filed by January 3, 2006.

(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, NMFS must do the following by March 17, 2006:

(i) Comply with the requirements of § 221.23;

(ii) Determine jointly with any other Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for NMFS to file an answer under § 221.24; and

(iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for NMFS to file an answer.

(c) *Alternatives process.* (1) Any alternative under § 221.71 must be filed with the Office of Habitat Conservation by December 19, 2005.

(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, NMFS must do the following by February 15, 2006:

(i) Determine jointly with any other Department that has received a related alternative, after consultation with FERC, a time frame for the filing of a modified prescription under § 221.72(b); and

(ii) Issue a notice to the license party that has submitted the alternative, specifying the time frame for the filing of a modified prescription.

(3) Upon receipt of an alternative under paragraph (c)(1) of this section, if a hearing request is also filed under paragraph (b)(1) of this section, NMFS will follow the provisions of paragraph (b)(3) of this section.

Subpart B—Hearing Process

Representatives

§ 221.10 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a federal, state, tribal, county, district, territorial, or local government or component.

(c) *Appearance.* A representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 221.11;

(2) Include the name and address of the person on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

Document Filing and Service

§ 221.11 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under this subpart must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page;

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 10 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under this subpart must begin with a caption that sets forth:

(1) The name of the case under this subpart and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under this subpart relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under this subpart must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 221.12 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before NMFS refers a case for docketing under § 221.25, any documents must be filed with the Office of Habitat Conservation. The Office of Habitat Conservation's address, telephone number, and facsimile number are set forth in § 221.2.

(2) NMFS will notify the parties of the date on which it refers a case for docketing under § 221.25. After that date, any documents must be filed with:

(i) The Department of Commerce's designated ALJ office. The name, address, telephone number, and facsimile number of the Department of Commerce's designated ALJ office will be provided in the referral notice from NMFS; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing under § 221.25. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from NMFS.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document;

(ii) By sending the original document by express mail or courier service for delivery on the next business day; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document is sent by regular mail on the same day.

(2) Parties are encouraged, but not required to supplement any original document by providing the appropriate office with an electronic copy of the document on compact disc.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected. If the defect is minor, the party may be notified of the defect and given a chance to correct it.

§ 221.13 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 221.21 must be served on FERC and each license party, using one of the methods of service in paragraph (c) of this section.

(2) A complete copy of any notice of intervention and response under § 221.22 must be:

(i) Served on FERC, the license applicant, any person who has filed a request for hearing under § 221.21, and NMFS, using one of the methods of service in paragraph (c) of this section; and

(ii) Sent to any other license party using regular mail.

(3) A complete copy of any other filed document must be served on each party, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the ALJ.* A complete copy of any notice, order, decision, or other document issued by the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day; or

(4) By sending the document, including all attachments, by electronic mail if:

(i) A copy of the document is sent by regular mail on the same day; and

(ii) The party acknowledges receipt of the document by close of the next business day.

(d) *Acknowledgment of service.* Any party who receives a document under this subpart by electronic mail must promptly send a reply electronic mail message acknowledging receipt.

(e) *Certificate of service.* A certificate of service must be attached to each document filed under this subpart. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 221.20 What supporting information must NMFS provide with its preliminary prescriptions?

(a) *Supporting information.* (1) When NMFS files a preliminary prescription with FERC, it must include a rationale for the prescription and an index to NMFS's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, NMFS must:

(i) File them with FERC at the time it files the preliminary prescription; and

(ii) Provide copies to the license applicant.

(b) *Service.* NMFS will serve a copy of its preliminary prescription on each license party.

§ 221.21 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any prescription filed by NMFS, you must:

(1) Be a license party; and

(2) File with the Office of Habitat Conservation a written request for a hearing within 30 days after the deadline for the Departments to file preliminary prescriptions with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence; and

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by [the bureau] under § 221.20(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous;

(iii) The basis for your opinion that any factual dispute is material; and

(iv) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding

record, you must provide a copy with the request.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.22 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with the Office of Habitat Conservation a notice of intervention and a written response to any request for a hearing within 15 days after the date of service of the request for a hearing.

(2) A license party filing a notice of intervention and response may not raise issues of material fact beyond those raised in the hearing request.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 221.21(b).

(1) If you agree with the information provided by NMFS under § 221.20(a) or by the requester under § 221.21(b), your response may refer to NMFS's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 221.21(b).

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.23 When will hearing requests be consolidated?

(a) *Initial Department coordination.* If NMFS has received a copy of a hearing request, it must contact the other Departments within 10 days after the deadline for filing hearing requests under § 221.21 and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Departments have also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Within 25 days after the deadline for filing hearing requests under § 221.21, if NMFS has received a hearing request, NMFS must:

(1) Consult with any other Department that has also received a hearing request; and

(2) Decide jointly with the other Department:

(i) Whether to consolidate the cases for hearing under paragraphs (c)(3)(ii) through (c)(3)(iv) of this section; and

(ii) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any prescriptions from NMFS will be consolidated for hearing.

(2) Any or all of the following may be consolidated for hearing if NMFS determines that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to prescriptions from NMFS and the Department of the Interior; or

(ii) Two or more hearing requests with respect to any condition from another Department and any prescription from NMFS.

§ 221.24 How will NMFS respond to any hearing requests?

(a) *General.* NMFS will determine whether to file an answer to any hearing request under § 221.21.

(b) *Content.* If NMFS files an answer:

(1) For each of the numbered factual issues listed under § 221.21(b)(1), the answer must explain NMFS's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That NMFS is willing to stipulate to the facts as alleged by the requester;

(ii) That NMFS believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That NMFS believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That NMFS agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 221.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(c) *Witnesses and exhibits.* NMFS's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, NMFS must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, NMFS must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If NMFS elects not to file an answer to a hearing request:

(1) NMFS is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) NMFS may file a list of witnesses and exhibits with respect to the request only as provided in § 221.42(b); and

(3) NMFS must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 221.23.

§ 221.25 What will NMFS do with any hearing requests?

(a) *Case referral.* Within 50 days after the deadline in § 221.21(a), NMFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by NMFS, NMFS will refer the case to the Department of Commerce's designated ALJ office.

(2) If the hearing is to be conducted by another Department, NMFS will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) A copy of any preliminary prescription under § 221.20;

(2) The original of any hearing request under § 221.21;

(3) The original of any notice of intervention and response under § 221.22;

(4) The original of any answer under § 221.24; and

(5) An original referral notice under paragraph (c) of this section.

(c) *Notice.* At the time NMFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The date on which NMFS is referring the case for docketing.

(d) *Delivery and service.* (1) NMFS must refer the case to the appropriate Department hearings component by one of the methods identified in § 221.12(b)(1)(i) through (b)(1)(ii).

(2) NMFS must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 221.13(c)(1) and (c)(2).

§ 221.26 What regulations apply to a case referred for a hearing?

(a) If NMFS refers the case to the Department of Commerce's designated ALJ office, the regulations in this subpart will continue to apply to the hearing process.

(b) If NMFS refers the case to the United States Department of Agriculture's Office of Administrative Law Judges, the regulations at 7 CFR 1.601 *et seq.* will apply from that point on.

(c) If NMFS refers the case to the Department of the Interior's Office of Hearings and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

General Provisions Related to Hearings

§ 221.30 What will the Department of Commerce's designated ALJ office do with a case referral?

Within 5 days after issuance of the referral notice under § 221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c):

(a) The Department of Commerce's designated ALJ office must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 221.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 221.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, consistent with the requirements of § 221.60(a), including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas to the extent authorized by law;

(c) Rule on motions;

(d) Authorize discovery as provided for in this subpart;

(e) Hold hearings and conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Exclude any person from a hearing or conference for misconduct or other good cause;

(i) Issue a decision consistent with § 221.60(b) regarding any disputed issues of material fact relating to any Department's condition or prescription that has been referred to the ALJ for hearing; and

(j) Take any other action authorized by law.

§ 221.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 221.31, the Department of Commerce's designated ALJ office shall designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 221.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 221.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 221.35 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Department of Commerce's designated ALJ office issues a docketing notice under § 221.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and

(iii) Not exceed 10 pages.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part or by order of the

ALJ, any other party may file a response to a written motion within 10 days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 221.40 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under § 221.30, on or about the 20th day after issuance of the referral notice under § 221.25(c).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 221.41 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set the deadline for submission of written testimony under § 221.52; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 221.41 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories;

(2) Depositions as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after issuance of the referral notice under § 221.25(c).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose a witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference, unless the ALJ sets a different deadline.

§ 221.42 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 5 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§ 221.21(c), 221.22(c), or 221.24(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§ 221.21(c), 221.22(c), or 221.24(c).

(c) *Failure to disclose.* (1) A party that fails to disclose information required under §§ 221.21(c), 221.22(c), or 221.24(c), or paragraphs (a) or (b) of this section, will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) Before or during the hearing, a party may object to the admission of evidence under paragraph (c)(1) of this section.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 221.43 What are the requirements for written interrogatories?

(a) *Motion.* Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under § 221.41(c).

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 221.44 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 221.41(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements.* If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(3) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 221.53.

§ 221.45 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 221.41(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 221.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 221.42(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 221.47 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may file a motion requesting the ALJ to issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may subpoena a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed to do so is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to federal employees who are called as witnesses by a Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires evidence during discovery that is not discoverable; or

(iii) Requires evidence during a hearing that is privileged or irrelevant.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 221.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 221.40, generally within 15 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 221.51 What are the parties' rights during the hearing?

Consistent with the provisions of this subpart, each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present direct and rebuttal evidence;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 221.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony must be prepared and submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 221.47 directing a witness to testify by telephonic conference call.

§ 221.53 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 221.44 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 221.54 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of NMFS and any other Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 221.55 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 221.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

§ 221.56 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Department of Commerce's designated ALJ office will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Department of Commerce's designated ALJ office on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 221.57 What is the standard of proof?

The standard of proof is a preponderance of the evidence.

§ 221.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 221.56(b).

§ 221.59 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) Form. (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 221.60 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 221.58; or

(2) 90 days after issuance of the referral notice under § 221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and

(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) *Finality.* The ALJ's decision under this section will be final, with respect to the disputed issues of material fact, for NMFS and any other Department involved in the hearing. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b).

Subpart C—Alternatives Process

§ 221.70 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 221.12(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be served on each license party and FERC, using:

(i) One of the methods of service in § 221.13(c); or

(ii) Regular mail.

(2) The provisions of § 221.13(d) and (e) regarding acknowledgment and certificate of service apply to service under this subpart.

§ 221.71 How do I propose an alternative?

(a) *General.* To propose an alternative, you must:

(1) Be a license party; and

(2) File a written proposal with the Office of Habitat Conservation within 30 days after the deadline for NMFS to file preliminary prescriptions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to NMFS's preliminary prescription;

(2) An explanation of how the alternative will be no less protective than the fishway prescribed by NMFS;

(3) An explanation of how the alternative, as compared to the preliminary prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to

support your proposal, including any assumptions you are making (*e.g.*, regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 221.72 What will NMFS do with a proposed alternative?

If any license party proposes an alternative to a preliminary prescription under § 221.71(a)(1), NMFS must do the following within 60 days after the deadline for filing comments to FERC's NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under § 221.73; and

(b) File with FERC:

(1) Any prescription that NMFS adopts as its modified prescription; and

(2) Its analysis of the modified prescription and any proposed alternatives under § 221.73(c).

§ 221.73 How will NMFS analyze a proposed alternative and formulate its modified prescription?

(a) In deciding whether to adopt a proposed alternative, NMFS must consider evidence and supporting material provided by any license party or otherwise available to NMFS including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on NMFS's preliminary prescription;

(3) Any ALJ decision on disputed issues of material fact issued under§ 221.60 with respect to the preliminary prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 221.71.

(b) NMFS must adopt a proposed alternative if NMFS determines, based on substantial evidence provided by any license party or otherwise available to NMFS, that the alternative will be no less protective than NMFS's preliminary prescription and will, as compared to NMFS's preliminary prescription:

(1) Cost significantly less to implement; or

(2) Result in improved operation of the project works for electricity production.

(c) When NMFS files with FERC the prescription that NMFS adopts as its modified prescription under §§ 221.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted prescription; and

(ii) If NMFS is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that NMFS gave equal consideration to the effects of the prescription adopted and any alternative prescription not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 221.74 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

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Federal Register

Thursday,
November 17, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designating the Greater Yellowstone Ecosystem Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT38

Endangered and Threatened Wildlife and Plants; Designating the Greater Yellowstone Ecosystem Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to establish a distinct population segment (DPS) of the grizzly bear *(Ursus arctos horribilis)* for the greater Yellowstone Ecosystem and surrounding area. We also propose to remove the Yellowstone DPS from the List of Threatened and Endangered Wildlife. The Yellowstone grizzly bear population is no longer an endangered or threatened population pursuant to the Endangered Species Act of 1973, as amended (ESA), based on the best scientific and commercial information available. Robust population growth, coupled with State and Federal cooperation to manage mortality and habitat, widespread public support for grizzly bear recovery, and the development of adequate regulatory mechanisms, has brought the Yellowstone grizzly bear population to the point where making a change to its status is appropriate.

The proposed delisting of the Yellowstone DPS would not change the threatened status of the remaining grizzly bears in the lower 48 States, which will remain protected by the ESA. If this proposed action is finalized, the Service intends to initiate a 5-year review of grizzly bear populations in the conterminous States outside of the Yellowstone DPS based on additional scientific information that is currently being collected and analyzed. Additionally, prior to finalizing the proposed action, the Service will—(1) finalize the Conservation Strategy that will guide post-delisting management of the grizzly bear in the Greater Yellowstone Area; (2) append habitat-based recovery criteria to the Recovery Plan; (3) append genetic monitoring information to the Recovery Plan; and (4) finalize revised methodology for calculating total population size, known to unknown mortality ratios, and sustainable mortality limits for the Yellowstone grizzly bear population. Both the Conservation Strategy and the supplemental information to be appended to the Recovery Plan have already undergone public review and comment (62 FR 19777, April 23, 1997; 62 FR 47677, September 10, 1997; 64 FR 38464, July 16, 1999; 64 FR 38465, July 16, 1999; 65 FR 11340, March 2, 2000). In a subsequent notice, the revised methodology pertaining to population parameters will be made available for public review and comment. It will be finalized, with public comments incorporated, before this proposed rule is finalized. Finally, the U.S. Forest Service will finalize their Forest Plan Amendments for Grizzly Bear Conservation for the Greater Yellowstone Area National Forests prior to the Service finalizing this action.

DATES: We will consider comments on this proposed rule received until the close of business on February 15, 2006. We will hold one public hearing on this proposed rule scheduled hearing for November 15, 2005. In addition, we have scheduled four open houses (see **ADDRESSES** section for locations).

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments to the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall 309, University of Montana, Missoula, Montana 59812.

2. You may hand deliver written comments to our Missoula office at the address given above.

3. You may send comments by electronic mail (e-mail) to *FW6_grizzly_yellowstone@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of this proposed action, will be available for inspection, by appointment, during normal business hours, at our Missoula office (see address above). In addition, certain documents such as the Conservation Strategy and information to be appended to the recovery plan are available at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.*

The public hearing will be held at the following location:

- January 10, 2006, from 7 to 9 p.m. at the Cody Auditorium, 1240 Beck Avenue, Cody Wyoming.

The open houses will be held at the following locations:

- January 9, 2006, from 4 to 8 p.m. at the Holiday Inn, 5 Baxter Lane, Bozeman, Montana.
- January 10, 2006, from 4 to 7 p.m. at the Cody Auditorium, 1240 Beck Avenue, Cody Wyoming.
- January 11, 2006, from 4 to 8 p.m. at the Snow King Resort, 400 E. Snow King Avenue, Jackson, Wyoming.
- January 12, 2006, from 4 to 8 p.m. at the Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, at our Missoula office (see address above) or telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

Species Description

Grizzly bears are generally larger and more heavily built than other bears (Craighead and Mitchell 1982; Schwartz *et al.* 2003a). Grizzly bears can be distinguished from black bears, which also occur in the lower 48 States, by longer, curved claws, humped shoulders, and a face that appears to be concave (Craighead and Mitchell 1982). A wide range of coloration from light brown to nearly black is common (LeFranc *et al.* 1987). Spring shedding, new growth, nutrition, and coat condition all affect coloration. Guard hairs (long, course outer hair forming a protective layer over the soft underfur) are often pale in color at the tips; hence the name ''grizzly'' (Craighead and Mitchell 1982). In the lower 48 States, the average weight of grizzly bears is generally 200 to 300 kilograms (kg) (400 to 600 pounds (lb)) for males and 110 to 160 kg (250 to 350 lb) for females (Craighead and Mitchell 1982). Grizzly bears are long-lived mammals, generally living to be around 25 years old (LeFranc *et al.* 1987).

Taxonomy

Grizzly bears *(Ursus arctos horribilis)* are vertebrates that belong to the Class *Mammalia,* Order *Carnivora,* and Family *Ursidae.* The grizzly bear is a member of the brown bear species *(U. arctos)* that occurs in North America, Europe, and Asia; the subspecies *U. a. horribilis* is limited to North America (Rausch 1963; Servheen 1999). Early taxonomic descriptions of *U. arctos* based primarily on skull measurements described more than 90 subspecies (Merriam 1918), but this was later revised to 2 subspecies in North America, *U. a. middendorfi* on the islands of the Kodiak archipelago and *U. a. horribilis* in the rest of North America

(Rausch 1963). Subsequent analyses (Hall 1984) suggested seven North American subspecies. DNA analyses provide an additional tool for evaluating taxonomic classification. Using mitochondrial DNA (mtDNA) of brown bears across their worldwide range, five lineage groups or clades have been described: Clade I brown bears from Scandinavia and southern Europe; Clade II from Admiralty, Baronoff, and Chichagof islands in Alaska; Clade III from eastern Europe, Asia, and western Alaska; Clade IV from southern Canada and the lower 48 United States; and Clade V from eastern Alaska and northern Canada (Cronin *et al.* 1991; Taberlet and Bouvet 1994; Kohn *et al.* 1995; Randi *et al.* 1994; Taberlet *et al.* 1995; Talbot and Shields 1996; Waits *et al.* 1998a; Waits *et al.* 1999). The two North American subspecies approach of Rausch (1963) is generally accepted by most taxonomists today. The original listing has been inadvertently modified in the List of Endangered and Threatened Wildlife to *U. arctos* and the range to holarctic. We propose to correct this error to reflect the original listed entity of *U. arctos horribilis* with a historic range of North America.

Behavior

Although adult bears are normally solitary (Nowak and Paradiso 1983), home ranges of adult bears frequently overlap (Schwartz *et al.* 2003a). Grizzly bears display a behavior called natal philopatry in which dispersing young establish home ranges within or overlapping their mother's (Waser and Jones 1983; Schwartz *et al.* 2003a). This type of movement makes dispersal across landscapes a slow process. For instance, McLellan and Hovey (2001) documented male and female dispersal over 20 years and found that grizzly bears gradually move farther from the center of their mother's home range over the course of 1 to 4 years. Females established home ranges an average of 9.8 kilometers (km) (6.1 miles (mi)) away from the center of their mother's home range, whereas males generally strayed further, establishing home ranges roughly 29.9 km (18.6 mi) away from their mother's (McLellan and Hovey 2001). Similarly, Proctor *et al.* (2004) used genetic analyses to find that, on average, females disperse only 14.3 km (8.9 mi) and males disperse 42.0 km (26.0 mi) from the center of their mother's home range.

The home range of adult male grizzly bears is typically 3 to 5 times the size of an adult female's home range (LeFranc *et al.* 1987). The large home ranges of grizzly bears, particularly males, enhance genetic diversity in the population by enabling males to mate with numerous females (Blanchard and Knight 1991; Craighead *et al.* 1995). Grizzly bear population densities of 1 bear per 20 sq km (8 sq mi) have been reported in Glacier National Park (Martinka 1976), but most populations in the lower 48 States are much less dense (LeFranc *et al.* 1987). For example, estimates of grizzly bear densities in the Yellowstone area range from one bear per 50 sq km (20 sq mi) to one bear per 80 sq km (30 sq mi) (Blanchard and Knight 1980; Craighead and Mitchell 1982).

Grizzly bears have a promiscuous mating system (Hornocker 1962; Craighead and Mitchell 1982; Schwartz *et al.* 2003a) with genetic studies confirming that cubs from the same litter can have different fathers (Craighead *et al.* 1998). Mating occurs from May through July with a peak in mid-June (Craighead and Mitchell 1982; Nowak and Paradiso 1983). Age of first reproduction and litter size may be related to nutritional state (Stringham 1990; McLellan 1994; Hilderbrand *et al.* 1999). Age of first reproduction varies from 3 to 8 years of age, and litter size varies from one to four cubs (Schwartz *et al.* 2003a). For the Yellowstone grizzly bear population, the average age of first reproduction is approximately 6 years old, and the average litter size is 2.04 cubs (Schwartz *et al.* 2005). Cubs are born in a den in late January or early February and remain with the female for 2 to 3 years before the mother will again mate and produce another litter (Schwartz *et al.* 2003a). Grizzly bears have one of the slowest reproductive rates among terrestrial mammals, resulting primarily from the late age of first reproduction, small average litter size, and the long interval between litters (Nowak and Paradiso 1983; Schwartz *et al.* 2003a). Given the above factors and natural mortality, it may take a single female 10 years to replace herself in a population (Service 1993). Grizzly bear females cease breeding successfully some time in their mid-to late 20s (Schwartz *et al.* 2003b).

For 3 to 6 months during winter, grizzly bears across their range enter dens in an adaptive behavior which increases survival during periods of low food availability, deep snow, and low air temperature (Craighead and Craighead 1972). Grizzly bears in the lower 48 States spend up to 4 to 6 months in dens beginning in October or November (Linnell *et al.* 2000). During this period, they do not eat, drink, urinate, or defecate (Folk *et al.* 1976; Nelson 1980). Hibernating grizzly bears exhibit a marked decline in heart and respiration rate, but only a slight drop in body temperature (Nowak and Paradiso 1983). Due to their relatively constant body temperature in the den, hibernating grizzly bears can be easily aroused and have been known to exit dens when disturbed by seismic or mining activity (Harding and Nagy 1980) or by human activity (Swenson *et al.* 1997). Both males and females have a tendency to use the same general area year after year but the same exact den is rarely used twice by an individual (Schoen *et al.* 1987; Linnell *et al.* 2000). Females display stronger area fidelity than males and generally stay in their dens longer, depending on reproductive status (Judd *et al.* 1986; Schoen *et al.* 1987; Linnell *et al.* 2000).

In preparation for hibernation, bears increase their food intake dramatically during a stage called hyperphagia. Hyperphagia is defined simply as overeating (in excess of daily metabolic demands) and occurs throughout the 2 to 4 months prior to den entry. During hyperphagia, excess food is deposited as fat, and grizzly bears may gain as much as 1.65 kg/day (3.64 lb/day) (Craighead and Mitchell 1982). Grizzly bears must consume foods rich in protein and carbohydrates in order to build up fat reserves to survive denning and post-denning periods (Rode and Robbins 2000). These layers of fat are crucial to the hibernating bear as they provide a source of energy and insulate the bear from cold temperatures and are equally important in providing energy to the bear upon emergence from the den when food is still sparse relative to metabolic requirements.

Although the digestive system of bears is essentially that of a carnivore, bears are successful omnivores, and in some areas may be almost entirely herbivorous (Jacoby *et al.* 1999; Schwartz *et al.* 2003a). Grizzly bears are opportunistic feeders and will consume almost any available food including living or dead mammals or fish, and, sometimes, garbage (Knight *et al.* 1988; Mattson *et al.* 1991a; Schwartz *et al.* 2003a). In areas where animal matter is less available, grasses, roots, bulbs, tubers, and fungi may be important in meeting protein requirements (LeFranc *et al.* 1987). High-quality foods such as berries, nuts, insects, and fish are important in some areas (Schwartz *et al.* 2003a).

The search for food has a prime influence on grizzly bear movements. In the Yellowstone area, four food sources have been identified as important to grizzly bear survival and reproductive success (Mattson *et al.* 2002). Winter-killed ungulates serve as an important food source in early spring before most vegetation is available (Greene *et al.*

1997; Mattson 1997). During early summer, spawning cutthroat trout (*Oncorhynchus clarki*) are a source of nutrition for grizzly bears in the Yellowstone population (Mattson *et al.* 1991a; Mattson and Reinhart 1995; Felicetti *et al.* 2004). Grizzly bears feed on army cutworm moths (*Euxoa auxiliaris*) during late summer and early fall as they try to acquire sufficient fat levels for winter (Pritchard and Robbins 1990; Mattson *et al.* 1991b; French *et al.* 1994). Lastly, whitebark pine seeds (*Pinus albicaulis*) serve as a crucial fall food due to their high fat content and abundance as a pre-hibernation food (Mattson and Reinhart 1994). The distribution and abundance of these grizzly bear foods vary naturally among seasons and years. In some years, whitebark pine seeds are an important food and in other years, few seeds are available and bears switch to alternate foods.

On average, approximately 79 percent of the diet of adult male and 45 percent of the diet of adult female grizzly bears in the Greater Yellowstone Area (GYA) is terrestrial meat (Jacoby *et al.* 1999). In contrast, in Glacier National Park, over 95 percent of the diets of both adult male and female grizzly bears is vegetation (Jacoby *et al.* 1999). Ungulates rank as the second highest source of net digestible energy available to grizzly bears in the GYA (Mealey 1975; Pritchard and Robbins 1990; Craighead *et al.* 1995). Ungulates provide a high-quality food source in early spring before most plant foods become available. Grizzly bears with home ranges in areas with few plant foods depend extensively on ungulate meat (Harting 1985). Grizzly bears in the Yellowstone area feed on ungulates primarily as winter-killed carrion from March through May although they also depredate elk calves for a short period in early June (Gunther and Renkin 1990; Green *et al.* 1997; Mattson 1997). Carcass availability fluctuates with winter severity because fewer ungulates die during mild winters.

Due to their high digestibility and protein and lipid content, spawning cutthroat trout are one of the highest sources of digestible energy available to bears during early summer in Yellowstone National Park (Mealey 1975; Pritchard and Robbins 1990). Grizzly bears are known to prey on cutthroat trout in at least 36 different streams tributary to Yellowstone Lake (Reinhart and Mattson 1990). From 1997 to 1999, Haroldson *et al.* (2000) identified 85 different grizzly bears that had likely fished spawning streams tributary to Yellowstone Lake. While importance varies by season and year, few bears develop a dependence on this food source. Only four individuals visited spawning streams consistently every year, suggesting that this resource is used opportunistically. Fishing activity can occur any time during the spawning runs but generally coincides with peak spawning numbers in mid-June through mid-July. In contrast to earlier studies which used different assumptions and methods (Reinhart and Mattson 1990; Mattson and Reinhart 1995), Felicetti *et al.* (2004) showed that male grizzly bears are the primary consumers of cutthroat trout, accounting for 92 percent of all trout consumed by Yellowstone grizzly bears.

Alpine moth aggregations are an important food source for a considerable portion of the Yellowstone grizzly bear population (Mattson *et al.* 1991b). As many as 35 different grizzly bears with cubs-of-the-year have been observed feeding at moth sites in a single season (Ternent and Haroldson 2000). Some bears may feed almost exclusively on moths for a period of over 1 month (French *et al.* 1994). Moths have the highest caloric content per gram of any other bear food (French *et al.* 1994). Moths are available during late summer and early fall when bears consume large quantities of foods in order to acquire sufficient fat levels for winter (Mattson *et al.* 1991b). A grizzly bear feeding extensively on moths over a 30-day period may consume up to 47 percent of its annual energy budget of 960,000 calories (White *et al.* 1999). Moths are also valuable to bears because they are located in remote areas, thereby reducing the potential for grizzly bear/human conflicts during the late-summer tourist months.

Due to their high fat content and potential abundance as a pre-hibernation food, whitebark pine seeds are an important fall food for bears in the GYA (Mattson and Jonkel 1990; Mattson *et al.* 1991a). Yellowstone grizzly bears consume whitebark pine seeds extensively when whitebark cones are available. Bears may feed predominantly on whitebark pine seeds when production exceeds 22 cones per tree (Mattson *et al.* 1992). During years of low whitebark pine seed availability, grizzly bears often seek alternate foods at lower elevations in association with human activities (Mattson *et al.* 1992; Knight and Blanchard 1995; Gunther *et al.* 1997, 2004).

The production and availability of these four major foods can have a positive effect on reproduction and survival rates of Yellowstone grizzly bears (Mattson *et al.* 2002). For example, during years when these food sources are abundant, there are few grizzly bear/human conflicts in the GYA (Mattson *et al.* 1992; Gunther *et al.* 1997; Gunther *et al.* 2004). Grizzly bear/human conflicts are incidents in which bears kill or injure people, damage property, kill or injure livestock, damage beehives, obtain anthropogenic foods, or damage or obtain garden and orchard fruits and vegetables (United States Department of Agriculture (USDA) 1986). In contrast, during years when there are shortages of natural food sources, grizzly bear/human conflicts are more frequent, resulting in higher numbers of human-caused grizzly bear mortalities due to defense of life or property and management removals of nuisance bears (Mattson *et al.* 1992; Gunther *et al.* 2004). A nuisance bear is one that seeks human food in human use areas, kills lawfully present livestock, or displays unnatural aggressive behavior towards people (USDA 1986). Introduced organisms (*e.g.,* white pine blister rust and lake trout), habitat loss, and other human activities can negatively impact the quantity and distribution of these four primary foods (Reinhart *et al.* 2001). The effects of invasive species on food supply and human/bear conflict are discussed in more detail in the five factor analysis.

Recovery

Prior to the arrival of Europeans, the grizzly bear occurred throughout the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska (Roosevelt 1907; Wright 1909; Merriam 1922; Storer and Tevis 1955; Rausch 1963; Herrero 1972; Mattson *et al.* 1995; Schwartz *et al.* 2003a). Pre-settlement population levels for the western contiguous United States were believed to be in the range of 50,000 animals (Servheen 1999). With European settlement of the American west, grizzly bears were shot, poisoned, and trapped wherever they were found, and the resulting range and population declines were dramatic (Roosevelt 1907; Wright 1909; Storer and Tevis 1955; Leopold 1967; Koford 1969; Craighead and Mitchell 1982; Mattson *et al.* 1995). The range and numbers of grizzlies were reduced to less than 2 percent of their former range and numbers by the 1930s, approximately 125 years after first contact (Service 1993; Mattson *et al.* 1995; Servheen 1999). Of 37 grizzly populations present in 1922, 31 were extirpated by 1975 (Servheen 1999).

By the 1950s, with little or no conservation effort or management directed at maintaining grizzly bears anywhere in their range, the Yellowstone area population had been reduced in numbers and was restricted largely to the confines of Yellowstone

National Park and some surrounding areas (Craighead *et al.* 1995; Schwartz *et al.* 2003a). High grizzly bear mortality in 1970 and 1971, following closure of the open-pit dumps in Yellowstone National Park (Gunther 1994; Craighead *et al.* 1995), and concern about grizzly population status throughout its remaining range prompted the 1975 listing of the grizzly bear as a threatened species in the lower 48 States under the ESA (40 FR 31734). When the grizzly bear was listed in 1975, the population estimate in the Yellowstone Ecosystem ranged from 229 (Craighead *et al.* 1974) to 312 (Cowan *et al.* 1974; McCullough 1981) individuals.

In 1981, the Service hired a grizzly bear recovery coordinator to direct recovery efforts and to coordinate all agency efforts on research and management of grizzly bears in the lower 48 States. In 1982, the first Grizzly bear recovery plan was completed (Service 1982). The 1982 Grizzly Bear Recovery Plan identified five ecosystems within the conterminous United States thought to support grizzly bears. Today, grizzly bear distribution is primarily within, but not limited to, the areas identified as Recovery Zones (Service 1993), including the Yellowstone area in northwest Wyoming, eastern Idaho, and southwest Montana (24,000 sq km (9,200 sq mi)) at more than 580 bears (Interagency Grizzly Bear Study Team (Study Team) 2005); the Northern Continental Divide Ecosystem (NCDE) of north central Montana (25,000 sq km (9,600 sq mi)) at more than 400 bears (70 FR 24870; May 11, 2005); the North Cascades area of north central Washington (25,000 sq km (9,500 sq mi)) at less than 20 bears (Almack *et al.* 1993); the Selkirk Mountains area of north Idaho, northeast Washington, and southeast British Columbia (5,700 sq km (2,200 sq mi)) at approximately 40 to 50 bears (64 FR 26725, May 17, 1999; 70 FR 24870, May 11, 2005); and the Cabinet-Yaak area of northwest Montana and northern Idaho (6,700 sq km (2,600 sq mi)) at approximately 30 to 40 bears (Kasworm and Manley 1988; Kasworm *et al.* 2004). There is an additional Recovery Zone known as the Bitterroot Recovery Zone in the Bitterroot Mountains of east-central Idaho and western Montana (14,500 sq km (5,600 sq mi)), but this area does not contain any grizzly bears at this time (Service 1996; 65 FR 69624, November 17, 2000; Service 2000). The San Juan Mountains of Colorado also were identified as an area of possible grizzly bear occurrence (40 FR 31734, July 28, 1975; Service 1982, 1993), but no evidence of grizzly bears has been found in the San Juan Mountains since a bear was killed there in 1979 (Service 1993).

In the initial Grizzly Bear Recovery Plan, the Yellowstone Grizzly Bear Ecosystem, later called the Yellowstone Grizzly Bear Recovery Zone, was defined as an area large enough and of sufficient habitat quality to support a recovered grizzly bear population within which the population and habitat would be monitored (Service 1982, 1993). A revised Grizzly Bear Recovery Plan (Service 1993) included additional tasks and new information that increased the focus and effectiveness of recovery efforts.

Grizzly bear recovery has required cooperation among numerous Federal agencies, State agencies, non-government organizations (NGOs), local governments, and citizens. In recognition that grizzly bear populations were unsustainably low, the Interagency Grizzly Bear Study Team (hereafter referred to as the Study Team) was created in 1973 to provide detailed scientific information for the management and recovery of the grizzly bear in the Yellowstone area. Currently, members of the Study Team include scientists from the U.S. Geological Survey (USGS), U.S. Forest Service (USFS), the Service, academia, and each State game and fish agency involved in grizzly bear recovery. The Study Team has developed protocols to monitor grizzly bear populations and some important habitat parameters. These parameters have been used in demographic and habitat management.

In 1983, the Interagency Grizzly Bear Committee was created to coordinate management efforts and research actions across multiple Federal lands and States within the various Recovery Zones to recover the grizzly bear in the lower 48 States. Its objective was to change land management practices to more effectively provide security and maintain or improve habitat conditions for the grizzly bear. The Interagency Grizzly Bear Committee is made up of upper level managers from all affected State and Federal agencies. Also in 1983, the Yellowstone Ecosystem Subcommittee, a subcommittee of the Interagency Grizzly Bear Committee, was formed to coordinate efforts specific to the Yellowstone area and to coordinate activities with the Interagency Grizzly Bear Committee. Members of the Yellowstone Ecosystem Subcommittee are mid-level managers and include representatives from the Shoshone National Forest; the Custer National Forest; the Beaverhead-Deerlodge National Forest; the Bridger-Teton National Forest; Gallatin National Forest; Targhee National Forest; Yellowstone National Park; Grand Teton National Park; the Wyoming Game and Fish Department (WGFD); the Montana Department of Fish, Wildlife, and Parks (MDFWP); the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); the Study Team; county government from each affected State; and the Service.

In 1994, The Fund for Animals, Inc., and 42 other organizations and individuals filed suit over the adequacy of the 1993 Recovery Plan. In 1995, the U.S. District Court for the District of Columbia issued an order that remanded for further study and clarification four issues that are relevant to the Yellowstone Ecosystem: (1) The method used to measure the status of bear populations; (2) the impacts of genetic isolation; (3) how mortalities related to livestock are monitored; and (4) the monitoring of disease (*Fund for Animals* v. *Babbitt*, 903 F. Supp. 96 (D. D.C. 1995); 967 F. Supp. 6 (D. D.C. 1997)). Following this decision, all parties filed appeals. In 1996, the parties reached a settlement whereby the Service also agreed to append habitat-based recovery criteria to the Recovery Plan. These issues and the necessary supplements to the Recovery Plan as required by the court order and subsequent settlement are discussed in detail in this section and in the threats analysis.

Habitat Management and Habitat-based Recovery Criteria. In 1979, the Study Team developed the first comprehensive Guidelines for Management Involving Grizzly Bears in the Yellowstone area (hereafter referred to as the Guidelines) (Mealey 1979). The Service (1979) determined in a biological opinion that implementation of the Guidelines by Federal land management agencies would promote conservation of the grizzly bear. Beginning in 1979, the six affected National Forests (Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer, Gallatin, and Shoshone), Yellowstone and Grand Teton National Parks, and BLM in the Yellowstone area began managing habitats for grizzly bears under direction specified in the Guidelines.

In 1986, the Interagency Grizzly Bear Committee modified the Guidelines to more effectively manage habitat by mapping and managing according to three different management situations:

- Management Situation (1) Grizzly habitat maintenance and improvement, and grizzly bear/human conflict minimization receive the highest management priority;

• Management Situation (2) Grizzly bear use is important, but not the primary use of the area; or

• Management Situation (3) Grizzly habitat maintenance and improvement are not management considerations (USDA 1986).

Accordingly, the National Forests and National Parks delineated 18 different bear management units within the Recovery Zone to aid in managing habitat and monitoring population trends. Each bear management unit was further subdivided into subunits, resulting in a total of 40 subunits contained within the 18 bear management units. The bear management units are analysis areas that approximate the lifetime size of a female's home range, while subunits are analysis areas that approximate the annual home range size of adult females. Subunits provide the optimal scale for evaluation of seasonal feeding opportunities and landscape patterns of food availability for grizzly bears (Weaver *et al.* 1986). The bear management units and subunits were identified to provide enough quality habitat and to ensure that grizzly bears were well distributed across the recovery area.

Another tool employed to monitor habitat quality and assist in habitat management is the Yellowstone Grizzly Bear Cumulative Effects Model. The model was designed to assess the inherent productivity of grizzly bear habitat and the cumulative effects of human activities on bear use of that habitat (Weaver *et al.* 1986; Dixon 1997; Mattson *et al.* 2002). The model uses GIS databases and relative value coefficients of human activities, vegetation, and key grizzly bear foods to calculate habitat value and habitat effectiveness (Weaver *et al.* 1986; Mattson *et al.* 2002). Habitat value is a relative measure of the average net digestible energy potentially available to bears in a subunit during each season. Habitat value is primarily a function of vegetation and major foods (Weaver *et al.* 1986; Dixon 1997). Habitat effectiveness is that part of the energy potentially derived from the area that is available to bears given their response to humans (Weaver *et al.* 1986; Dixon 1997; Mattson *et al.* 2002). More specifically, habitat effectiveness is a function of relative value coefficients of human activities, such as location, duration, and intensity of use for motorized access routes, non-motorized access routes, developed sites, and front- and back-country dispersed uses (Mattson *et al.* 2002). The Cumulative Effects Model is updated annually to reflect changes in vegetation, major foods, and the number and capacity of human activities.

As per a court settlement (*Fund for Animals* v. *Babbitt*) and as recommended by Recovery Plan Task Y423, the Service has worked to ''establish a threshold of minimal habitat values to be maintained within each Cumulative Effects Analysis Unit in order to ensure that sufficient habitat is available to support a viable population'' (Service 1993, p. 55). On June 17, 1997, the Service held a public workshop in Bozeman, Montana, to develop and refine habitat-based recovery criteria for the grizzly bear. A **Federal Register** notice notified the public of this workshop and provided interested parties an opportunity to participate and submit comments (62 FR 19777, April 23, 1997). After considering 1,167 written comments, the Service developed biologically-based habitat criteria with the overall goal of maintaining or improving habitat conditions at 1998 levels.

Recognizing that grizzly bears are opportunistic omnivores and that a landscape's ability to support grizzly bears is a function of overall habitat productivity, the distribution and abundance of major food sources, the levels and type of human activities, grizzly bear social systems, bear densities, and stochasticity, there is no known way to deductively calculate minimum habitat values. The Service instead inductively selected 1998 levels because it was known that these habitat values had adequately supported an increasing Yellowstone grizzly bear population throughout the 1990s (Eberhardt *et al.* 1994; Knight and Blanchard 1995; Knight *et al.* 1995; Boyce 2001) and that levels of secure habitat and the number and capacity of developed sites had changed little from 1988 to 1998 (USFS 2004). Specific habitat conditions or criteria include limiting road densities inside the Recovery Zone, maintaining or increasing levels of secure habitat, maintaining or improving habitat effectiveness values in secure habitat, and limiting further site development and livestock grazing allotments on public lands within the Yellowstone grizzly bear Recovery Zone. Additionally, the Service developed four general habitat-based parameters to monitor and relate to population information: (1) Productivity of the four major foods; (2) habitat effectiveness as measured by the Cumulative Effects Model; (3) grizzly bear mortality numbers, locations, and causes; grizzly bear/human conflicts; nuisance bear management actions; bear/hunter conflicts; and bear/livestock conflicts; and (4) development on private lands. A copy of the habitat-based criteria is available at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.* This revised habitat-based recovery criteria will be appended to the Recovery Plan and is included in the Conservation Strategy. These habitat-based criteria have been maintained successfully at 1998 levels, and the Conservation Strategy ensures they will continue to be met in the foreseeable future (see Conservation Strategy).

Population and Demographic Management. Mortality control is a key part of any successful management effort; however, some mortality, including human-caused mortality, is unavoidable in a dynamic system where hundreds of bears inhabit thousands of square miles of diverse habitat with several million human visitors and residents. In 1977, Eberhardt documented that adult female survival was the most important of the vital rates influencing population trajectory. Low adult female survival was the critical factor causing decline in the Yellowstone area population prior to the mid-1980s (Knight and Eberhardt 1985). In the early 1980s, with the development of the first Grizzly Bear Recovery Plan (Service 1982), agencies began to control mortality and increase adult female survivorship (Interagency Grizzly Bear Committee 1983; USDA 1986; Knight *et al.* 1999). The Recovery Plan (Service 1982, revised 1993) established three demographic (population) goals to objectively measure and monitor recovery of the Yellowstone grizzly bear population:

Demographic Recovery Criterion 1—Maintain a minimum of 15 unduplicated (only counted once) females with cubs-of-the-year over a running 6-year average both inside the Recovery Zone and within a 16-km (10-mi) area immediately surrounding the Recovery Zone. This recovery criterion has been met.

Demographic Recovery Criterion 2—Sixteen of 18 bear management units within the Recovery Zone must be occupied by females with young, with no 2 adjacent bear management units unoccupied, during a 6-year sum of observations. This criterion is important as it ensures that reproductive females occupy the majority of the Recovery Zone and are not concentrated in one portion of the ecosystem. This recovery criterion has been met.

Demographic Recovery Criterion 3—The running 6-year average for total known, human-caused mortality should not exceed 4 percent of the minimum population estimate in any 2

consecutive years; and human-caused female grizzly bear mortality should not exceed 30 percent of the above total in any 2 consecutive years. These recovery criteria have not been exceeded in 2 consecutive years since 1997.

Although the Recovery Plan suggested calculating sustainable mortality as a percentage of the minimum population estimate (as outlined in Demographic Recovery Criterion 3), this method no longer represents the best scientific and commercial information available (see pages 9–11 of Study Team 2005). As per a court settlement (*Fund for Animals* v. *Babbit*) and as recommended by Recovery Plan Task Y11, the Service has worked to ''determine population conditions at which the species is viable and self-sustaining,'' and to ''reevaluate and refine population criteria as new information becomes available'' (Service 1993, p. 44). Beginning in 2000, the Study Team, at the request of the Service, began a comprehensive evaluation of the demographic data and the methodology used to estimate population size and establish the sustainable level of mortality to grizzly bears in the Yellowstone Ecosystem. Accordingly, the Study Team conducted a critical review of the current methods for calculating population size, estimating the known to unknown mortality ratio, and establishing sustainable mortality levels for the Yellowstone grizzly population (Study Team 2005). The product of this work is a 60-page report compiled by the Study Team that evaluates current methods, reviews recent scientific literature, examines alternative methods, and recommends the most valid technique based on these reviews (Study Team 2005) (accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The end result of this review is a revised method customized for the Yellowstone grizzly bear population for calculating total population size rather than minimum population size (Study Team 2005). This revised method will be appended to the Recovery Plan and included in the Conservation Strategy.

As with the previous method, the revised method uses counts of unduplicated females with cubs-of-the-year as the baseline data upon which the total population is calculated. From this, the total number of independent females (>2 years old) in the Yellowstone population is calculated (Keating *et al.* 2002). This number is then divided by the modeled sex ratio (Schwartz *et al.* 2005) of grizzly bears in the Yellowstone population to determine the total number of independent males (>2 years old) in the population. The last component of calculating a total population is to add the number of cubs less than 2 years old (*i.e.*, dependent young.). This number is extrapolated from the number of females with cubs-of-the-year (Study Team 2005). Finally, by adding the number of independent males, independent females, and dependent young, the total population is determined. The revised method for calculating total population size produces a larger estimate than the current method which only calculates the minimum population size. For example, using the current method, the minimum population size in 2004 was 431 bears. Using the revised method, the total population estimate of Yellowstone grizzly bears in 2004 was 588 (Study Team 2005). The total population estimate is considered a more accurate representation of actual population size (Study Team 2005). Total population size is critical in determining sustainable mortality.

Also outdated is the Recovery Plan's total human-caused mortality limit and female human-caused mortality limit as outlined in Demographic Recovery Criterion 3. In 1986, Harris (1986) concluded that healthy grizzly bear populations could sustain approximately 6.5 percent human-caused mortality without population decline. To account for unknown/unreported deaths, the Service assumed that for every two bears known to be killed by human causes, there was one that was unknown. This approach on unknown mortalities resulted in the Service adopting a more conservative 4 percent limit on known human-caused grizzly bear mortalities in the Grizzly Bear Recovery Plan (Service 1993).

After critically reviewing the current method of establishing human-caused mortality limits, alternative methods, and scientific literature, the Study Team concluded that Harris' (1986) method was no longer the best available nor the most biologically valid (Study Team 2005). As a result of this effort, the Study Team recommended revising the sustainable mortality limits for the Yellowstone population (Study Team 2005). The revised mortality limits are derived from a more accurate model for establishing sustainable mortality limits for grizzly bear populations (Schwartz *et al.* 2005).

The refined method resulted in new, calculated mortality limits for independent females, males, and dependent young. Unlike the previous method, which only counted human-caused mortalities against a 4 percent limit, the revised method counts all deaths of grizzly bears from any source against the limits. This includes: (1) Known and probable human-caused mortalities; (2) reported deaths due to natural and undetermined causes; and (3) calculated unreported human-caused mortalities. This new method is a much more comprehensive mortality management approach. Between 1980 and 2002, approximately 21 percent of all known grizzly bear deaths were from undetermined causes (Servheen *et al.* 2004). These deaths could not be counted against the 4 percent human-caused mortality limit using the previous method because the cause of death could not be confirmed. The previous method also assumed a 2-to-1 known-to-unknown mortality ratio. Many researchers hypothesize that the ratio of known-to-unknown mortality is much higher than 2-to-1 (Knight and Eberhardt 1985; McLellan *et al.* 1999). After careful consideration and using the best available science, the Study Team adopted a known-to-unknown mortalities ratio of 1-to-1.7 (Cherry *et al.* 2002; Study Team 2005).

For independent females, the revised annual mortality limit, not to be exceeded in 2 consecutive years, which includes all sources of mortality, is 9 percent of the total number of independent females. Simulations have shown that a 9 percent adult female mortality rate allows populations to increase at 3 percent per year with a stable to increasing population 95 percent of the time (Schwartz *et al.* 2005).

The revised mortality limit for independent males (≥2 years old), not to be exceeded in 3 consecutive years, is 15 percent of the total number of independent males and, like the limit for independent females, includes all sources of mortality. This level of mortality was sustainable under different population growth model scenarios simulated by Schwartz *et al.* (2005). The Study Team chose this limit because it approximates the level of male mortality in the GYA from 1983 to 2001, a period when population size was calculated to have increased at 4 to 7 percent each year (Schwartz *et al.* 2005). Independent males can endure a relatively high mortality rate without affecting the overall stability or trajectory of the population because they contribute little to overall population growth (Mace and Waller 1998; Wielgus 2002; Study Team 2005; Schwartz *et al.* 2005).

For dependent young (<2 years old), the mortality limit, not to be exceeded in 3 consecutive years, is 9 percent of the total number of dependent young (Study Team 2005). However, this only includes known and probable human-caused mortalities. This limit is less

than the 15 percent human-caused mortality documented for each sex from 1983 to 2001, a period of population growth and expansion (Study Team 2005). Although it is known that dependent bears experience far higher natural mortality rates than independent bears, there is no known way to sample these mortalities directly in the field. Instead, these rates are calculated from consecutive years of observing radio-collared females with cubs-of-the-year.

Annual allowable mortality limits for each bear class (independent female, independent male, dependent young) are calculated as a running 3-year average based on total population estimates of each bear class for the current year and the 2 preceding years (Study Team 2005). This dampens variability and provides managers with inter-annual stability in the threshold number of mortalities allowed. The Study Team calculates both the total population size and the mortality limits within an area designated by the Conservation Strategy (see The Conservation Strategy section) that overlaps and extends beyond suitable habitat (Figure 1, see Application of the Distinct Population Segment Policy section). Future changes to either of these methods will be based on the best scientific information available. This revised methodology for calculating total population size and establishing sustainable mortality limits will be appended to the Recovery Plan prior to our making a final determination on this proposed action and included in the Conservation Strategy. Applying this method to 1999 to 2004 data, these mortality limits have not been exceeded for consecutive years for any bear class.

Maintaining Genetic Diversity. As per a court settlement (*Fund for Animals* v. *Babbitt*), measurable criteria to assess genetic isolation will be appended to the existing Yellowstone chapter of the 1993 Grizzly Bear Recovery Plan (Service 1993) before we make a final determination on this proposed action. Changes in genetic diversity must be monitored over time in order to make sound decisions regarding the need for augmentation of new individuals to increase diversity if it is being lost. When the Recovery Plan was revised in 1993, many of the genetic techniques and markers commonly used today to assess genetic diversity and isolation were just being developed. Following direction from the Court, the Service reviewed the best available and most recent scientific information pertaining to genetic monitoring and established measurable genetic criteria based on this review. This document was made available for public review in 1997 (62 FR 47677; September 10, 1997). A draft of this document is available for viewing online at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*. This revised genetics recovery criteria will be appended to the Recovery Plan and included in the Conservation Strategy. Long-term management of genetic diversity is discussed in more detail under Factor E.

The Conservation Strategy. In order to ensure the long-term preservation of a viable population, the Recovery Plan calls for the development of ''a conservation strategy to outline habitat and population monitoring that will continue in force after recovery'' (Recovery Plan Task Y426) (Service 1993, p. 55). To accomplish this goal, in 1993, the Service created the Interagency Conservation Strategy Team which included biologists from the National Park Service (NPS), the USFS, the Service, the IDFG, the WGFD, and MTFWP.

In March 2000, a draft Conservation Strategy for the GYA was released for public review and comment (65 FR 11340; March 2, 2000). Also in 2000, a Governors' Roundtable was organized to provide recommendations from the perspectives of the three States that would be involved with grizzly bear management after delisting. In 2002, the draft Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area (hereafter referred to as the Strategy) was released, along with drafts of State grizzly bear management plans (all accessible at *http:// mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The Service will sign the Strategy, and it will go into effect if we finalize this proposed action.

The purpose of the Strategy and associated State and Federal implementation plans is to—(1) describe, summarize, and implement the coordinated efforts to manage the grizzly bear population and its habitat to ensure continued conservation of the Yellowstone grizzly bear population; (2) specify and implement the population, habitat, and nuisance bear standards to maintain a recovered grizzly bear population for the foreseeable future; (3) document the regulatory mechanisms and legal authorities, policies, management, and monitoring programs that exist to maintain the recovered grizzly bear population; and (4) document the actions which the participating agencies have agreed to implement.

The Strategy identifies and provides a framework for managing two areas, the Primary Conservation Area (PCA) and adjacent areas of suitable habitat where occupancy by grizzly bears is anticipated. The PCA boundaries (containing 23,853 sq km (9,210 sq mi)) correspond to those of the Yellowstone Recovery Zone (Service 1993) and will replace the Recovery Zone boundary if this proposed delisting is finalized (Figure 1 (see Application of the Distinct Population Segment Policy section)). The PCA contains adequate seasonal habitat components needed to support the recovered Yellowstone grizzly bear population for the foreseeable future and to allow bears to continue to expand outside the PCA. The PCA includes approximately 51 percent of the suitable habitat within the DPS and approximately 90 percent of the population of female grizzly bears with cubs (Schwartz 2005, unpublished data).

The Strategy will be implemented and funded by both Federal and State agencies within the Yellowstone DPS. These Federal agencies will cooperate with the State wildlife agencies, MTFWP, IGFD, and WDFG, to implement the Strategy and its protective habitat and population standards. The USFS and NPS (which own and manage approximately 98 percent of the PCA) will be responsible for maintaining or improving habitat standards inside the PCA and monitoring population criteria. Specifically, Yellowstone National Park; Grand Teton National Park; and the Shoshone, the Beaverhead-Deerlodge, the Bridger-Teton, the Caribou-Targhee, the Custer, and the Gallatin National Forests are the primary areas with Federal agencies responsible for implementing the Strategy. Affected National Forests and National Parks are currently in the process of incorporating the habitat standards and criteria into their Forest Plans and National Park management plans via appropriate amendment processes so that they are legally applied to these public lands within the proposed Yellowstone DPS boundaries. The Service would not finalize this proposed action until these amendments to current management plans are completed.

Outside of the PCA, grizzly bears will be allowed to expand into suitable habitat. Here the objective is to maintain existing resource management and recreational uses and to allow agencies to respond to demonstrated problems with appropriate management actions. The key to successful management of grizzly bears outside of the PCA lies in their successfully utilizing lands not managed solely for bears, but in which their needs are considered along with other uses. Currently, approximately 10

percent of female grizzly bears with cubs occupy habitat outside of the PCA (Schwartz 2005, unpublished data). The area of suitable habitat outside of the PCA is roughly 82.3 percent federally owned and administered by one of the six National Forests in the region, the BLM, the NPS, or the Service; 9.5 percent privately owned; 6.0 percent tribally owned; 0.7 percent State-owned land; and 2 percent in other ownership (such as private conservation trusts or other Federal ownership). State grizzly bear management plans, Forest Plans, and other appropriate planning documents provide specific management direction for areas outside of the PCA.

This differential management standard (one standard inside the PCA and another standard for suitable habitat outside the PCA) has been successful in the past (see USFS 2004, p. 19). Lands within the PCA/Recovery Zone are currently managed primarily to maintain grizzly bear habitat, whereas lands outside of the PCA/Recovery Zone boundaries are managed with more consideration for human uses (Service 1993). Such flexible management promotes communication and tolerance for grizzly bear recovery. As grizzly bear populations within the Recovery Zone have rebounded in response to recovery efforts, there has been a gradual natural recolonization of suitable habitat outside of the PCA/Recovery Zone. Today, most suitable habitat outside of the Recovery Zone is occupied by grizzly bears (68 percent).

The Strategy is an adaptive, dynamic document that establishes a framework to incorporate new and better scientific information as it becomes available or as necessary in response to environmental changes. Ongoing review and evaluation of the effectiveness of the Strategy is the responsibility of the State and Federal managers and will be updated by the management agencies every 5 years or as necessary, allowing public comment in the updating process.

Previous Federal Actions

On July 28, 1975, the grizzly bear was designated as threatened in the conterminous (lower 48) United States (40 FR 31734). On November 5, 1976, the Service proposed critical habitat for the grizzly bear (41 FR 48757). This proposed rule was never finalized and we withdrew this proposed designation in 1979 because the 1978 amendments to the ESA (16 U.S.C. 1531 *et seq.*) imposed additional obligations on the Service, such as economic analysis, that had not been adequately addressed in the proposal.

At the time of listing, special regulations were issued in conjunction with the listing determination, and were incorporated into 50 CFR 17.40(b). These rules provided general protection to the species, but allowed take under certain conditions to defend human life, to eliminate nuisance animals, and to carry out research. Legal grizzly bear mortality has been almost entirely due to removal of chronic nuisance bears by government bear managers due to repeated human/bear conflicts or to killing by humans in self-defense or defense of others (Gunther *et al.* 2004; Servheen *et al.* 2004). In addition, a limited sport hunting season was authorized in a specified portion of northwestern Montana; these rules were modified in 1985 (50 FR 35086; August 29, 1985) and 1986 (51 FR 33753; September 23, 1986). A similar, limited hunt was proposed for the Yellowstone Ecosystem in October of 1989 (54 FR 42524; October 17, 1989), but this rule was never finalized. The Service withdrew the hunt provisions of 50 CFR 17.40(b) (see 57 FR 37478) in response to a court decision that declared 50 CFR 17.40(b)(1)(i)(E) invalid and enjoined the Service from authorizing a grizzly bear hunt (*Fund for Animals, Inc.*, v. *Turner*, Civil No. 91–2201 (MB), September 27, 1991) (57 FR 37478; August 19, 1992).

According to the Grizzly Bear Recovery Plan (Service 1982, 1993), individual populations could be delisted as recovery goals were achieved (Service 1982, 1993). In the 1990s, the Service received a number of petitions to change the status of several grizzly bear populations. The Service issued warranted-but-precluded petition findings to reclassify the grizzly bear in the North Cascade Ecosystems as endangered in 1991 and 1998 (56 FR 33892, July 24, 1991; 63 FR 30453, June 4, 1998). The Service also issued warranted-but-precluded petition findings to reclassify the grizzly bear in the Cabinet-Yaak Ecosystems as endangered in 1993 and 1999 (58 FR 8250, February 12, 1993; 64 FR 26725, May 17, 1999). Finally, the Service issued a not warranted petition finding to uplist the Selkirk Ecosystem bears in 1993 (58 FR 8250; February 12, 1993), followed by a warranted-but-precluded petition finding in 1999 (64 FR 26725; May 17, 1999). The Service reviewed these warranted-but-precluded findings in the 1999 (64 FR 57533; October 25, 1999), 2001 (66 FR 54808; October 30, 2001), 2002 (67 FR 40657; June 13, 2002), 2003 (69 FR 24876; May 4, 2004), and 2004 (70 FR 24870; May 11, 2005) Candidate Notices of Review. These actions remain precluded by higher priority actions. The Service's decision to manage each population separately, including each population's listing status, predated our DPS policy (61 FR 4722; February 7, 1996). None of the above decisions included formal DPS analysis, although the warranted uplisting petition finding in 1999 (64 FR 26725; May 17, 1999) included a preliminary DPS analysis. In preparation for future application of the DPS policy, beyond this action, including that required to implement warranted-but-precluded uplistings or any additional reclassification proposals, we are currently collecting additional genetic and bear movement information. The Service expects that this information will be available within the next few years. In anticipation of this information, the Service intends to initiate a 5-year review of all listed grizzly bear populations in the conterminous States, including an evaluation of the appropriate application of the DPS policy and the threats facing each listable entity should this proposed rule be finalized. Adequate information of this type already exists for the Yellowstone grizzly bear population.

This proposed delisting action was not prompted by a petition. However, there was a March 31, 2004, petition from the Wyoming Farm Bureau Federation requesting that we declare the grizzly bear in the GYA as a DPS (Hamilton *et al.* in litt. 2004). This petition did not seek to change the status of grizzly bears as a threatened species in any or all of the species' range. On May 17, 2004, the Service responded that section 4 of the ESA limits petitionable actions to listing, delisting, designation or modification of critical habitat, or reclassification of the status of a species (meaning whether a species is classified as endangered or threatened) and that this petition did not fit any of these categories (Blankenship in litt. 2004). Instead, petitioners were informed that the requested action falls within the authority of the Administrative Procedures Act; that the Service was currently considering the Yellowstone population for delisting; and that an evaluation of the Yellowstone grizzly bear recovery area as a potential DPS was a part of this process. The Administrative Procedures Act provides no statutory time periods for processing petitions, but this action, if finalized, will address this petition.

Distinct Vertebrate Population Segment Policy Overview

Pursuant to the ESA, we shall 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. To interpret and implement the DPS provision of the ESA and congressional guidance, the Service and the National Marine Fisheries Service published, on December 21, 1994, a draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the ESA and invited public comments on it (59 FR 65884). After review of comments and further consideration, the Services adopted the interagency policy as issued in draft form, and published it in the **Federal Register** on February 7, 1996 (61 FR 4722). This policy addresses the establishment of DPSs for potential listing actions.

Under our DPS policy, three factors are considered in a decision regarding the establishment of a possible DPS. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are—(1) discreteness of the population segment in relation to the remainder of the taxon (*i.e., U. a. horribilis);* (2) the significance of the population segment to the taxon to which it belongs (*i.e., U. a. horribilis);* and (3) the population segment's conservation status in relation to the ESA's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened).

Application of the Distinct Population Segment Policy

Although the Vertebrate Population Policy does not allow State or other intra-national governmental boundaries to be used in determining the discreteness of a potential DPS, an artificial or manmade boundary may be used as a boundary of convenience in order to clearly identify the geographic area included within a DPS designation. Easily identifiable manmade projects, such as interstate highways, Federal highways, and State highways, also can serve as a boundary of convenience for delineating a DPS. Thus, the proposed Yellowstone DPS consists of: That portion of Idaho that is east of Interstate Highway 15 and north of U.S. Highway 30; and that portion of Montana that is east of Interstate Highway 15 and south of Interstate Highway 90; that portion of Wyoming south of Interstate Highway 90, west of Interstate Highway 25, Wyoming State Highway 220, and U.S. Highway 287 south of Three Forks (at the 220 and 287 intersection), and north of Interstate Highway 80 and U.S. Highway 30 (Figure 1, below).

The core of the proposed Yellowstone DPS is the Yellowstone Recovery Zone (24,000 sq km (9,200 sq mi)) (Service 1982, 1993). The Yellowstone Recovery Zone includes Yellowstone National Park; Grand Teton National Park; John D. Rockefeller Memorial Parkway; sizable contiguous portions of the Shoshone, Bridger-Teton, Targhee, Gallatin, Beaverhead-Deerlodge, and Custer National Forests; BLM lands; and surrounding State and private lands (Service 1993). As grizzly bear populations have rebounded and densities have increased, bears have expanded their range beyond the Recovery Zone, into other suitable habitat. Grizzly bears in this area now occupy about 36,940 sq km (14,260 sq mi) in and around the Yellowstone Recovery Zone (Schwartz *et al.* 2002; Schwartz 2005, unpublished data). No grizzly bears originating from the Yellowstone Recovery Zone have been suspected or confirmed beyond the borders of the proposed Yellowstone DPS.

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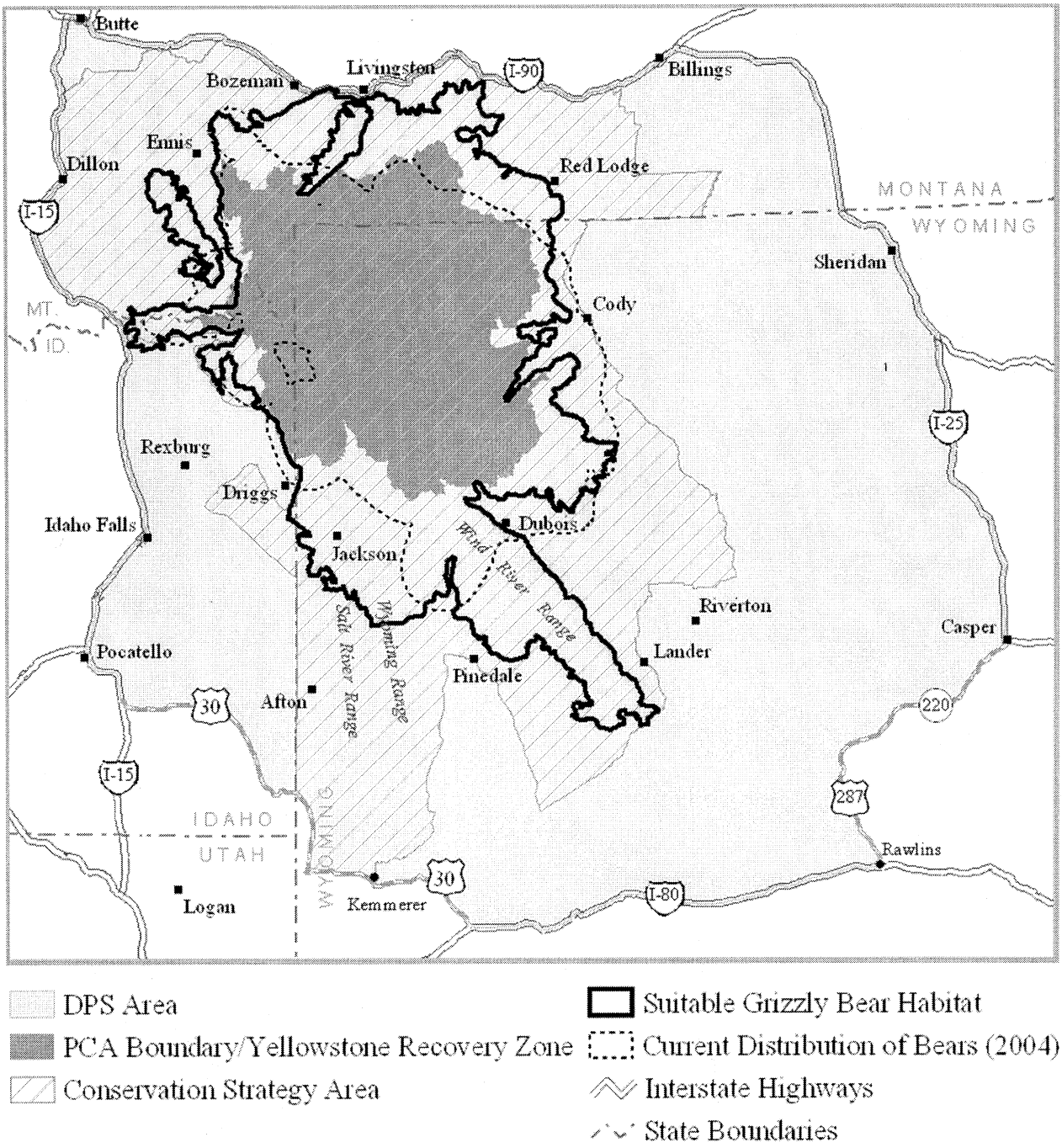

Figure 1. Proposed boundaries for: (1) DPS Area—the Yellowstone distinct population segment of grizzly bears; (2) Primary Conservation Area (PCA) Boundary—area within which the habitat standards in the Conservation Strategy apply. The boundaries of the PCA correspond to those of the Yellowstone Recovery Zone; (3) Conservation Strategy Area—the area in which all population and mortality standards will be monitored and calculated; (4) Current Distribution of Grizzly Bears, using Schwartz et al. (2002) methodology and revised 2005 unpublished data; and (5) Suitable Habitat—the area of suitable grizzly habitat in this DPS as defined in this proposed rule.

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Analysis for Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate species 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., U. a. horribilis*) 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) (''the inadequacy of existing regulatory mechanisms'') of the ESA.

The Yellowstone grizzly bear population is the southernmost population remaining in the conterminous States and has been physically separated from other areas where grizzly bears occur for at least 100 years (Merriam 1922; Miller and Waits 2003). The nearest population of grizzly bears is found in the NCDE. These populations are separated by land ownership, vegetation, and topographic patterns which have promoted human occupation, development, and land uses in the intervening valleys between large blocks of mountainous, public lands (Servheen *et al.* 2003). These human activities increase grizzly bear mortality risk by increasing the frequency of encounters with humans, which increases the chances for grizzly bear/human conflicts (Mattson *et al.* 1996). The end result of this increased mortality risk in the intervening valleys is a functional barrier to grizzly bear movement across the landscape and connectivity between the GYA and the NCDE.

As of 2005, grizzly bears from the Yellowstone area have not migrated north across Interstate 90 (the northern boundary of the proposed DPS), probably for at least the last century (Miller and Waits 2003). Meanwhile, during the last decade, there have been occasional anecdotal reports of grizzly bears from the NCDE as far south as Highway 12 near Helena, Montana. These unverified reports are approximately 130 km (80 mi) north of the most northerly Yellowstone grizzly bears. This distance is too far for normal grizzly bear dispersal distances of roughly 10 to 40 km (6 to 25 mi) (McLellan and Hovey 2001; Proctor *et al.* 2004) to effectively connect the NCDE population with the proposed Yellowstone DPS. There is currently no connectivity, nor are there any resident grizzly bears in the area, between these two separate grizzly bear populations. Although future connectivity through this area may be possible as grizzly bear populations expand, grizzly bears in the Yellowstone area remain an island population separated from other grizzly bears further north by about 210 km (130 mi).

Because the Yellowstone Ecosystem represents the most southerly population of grizzly bears, connectivity further south is not an issue. Additionally, connectivity east also is irrelevant to this action as grizzly bears in the lower 48 States no longer exist east of the Yellowstone area, and most of the habitat is unsuitable for grizzly bears. Finally, connectivity west into the Bitterroot Mountains is irrelevant to this action because no bears have been documented in this ecosystem in the past 30 years (Service 1993; 65 FR 69624, November 17, 2000; Service 2000).

Genetic data also support the conclusion that grizzly bears from the Yellowstone area are markedly separated from other grizzly bears. Genetic studies involving heterozygosity (provides a measure of genetic variation in either a population or individual) estimates at 8 microsatellite loci show 55 percent heterozygosity in the Yellowstone area grizzly bears compared to 69 percent in the NCDE bears (Paetkau *et al.* 1998). Heterozygosity is a useful measure of genetic diversity with higher values indicative of greater genetic variation and evolutionary potential. High levels of genetic variation are indicative of high levels of connectivity among populations or high numbers of breeding animals. By comparing heterozygosity of extant bears to samples from Yellowstone grizzlies of the early 1900s, Miller and Waits (2003) concluded that gene flow and therefore population connectivity, between the Yellowstone area grizzly population and populations to the north was very low historically, even prior to the arrival of settlers. The reasons for this historic limitation of gene flow are unclear. Increasing levels of human activity and settlement in this intervening area over the last century further limited grizzly bear movements into and out of the Yellowstone area, resulting in even less connectivity than in the past.

Based on our analysis of the best available scientific information, we find that the Yellowstone area grizzly population and other remaining grizzly bears populations are markedly separated from each other. This contention is supported by evidence of physical separation between populations and evidence of genetic discontinuity. Therefore, the proposed Yellowstone DPS meets the criterion of discreteness under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments.

Analysis for Significance

If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon (*i.e., U. a. horribilis*) 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. Below we address Factors 1, 2, and 4. Factor 3 does not apply to the Yellowstone grizzly bear population because it is not the only surviving wild population of the species and, therefore, this factor is not included in our analysis for significance.

Unusual or Unique Ecological Setting. Grizzly bears in the Yellowstone area exist in a unique ecosystem that has greater access to large-bodied ungulates such as bison (*Bison bison*), elk (*Cervus elaphus*), and moose (*Alces alces*) and less access to fall berries than any other interior North American, European, or Asian grizzly bear population (Stroganov 1969; Mattson *et al.* 1991a; Jacoby *et al.* 1999; Schwartz *et al.* 2003). Unlike most other areas in the world where brown or grizzly bears still exist, the Yellowstone area ecosystem contains extensive populations of ungulates with an estimated 100,000 elk, 29,500 mule (*Odocoileus hemionus*) and white-tailed deer (*O. virginianus*), 5,800 moose, 4,000 bison and relatively smaller population of pronghorn antelope (*Antilocapra americana*) (Service 1994; Toman *et al.* 1997; Smith *et al.* 2003). Although grizzly bears are successful omnivores, grizzlies in the rest of the conterminous States (Jacoby *et al.* 1999), most of Europe (Berducou *et al.* 1983; Clevenger *et al.* 1992; Dahle *et al.* 1998), and in Siberia (Stroganov 1969) rely on plant and insect materials

for the majority of their diet. In contrast, grizzlies in the Yellowstone area rely on terrestrial mammals as their primary source of nutrition, as indicated by bear scats (Mattson 1997), feed site analysis (Mattson 1997), and bear hair isotope analysis (Jacoby *et al.* 1999). Concentration of isotopic nitrogen (^{15}N) in grizzly bear hair from Yellowstone grizzly bears suggests that meat constitutes 45 percent and 79 percent of the annual diet for females and males, respectively (Jacoby *et al.* 1999). These high percentages of meat in the diet for Yellowstone grizzly bears are in contrast to the 0 to 33 percent of meat in the diet of bears in the NCDE and 0 to 17 percent of meat in the diet in bears from the Cabinet-Yaak Ecosystem (Jacoby *et al.* 1999). Furthermore, the source of this animal meat is primarily large-bodied ungulates, not fish, as in other populations of brown bears in Alaska and Siberia (Stroganov 1969; Hilderbrand *et al.* 1996). Of particular relevance is grizzly bear use of wild bison, a species endemic to North America, but eradicated in most of the 48 States except the GYA by the end of the 19th century (Steelquist 1998). Although bison numbers have increased since this time, the vast majority of bison are found in managed or ranched herds (Steelquist 1998). Their habitat, bunchgrass prairie (tallgrass, mixed-grass, and shortgrass prairie), has been almost entirely converted to agricultural lands (Steelquist 1998), leaving little opportunity for existence in areas outside of the isolated refuges and ranches they are commonly found today. Mattson (1997) found that wild bison comprised the second largest source of ungulate meat (24 percent) consumed by Yellowstone grizzly bears, second only to elk (53 percent).

The Yellowstone grizzly population also exists in a unique ecological setting because it is able to use whitebark pine seeds as a major food source. Whitebark pine, a tree species found only in North America (Schmidt 1994), exhibits annual variation in seed crops with high seed production in some years and very low seed production in other years (Weaver and Forcella 1986; Morgan and Bunting 1992). During these years of high seed production, Yellowstone grizzly bears derive as much as 51 percent of their protein from pine nuts (Felicetti *et al.* 2003). In fact, grizzly bear consumption of ungulates decreases during years of high whitebark pine seed production (Mattson 1997). In most areas of North America where whitebark pine distribution overlaps with grizzly bear populations, bears do not consistently use this potential food source (Mattson and Reinhart 1994). This may be due to different climatic regimes which sustain berry-producing shrubs or simply the scarcity of whitebark pines in some areas of its range (Mattson and Reinhart 1994). Dependence of Yellowstone grizzly bears on whitebark pine is unique because in most areas of its range, whitebark pine has been significantly reduced in numbers and distribution due to the introduced pathogen whitepine blister rust (*Cronartium ribicola*) (Kendall and Keane 2001). While there is evidence of blister rust in whitebark pines in the Yellowstone area, the pathogen has been present for more than 50 years (McDonald and Hoff 2001) but very few trees have been infected (see Factor E). Due to this dependency of Yellowstone grizzly bears on animal and plant species endemic to North America and currently limited to the GYA, the population is significant to the taxon because of its unique ecological setting.

Significant Gap in the Range of the Taxon. Loss of the proposed Yellowstone DPS would represent a significant gap in the range of the taxon. As noted above, grizzly bears once lived throughout the North American Rockies from Alaska and Canada, and south into central Mexico. Grizzly bears have been extirpated from most of the southern portions of their historic range. Today, the proposed Yellowstone DPS represents the southernmost reach of the grizzly bear. The loss of this population would be significant because it would substantially curtail the range of the grizzly bear by moving the range approximately 4 degrees of latitude to the north. Thus, the loss of this population would result in a significant gap in the current range of the taxon.

Given the grizzly bear's historic occupancy of the conterminous States and the portion of the historic range the conterminous States represent, recovery in the lower 48 States where the grizzly bear existed in 1975 when it was listed has long been viewed as important to the taxon (40 FR 31734). The proposed Yellowstone DPS is significant in achieving this objective as it is 1 of only 5 known occupied areas and constitutes approximately half of the remaining grizzly bears in the conterminous 48 States. Finally, the proposed Yellowstone DPS represents the only grizzly bear population not connected to bears in Canada.

Marked Genetic Differences. Several genetics studies have confirmed the uniqueness of grizzly bears in the Yellowstone area. The Yellowstone area population has been isolated from other grizzly bear populations for approximately 100 years or more (Miller and Waits 2003). Yellowstone grizzly bears have the lowest relative heterozygosity of any continental grizzly population yet investigated (Paetkau *et al.* 1998; Waits *et al.* 1998b). Only Kodiak Island grizzly bears, a different subspecies (*Ursus arctos middendorfi*), have lower heterozygosity scores (26.5 percent), reflecting as much as 12,000 years of separation from mainland populations (Paetkau *et al.* 1998; Waits *et al.* 1998b). Miller and Waits (2003) conclude that gene flow between the Yellowstone area and the closest remaining population was limited prior to the arrival of European settlers but could only speculate as to the reasons behind this historical separation. The apparent long-term difference in heterozygosity between Yellowstone and other Montana populations indicates a unique set of circumstances in which limited movement between these areas has resulted in a markedly different genetic situation for the Yellowstone population.

We conclude that the Yellowstone grizzly population is significant because it exists in a unique ecological setting; the loss of this population would result in a significant gap in the range of the taxon; and this population's genetic characteristics differ markedly from other grizzly bear populations.

Conclusion of Distinct Population Segment Review

Based on the best available scientific information, as described above, we find that the Yellowstone grizzly bear population is discrete from other grizzly populations and significant to the remainder of the taxon (*i.e.*, *U. a. horribilis*). Because the Yellowstone grizzly bear population is discrete and significant, it warrants recognition as a DPS under the ESA. Therefore, the remainder of this proposed rule will focus on the Yellowstone DPS.

Summary of Factors Affecting the Species

Section 4 of the ESA and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for listing, reclassifying, and delisting species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available demonstrate that the species is no longer endangered or threatened because of (1) Extinction; (2) recovery; or (3) error in the original data used for classification of the species. The analysis for a delisting due to recovery must be based on the five factors outlined in section 4(a)(1) of the ESA. This analysis must include an

evaluation of threats that existed at the time of listing and those that currently exist or that could potentially affect the species in the foreseeable future once the protections of the ESA are removed.

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.

The ESA defines ''species'' to also include any subspecies or, for vertebrates, any DPS. Because the Yellowstone grizzly bear population is discrete and significant, as defined above, it warrants recognition as a DPS under the ESA and our policy (61 FR 4722). Therefore, our analysis only covers the DPS.

For the purposes of this proposed rule, ''foreseeable future'' shall refer to approximately 100 years. This definition is based on 10 grizzly bear generations where a single female may take 10 years to replace herself in a population. This time period is also commonly used in population viability analyses of grizzly bear populations (Boyce 1995; Saether *et al.* 1998; Boyce *et al.* 2001).

For the purposes of this proposed rule, the ''range'' of this grizzly bear DPS is the area within the DPS boundaries where viable populations of the species now exist. As previously noted, we have defined the overall DPS boundary by existing roads for ease in determining its location. Bears occupy or can occupy all suitable habitat within the DPS boundary and a few individual bears occasionally occupy or pass through the areas we define as unsuitable habitat. Suitable habitat provides food, seasonal foraging opportunities, cover, denning areas, and security. We have defined suitable habitat for grizzly bears as areas having three characteristics—(1) being of adequate habitat quality and quantity to support grizzly bear reproduction and survival; (2) contiguous with the current distribution of Yellowstone grizzly bears such that natural re-colonization is possible; and (3) having low mortality risk as indicated through reasonable and manageable levels of grizzly bear/human conflicts. Unsuitable habitat consists of those areas within the DPS boundary that cannot support viable populations of grizzly bears.

The Statutory standard is whether the species is threatened in ''all or a significant portion'' of its range. Because the grizzly bear occupies all of its range within this DPS, we conducted the following threats assessment over the entire current range of the grizzly bear and throughout all suitable habitat within the DPS.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat destruction and modification were major contributing factors leading to the 'listing of the grizzly bear as a threatened species under the ESA in 1975 (40 FR 1734). Both the dramatic decreases in historical range and land management practices in formerly secure grizzly bear habitat lead to the 1975 listing (40 FR 1734). To address this source of population decline, the Study Team was created in 1973 to collect, manage, analyze, and distribute science-based information regarding habitat and demographic parameters upon which to base management and recovery. Then, in 1983, the Interagency Grizzly Bear Committee was created to coordinate management efforts across multiple Federal lands and different States within the various Recovery Zones ultimately working to achieve recovery of the grizzly bear in the lower 48 States. Its objective was to change land management practices on Federal lands that supported grizzly bear populations at the time of listing to provide security and maintain or improve habitat conditions for the grizzly bear. Since 1986, National Forest and National Park plans have incorporated the Guidelines for Management Involving Grizzly Bears in the Yellowstone area (USDA 1986) to manage grizzly bear habitat in the Yellowstone Recovery Zone. The Service considers implementation of these Guidelines to be a primary factor contributing to the Yellowstone grizzly bear population's recovery in the last 2 decades.

Management improvements made as a result of the Guidelines include, but are not limited to—(1) Federal and State agency coordination to produce nuisance bear guidelines that allow a quick response to resolve and minimize grizzly bear/human confrontations; (2) reduced motorized access route densities through restrictions, decommissioning, and closures; (3) highway design considerations to facilitate population connectivity; (4) closure of some important habitat areas to all human access in National Parks during certain seasons that are particularly important to grizzlies; (5) closure of many areas in the GYA to oil and gas leasing or implementing restrictions such as no surface occupancy; (6) elimination of two sheep allotments on the Caribou-Targhee National Forest in 1998, resulting in a 46 percent decrease in total sheep animal months inside the Yellowstone Recovery Area; and (7) expanded Information and Education (IE) programs in the Yellowstone Recovery Area to help reduce the number of grizzly mortalities caused by big-game hunters. Overall, adherence to the Guidelines has changed land management practices on Federal lands to provide security and to maintain or improve habitat conditions for the grizzly bear. Implementation of these Guidelines has led to the successful rebound of the Yellowstone grizzly bear population, allowing it to significantly increase in size and distribution since its listing in 1975.

In 2002, an interagency group representing pertinent State and Federal parties released the draft Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area to guide management and monitoring of the habitat and population of Yellowstone grizzly bears after delisting. The Strategy identifies and provides a framework for managing two areas, the PCA and adjacent areas of suitable habitat where occupancy by grizzly bears is anticipated. What follows is an assessment of present or threatened destruction, modification, or curtailment of current suitable habitat, or range, in both of these areas.

Habitat Management within the Primary Conservation Area: As per the Strategy and the habitat-based recovery criteria discussed above, the PCA will be a core security area for grizzlies where human impacts on habitat conditions will be maintained at or below levels that existed in 1998 (Service 2003). The 1998 baseline for habitat standards was chosen because several studies (Boyce *et al.* 2001; Schwartz *et al.* 2005) showed that the Yellowstone grizzly bear population was increasing at a rate of 4 to 7 percent per year between 1983 and 2001, and 1998 was within the time that this rate of increase was occurring. Because levels of secure habitat and developed sites remained relatively constant in the 10 years preceding 1998 (USFS 2004), the selection of 1998 assured that the habitat conditions that allowed this rate of population increase would be maintained. For each of the 40 bear management subunits, the 1998 baseline was determined through a GIS analysis of the amount of secure habitat, open and closed road densities, the number and capacity of livestock allotments, the number of developed sites on public lands, and habitat effectiveness.

Secure habitat refers to those areas with no motorized access that are at least 4 hectares (10 acres) in size and more than 500 meters (550 yards) from a motorized access route or reoccurring helicopter flight line (USFS 2004). Grizzly bear habitat security is primarily achieved by managing motorized access which—(1) minimizes human interaction and reduces potential grizzly bear mortality risk, (2) minimizes displacement from important habitat, (3) minimizes habituation to humans, and (4) provides habitat where energetic requirements can be met with limited disturbance from humans (Mattson *et al.* 1987; McLellan and Shackleton 1988; McLellan 1989; Mace *et al.* 1996; Mattson *et al.* 1996). Secure habitat is especially important to the survival and reproductive success of grizzly bears, especially adult female grizzly bears (Mattson *et al.* 1987; Interagency Grizzly Bear Committee 1994). In the 1998 baseline, secure habitat comprised 45.4 to 100 percent of the total area within a given subunit with an average of 86.2 percent throughout the entire PCA (Table 2 in Appendix F of the Strategy). These levels of secure habitat have been successfully maintained and will continue to be maintained and improved, where possible, as directed by the Conservation Strategy (Service 2003).

Open road densities of more than 1.6 km/2.6 sq km (1 mi/sq mi) were calculated for two seasons to account for seasonal road closures. The percentage of land within each subunit containing road density values higher than 1.6 km/2.6 sq km (1 mi/sq mi) in 1998 ranged from 0 to 46.1 percent, although the average for all subunits was only 10.7 percent. Lands containing total road density values of more than 3.2 km/2.6 sq km (2 mi/sq mi) in 1998 comprised 0 to 28.1 percent of the total area within each subunit, with the average for all subunits of 5.3 percent (Table 2 in Appendix F of the Strategy). These levels of motorized access have been effectively maintained or improved from 1998 levels, as per the habitat-based recovery criteria. The Conservation Strategy assures that they will continue to be managed at 1998 levels if this proposed delisting action is finalized (Service 2003).

Several subunits within the boundaries of the Gallatin National Forest (Henry's Lake No. 2, Gallatin No. 3, and Madison No. 2) within the PCA have been identified as needing improvement in access parameters. However, the high road density values and subsequently low levels of secure habitat in these subunits is primarily due to motorized access on private land (Appendix G in the Strategy). The Gallatin National Forest is working on several land exchange efforts with private parties in these subunits. These land exchanges allow management of the roads on these private parcels and increase the secure habitat in these subunits.

All the above-mentioned subunits on the Gallatin National Forest have the potential for improvement in the long term. The timing and amount of improvement will be determined through the Gallatin National Forest travel management planning process. The Travel Plan will amend the Gallatin Forest Plan and set a 1998 baseline for access values in these subunits. This travel Plan for the Gallatin National Forest is in revision as of 2005.

The Gallatin Range Consolidation and Protection Act of 1993 (Pub. L. 103–91) and the Gallatin Range Consolidation Act of 1998 (Pub. L. 105–267) will result in trading timber for land in the Gallatin No. 3 and Hilgard No. 1 subunits. The private land involved will become public land under the jurisdiction of the Gallatin National Forest. In order to complete the exchange, access values in these two subunits will temporarily decline below 1998 values. However, upon completion of this sale and land exchange, secure habitat and motorized access route density in these subunits will improve from the 1998 baseline (see Appendix F in the Strategy).

The Strategy identified several subunits within the boundaries of the Targhee National Forest within the PCA in need of improvement in terms of motorized access (Plateau No. 1, Plateau No. 2, and Henry's Lake No. 1). The Strategy states that upon full implementation of the access management changes in the revised 1997 Targhee Forest Plan, those subunits will have acceptable levels of road densities and secure habitat due to the decommissioning of roughly 433 miles of roads within the PCA (Service 2003). As of June 2005, the Targhee National Forest has completed approximately 80 percent of this decommissioning work with the remaining 20 percent likely to be completed in 2005, after site-specific National Environmental Policy Act analyses are completed (USDA Forest Service 2005). The 1998 baseline (see Appendix F in the Strategy) for these subunits was modified to reflect increased road closures with the full implementation of the 1997 Targhee Forest Plan. Henry's Lake subunit No. 1 still has high levels of motorized access density and a low secure habitat level due to motorized access routes on private lands (see Appendix F of the Strategy).

Habitat standards described in the Strategy regarding livestock require that the number of commercial livestock allotments and permitted sheep animal months within the PCA not increase above 1998 levels (Service 2003). Livestock allotments, particularly sheep allotments, decrease habitat security (*i.e.*, habitat effectiveness) as grizzly bears occupying lands with sheep are more likely to come into conflict with these sheep. This increase in encounters between bears and livestock or their human owners decreases survival rates of grizzly bears in areas of active sheep allotments as repeat depredators are removed from the population. Additionally, sheep and cattle can compete directly to some degree with grizzly bears during late spring and early summer for desired foods such as grasses, sedges, and forbs (Jonkel 1980). Due to the higher prevalence of grizzly bear conflicts associated with sheep grazing, existing sheep allotments will be phased out as the opportunity arises with willing permittees.

A total of 88 livestock allotments existed inside the PCA in 1998. Of these 1998 allotments within the PCA, there were 71 active and 2 vacant cattle allotments and 11 active and 4 vacant sheep allotments with a total of 17,279 animal months for sheep (Service 2003). Sheep animal months are calculated by multiplying the permitted number of animals by the permitted number of months. Any use of vacant allotments will only be permitted after an analysis is completed to evaluate impacts on grizzly bears. Since 1998, the Caribou-Targhee National Forest has closed five sheep allotments within the PCA while the Shoshone National Forest has closed two sheep allotments (USDA Forest Service 2005). This has resulted in a reduction of 7,889 sheep animal months under the total calculated for 1998 within the PCA and is a testament to the commitment land management agencies have to the ongoing success of the grizzly bear population in the Yellowstone area. As of 2005, there are a total of four active sheep allotments within the PCA: Two on Targhee National Forest and two on the Gallatin National Forest. The permittee of the two allotments on the Gallatin National Forest has agreed to waive the grazing permit back to the Gallatin National Forest without preference. The Gallatin National Forest plans to close these two allotments along with three other vacant allotments when they revise their current Forest Plan. This Forest Plan revision process is scheduled to be

completed by 2010 (USDA Forest Service 2005).

The National Parks and National Forests within the PCA will manage developed sites at 1998 levels within each bear management subunit, with some exceptions for administrative and maintenance needs. Developed sites refer to sites on public land developed or improved for human use or resource development. Examples include campgrounds, trailheads, lodges, summer homes, restaurants, visitor centers, oil and gas exploratory wells, production wells, and work camps. The primary concerns related to developed sites are direct mortality from bear/human encounters, food conditioning, and habituation of bears to humans (Mattson *et al.* 1987). Habituation occurs when grizzly bears encounter humans or developed sites frequently, and without negative consequences, so that the bears no longer avoid humans and areas of human activity. Habituation does not necessarily involve human-related food sources. Food conditioning occurs when grizzly bears receive human-related sources of food and thereafter seek out humans and human use areas as feeding sites. In areas of suitable habitat inside the PCA, the NPS and the USFS enforce food storage rules aimed at decreasing grizzly bear access to human foods. These regulations will continue to be enforced and will be applied to all suitable habitat within the Yellowstone DPS boundaries.

Gunther (1994) noted that grizzly bear management in Yellowstone National Park has shifted from problems involving food-conditioned bears to problems involving habituated (but not food-conditioned) bears seeking natural foods within developed areas or along roadsides. New or expanded developed sites can impact bears through temporary or permanent habitat loss and displacement, increased length of time of human use, increased human disturbance to surrounding areas, and, potentially unsecured bear attractants.

Developed sites on public lands are currently inventoried in existing GIS databases and are input in the Yellowstone Grizzly Bear Cumulative Effects Model. As of 1998, there were 598 developed sites on public land within the PCA (USDA Forest Service 2005). All changes in developed sites since 1998 have been evaluated against the baseline and have been determined acceptable under the standard for developed sites identified in the Strategy (Service 2003). For a new developed site to be determined acceptable, it must be demonstrated that it will have no effect on grizzly bears. For example, a cell phone tower would fit this criteria because there is no human occupancy, nor human attractants such as garbage or other potential food sources. However, campgrounds, trailheads, lodges, summer homes, restaurants, visitor centers, oil and gas exploratory wells, production wells, and work camps would not be considered acceptable. No changes in the 1998 baseline have occurred in terms of site developments.

Management of oil, gas, mining, and timber development also are tracked as part of the developed site monitoring effort. There were no oil and gas leases inside the PCA as of 1998. There are approximately 552 sq km (213 sq mi) of secure habitat potentially available for oil, gas, or timber projects within the PCA. This comprises only 2 percent of all suitable habitat within the PCA. Additionally, 1,354 mining claims existed in 10 of the subunits inside the PCA (Table 1 in Appendix F of the Strategy), but only 27 of these mining claims had operating plans. These operating plans are included in the 1998 developed site baseline. Under the conditions of the Strategy, any new project will be approved only if it conforms to secure habitat and developed site standards (Service 2003). For instance, any project that reduces the amount of secure habitat permanently will have to provide replacement secure habitat of equivalent habitat quality (as measured by the Cumulative Effects Model or equivalent technology) and any change in developed sites will require mitigation equivalent to the type and extent of the impact. For projects that temporarily change the amount of secure habitat, only one project is allowed in any subunit at any time. Mitigation of any project will occur within the same subunit and will be proportional to the type and extent of the project.

Finally, the Service established a habitat effectiveness baseline by documenting habitat effectiveness values using the Cumulative Effects Model and 1998 habitat data (Service 2003). Habitat effectiveness values reflect the relative amount of energy (derived from natural foods) that is available to grizzly bears given their response to human activities. Important foods are key habitat-based criteria. The inverse relationship between whitebark pine cone production and grizzly conflicts in the Yellowstone Ecosystem has been documented (Mattson *et al.* 1992; Knight and Blanchard 1995; Gunther *et al.* 1997, 2004). However, the relationship between other important foods such as spring ungulate carcasses, cutworm moths, and cutthroat trout is not as clear cut. Therefore, it is important to monitor foods and continue to relate major food abundance to demographics and human/bear conflicts. Monitoring habitat effectiveness using the Cumulative Effects Model is valuable in understanding and maintaining important habitats for grizzly bears. Should we finalize delisting, the Study Team would continue coordinating with the National Forests and National Parks within the PCA to update and evaluate habitat effectiveness against the 1998 baseline.

To establish the 1998 baseline for habitat effectiveness values, the Forest Service calculated habitat effectiveness within each subunit for four important bear seasons: Spring (March 1–May 15); estrus (May 16–July 15); early hyperphagia (July 16–August 31); and late hyperphagia (September 1–November 30) (Table 6 in Appendix F of the Strategy). High habitat effectiveness values during estrus are associated with cutthroat trout spawning streams. Similarly, high habitat effectiveness values during early hyperphagia and late hyperphagia are associated with moth aggregation sites and whitebark pine, respectively. Habitat effectiveness values also are directly influenced by the amount of secure habitat in a subunit. This combination of the distribution and abundance of natural foods and the distribution and abundance of human activities produces relative values indicative of how effective a certain subunit is at supporting grizzly bear growth, reproduction, and survival. As such, values varied widely among seasons and across seasons within subunits (Table 6 in Appendix F of the Strategy). Because the National Park Service and the Forest Service have not changed levels of road densities, secure habitat, developed sites, or livestock allotments except to improve upon the 1998 baseline, the 1998 habitat effectiveness values remain applicable. At this point, habitat effectiveness values have remained at sufficient levels to support grizzly bears since other more frequently measured and monitored habitat baseline (such as road densities, secure habitat, site development, and livestock allotments) have not changed. If this rule is finalized and the Strategy is implemented, the USFS could measure changes in seasonal habitat effectiveness values in each Bear Management Unit and subunit by regular application of the Cumulative Effects Model or best available system and compare outputs with the 1998 baseline values (Service

2003). The Cumulative Effects Model databases would be reviewed annually and updated as needed (Service 2003).

The Strategy calls for maintaining or improving the existing habitat effectiveness values in secure habitat in each subunit (Service 2003). Private land development would also be monitored and linked to numbers of human/bear conflicts, causes of human/bear conflicts, and distribution of human/bear conflicts so as to direct management efforts to improve food supply and minimize bear/human conflicts in such areas.

Within the PCA, each National Forest and National Park would monitor adherence to the secure habitat, developed site, and livestock standards inside the PCA, as established by the Strategy (Service 2003). If we finalize delisting, the Study Team would monitor habitat effectiveness and track any changes to the habitat from fire, insects, and disease, and other human activities not measured by the habitat standard monitoring efforts. The agencies will measure changes in seasonal habitat value and effectiveness in each bear management unit and subunit by regular application of the Cumulative Effects Model or the best available system, and compare outputs to the 1998 baseline. These databases incorporate information regarding vegetation, the abundance and distribution of the four major bear foods, location, duration, and intensity of use for motorized access routes, non-motorized access routes, developed sites, and front-country and back-country dispersed uses. The Study Team would review Cumulative Effects Model databases annually to refine and verify Cumulative Effects Model assumptions and update them as needed to reflect changes in intensity or duration of human use. The multi-agency Yellowstone Grizzly Coordinating Committee (hereafter referred to as the Coordinating Committee) may review and revise habitat standards based on the best available science after appropriate public processes have been conducted by the affected land management agencies.

To prevent habitat fragmentation and degradation, the Strategy requires that all road construction projects in suitable habitat throughout the entire GYA (both inside and outside of the PCA) evaluate the impacts of the project on grizzly habitat connectivity during the NEPA analysis process (Service 2003). By identifying areas used by grizzly bears, officials can mitigate potential impacts from road construction both during and after a project. Federal agencies would identify important crossing areas by collecting information about known bear crossings, bear sightings, ungulate road mortality data, bear home range analyses, and locations of game trails. Potential advantages of this requirement include reduction of grizzly bear mortality due to vehicle collisions, access to seasonal habitats, maintenance of traditional dispersal routes, and decreased fragmentation of individual home ranges. For example, work crews would place temporary work camps in areas with lower risk of displacing grizzly bears and food and garbage will be kept in bear-proof containers. Highway planners would incorporate warning signs and crossing structures such as culverts or underpasses into projects when possible to facilitate safe highway crossings by wildlife.

Suitable Habitat: Because we used easily recognized boundaries to delineate the Yellowstone DPS, the DPS includes both suitable and unsuitable habitat (Figure 1, above). For the purposes of this proposed rule, suitable habitat is considered the area within the DPS boundaries where viable populations of the species now exist or are capable of being supported in the foreseeable future. Suitable habitat provides food, seasonal foraging opportunities, cover, denning areas, and security. We have defined suitable habitat for grizzly bears as areas having three characteristics—(1) being of adequate habitat quality and quantity to support grizzly bear reproduction and survival; (2) contiguous with the current distribution of Yellowstone grizzly bears such that natural re-colonization is possible; and (3) having low mortality risk as indicated through reasonable and manageable levels of grizzly bear mortality.

Our definition and delineation of suitable habitat is built on the widely recognized conclusions of extensive research (Craighead 1980; Knight 1980; Peek *et al.* 1987; Merrill *et al.* 1999; Pease and Mattson 1999) that grizzly bear reproduction and survival is a function of both the biological needs of grizzly bears and remoteness from human activities which minimizes mortality risk for grizzly bears. Mountainous areas provide hiding cover and the topographic variation necessary to ensure a wide variety of seasonal foods and the steep slopes required for denning (Judd *et al.* 1986; Aune and Kasworm 1989; Linnell *et al.* 2000). Higher elevation, mountainous regions in the GYA (Omernik 1987, 1995; Woods *et al.* 1999; McGrath *et al.* 2002; Chapman *et al.* 2004) contain high-energy foods such as whitebark pine seeds (Mattson and Jonkel 1990; Mattson *et al.* 1991a) and army cutworm moths (Mattson *et al.* 1991b; French *et al.* 1994).

For our analysis of suitable habitat, we considered the Middle Rockies ecoregion (Omernik 1987; Woods *et al.* 1999; McGrath *et al.* 2002; Chapman *et al.* 2004) to meet grizzly bear biological needs providing food, seasonal foraging opportunities, cover, and denning areas (Mattson and Merrill 2002). The Middle Rockies ecoregion has Douglas-fir, subalpine fir, and Engelmann spruce forests and alpine areas. Forests can be open. Foothills are partly wooded or shrub- and grass-covered. Intermontane valleys are grass- and/or shrub-covered and contain a mosaic of terrestrial and aquatic fauna that is distinct from the nearby mountains. Many mountain-fed, perennial streams occur and differentiate the intermontane valleys from the Northwestern Great Plains. Recreation, logging, mining, and summer livestock grazing are common land uses in this ecoregion.

Although grizzly bears historically occurred throughout the area of the Yellowstone DPS (Stebler 1972), many of these habitats are not, today, biologically suitable for grizzly bears. There are records of grizzly bears in eastern Wyoming near present-day Sheridan, Casper, and Wheatland, but even in the early 19th century, indirect evidence suggests that grizzly bears were less common in these eastern prairie habitats than in mountainous areas to the west and south (see Rollins 1935; Wade 1947). Grizzly bear presence in these drier, grassland habitats was associated with rivers and streams where grizzlies used buffalo carcasses as a major food source (Burroughs 1961; Herrero 1972; Stebler 1972; Mattson and Merrill 2002). Wild buffalo herds no longer exist in these areas. Thus, we did not include drier sagebrush, prairie, or agricultural lands because these land types no longer contain adequate food resources (*i.e.*, bison) to support grizzly bears.

The negative impacts of humans on grizzly bear survival and habitat use are well documented (Harding and Nagy 1980; McLellan and Shackleton 1988; Aune and Kasworm 1989; McLellan 1989; McLellan and Shackleton 1989a; Mattson 1990; Mattson and Knight 1991; Mattson *et al.* 1992; Mace *et al.* 1996; McLellan *et al.* 1999; White *et al.* 1999; Woodroffe 2000; Boyce *et al.* 2001; Johnson *et al.* 2004). These effects range from temporary displacement to actual mortality. Mattson and Merrill (2002) found that grizzly bear persistence in the contiguous United States between 1920 and 2000 was negatively associated with human and livestock

densities. As human population densities increase, the frequency of encounters between humans and grizzly bears also increases, resulting in more human-caused grizzly bear mortalities due to a perceived or real threat to human life or property (Mattson *et al.* 1996). Similarly, as livestock densities increase in habitat occupied by grizzly bears, depredations follow. Although grizzly bears frequently coexist with cattle without depredating them, when grizzly bears encounter domestic sheep, they usually are attracted to such flocks and depredate the sheep (Jonkel 1980; Knight and Judd 1983; Orme and Williams 1986; Anderson *et al.* 2002). If repeated depredations occur, managers either relocate the bear or remove it from the population, resulting in such domestic sheep areas becoming population sinks (Knight *et al.* 1988).

Because urban sites and sheep allotments possess high mortality risks for grizzly bears, we did not include cities or large contiguous blocks of active sheep allotments as suitable habitat (Knight *et al.* 1988). Our elimination of domestic sheep grazing areas on public lands from suitable habitat is based on current conditions. Should the grazing management of these areas change in the future it is possible that such areas could become suitable grizzly bear habitat. Based on 2000 Census data, we defined urban areas as census blocks with human population densities of more than 50 people/sq km (129 people/sq mi). Cities within the Middle Rockies ecoregion such as West Yellowstone, Gardiner, Big Sky, and Cooke City, Montana, and Jackson, Wyoming, were not included as suitable habitat. There are large, contiguous blocks of sheep allotments in peripheral areas of the ecosystem in the Wyoming Salt River and Wind River Mountain Ranges on the Bridger-Teton and the Targhee National Forests (Figure 1, above). This spatial distribution of sheep allotments on the periphery of suitable habitat results in areas of high mortality risk to bears within these allotments and a few small, isolated patches or strips of suitable habitat adjacent to or within sheep allotments. These strips and patches of land possess higher mortality risks for grizzly bears because of their enclosure by and proximity to areas of high mortality risk. This phenomenon in which the quantity and quality of suitable habitat is diminished because of interactions with surrounding less suitable habitat is known as an ''edge effect'' (Lande 1988; Yahner 1988; Mills 1995). Edge effects are exacerbated in small habitat patches with high perimeter to area ratios (*i.e.*, those that are longer and narrower) and in wide-ranging species such as grizzly bears because they are more likely to encounter surrounding, unsuitable habitat (Woodroffe and Ginsberg 1998). Due to the negative edge effects of this distribution of sheep allotments on the periphery of grizzly range, our analysis did not classify linear strips and isolated patches of habitat as suitable habitat.

Although the Bighorn Mountains west of I–90 near Sheridan, Wyoming, are grouped within the Middle Rockies ecoregion, they are not connected to the current distribution of grizzly bears via suitable habitat or linkage zones, nor are there opportunities for such linkage. The Bighorn Mountains are separated from the current grizzly bear distribution by approximately 100 km (60 mi) of a mosaic of private and BLM lands primarily used for agriculture, livestock grazing, and oil and gas production (Chapman *et al.* 2004). Although there is a possibility that individual bears may emigrate from the Yellowstone area to the Bighorns occasionally, without constant emigrants from suitable habitat, the Bighorns will not support a self-sustaining grizzly bear population. Therefore, due to the fact that this mountain range is disjunct from other suitable habitat and current grizzly bear distribution, our analysis did not classify the Bighorns as suitable habitat within the Yellowstone DPS boundaries.

Some areas that are not considered suitable habitat by our definition are occasionally used by grizzly bears (4,635 sq km (1,787 sq mi)) (see Figure 1, above) (Schwartz *et al.* 2002; Schwartz 2005, unpublished data). The records of grizzly bears in these unsuitable habitat areas are generally due to recorded grizzly bear/human conflicts or to transient animals. These areas are defined as unsuitable due to the high risk of mortality resulting from these grizzly bear/human conflicts. These unsuitable habitat areas do not permit grizzly bear reproduction or survival because bears that repeatedly come into conflict with humans or livestock are usually either relocated or removed from these areas.

Based on these factors and subsequent Geographic Information System (GIS) analysis, we found there are 46,035 sq km (17,774 sq mi) of suitable grizzly bear habitat within the DPS boundaries; or roughly 24 percent of the total area within the DPS boundaries (Figure 1, above). Grizzly bears currently occupy about 68 percent of that suitable habitat (31,481 sq km (12,155 sq mi)) (Schwartz *et al.* 2002; Schwartz 2005, unpublished data). It is important to note that the current grizzly bear distribution shown in Figure 1 does not mean that equal densities of grizzly bears are found throughout the region. Instead, most grizzly bears (approximately 90 percent of females with cubs-of-the-year) are found within the PCA (Schwartz 2005, unpublished data). Grizzly bear use of suitable habitat may vary seasonally and annually with different areas being more important than others in some seasons or years (Aune and Kasworm 1989). An additional 14,554 sq km (5,619 sq mi) of suitable habitat is currently unoccupied by grizzly bears (Figure 1, above) (Schwartz *et al.* 2002; Schwartz 2005, unpublished data). These areas would allow for the continued growth and expansion of the population within the proposed Yellowstone DPS as grizzly bears naturally recolonize them in the next few decades (Pyare *et al.* 2004).

Habitat Management Outside the Primary Conservation Area: In suitable habitat outside of the PCA within the DPS, the USFS, BLM, and State wildlife agencies will monitor habitat and population criteria to prevent potential threats to habitat from inhibiting the population's viability. Factors impacting suitable habitat outside of the PCA in the future may include increased road densities, livestock allotments, developed sites, human presence, and habitat fragmentation. Both Federal and State agencies are committed to managing habitat so that a viable Yellowstone grizzly bear population is maintained (see also Factor D—Inadequacy of Regulatory Mechanisms). In suitable habitat outside of the PCA, restrictions on human activities are more flexible but still the USFS, BLM, and State wildlife agencies will carefully manage these lands, monitor bear/human conflicts in these areas, and respond with management as necessary to reduce such conflicts to account for the complex needs of both grizzly bears and humans.

Currently, there are 22,783 sq km (8,797 sq mi) of suitable habitat outside of the PCA within the DPS. About 10 percent of the population of female grizzly bears with cubs occurs outside the PCA (Schwartz 2005, unpublished data). Of this, 17,292 sq km (6,676 sq mi) are on National Forest lands. Management decisions on USFS lands will continue to consider potential impacts on grizzly bear habitat and will be managed so as to allow grizzly bear expansion in terms of numbers and distribution. Approximately 79 percent of USFS suitable habitat outside the PCA within the DPS is currently designated a wilderness area (6,799 sq km (2,625 sq mi)), a wilderness study area (708 sq km (273 sq mi)), or an

inventoried roadless area (6,179 sq km (2,386 sq mi)) (USFS 2004). The amount of designated wilderness area, wilderness study area, and inventoried roadless area within each National Forest ranges from 56 to 90 percent, depending upon the forest.

Wilderness areas outside of the PCA are considered secure because they are protected from new road construction by federal legislation. In addition to restrictions on road construction, the Wilderness Act of 1964 (Pub. L. 88–577) also protects designated wilderness from permanent human habitation and increases in developed sites. The Wilderness Act allows livestock allotments existing before the passage of the Wilderness Act and mining claims staked before January 1, 1984, to persist within wilderness areas, but no new grazing permits or mining claims can be established after these dates. If pre-existing mining claims are pursued, the plans of operation are subject to Wilderness Act restrictions on road construction, permanent human habitation, and developed sites.

Wilderness study areas are designated by federal land management agencies as those having wilderness characteristics and being worthy of congressional designation as a wilderness area. Individual National Forests that designate wilderness study areas manage these areas to maintain their wilderness characteristics until Congress decides whether to designate them as a permanent wilderness area. This means that individual wilderness study areas are protected from new road construction by Forest Plans. As such, they are safeguarded from decreases in grizzly bear security. Furthermore, activities such as timber harvest, mining, and oil and gas development are much less likely to occur because the road networks required for these activities are unavailable. However, because these lands are not congressionally protected, they could experience changes in management prescription with Forest Plan revisions.

Inventoried roadless areas are currently secure habitat for grizzly bears outside of the PCA within the DPS. A USFS Interim Directive (69 FR 42648; July 16, 2004) which instructs National Forests to preserve the ''roadless characteristics'' of roadless areas will remain in effect until at least November 2006. State governors have the option to submit petitions with management recommendations to individual National Forests in their State by November 2006 (70 FR 25653; May 13, 2005). If no petitions are received by this time, individual National Forests will continue operating under the Interim Directive until they revise their Forest Plans to include direction on managing roadless areas. Technically, the only management direction given in roadless areas is that no new roads may be constructed. However, this restriction makes mining activities, oil and gas production, and timber harvest much less likely because access to these resources becomes cost-prohibitive or impossible without new roads. Potential changes in the management of these areas are not anticipated, but are discussed further under Factor D.

An estimated 7,195 sq km (2,778 sq mi) of suitable habitat outside the PCA on Forest Service lands within the DPS could experience permanent or temporary changes in road densities. Because grizzly bears would remain a sensitive species on the USFS Sensitive Species list if we finalize this proposed delisting, any increases in roads on National Forests would have to comply with National Forest Management Act and be subject to environmental assessment considering potential impacts to grizzly bears.

Importantly, all three State grizzly bear management plans recognize the importance of areas that provide security for grizzly bears in suitable habitat outside of the PCA within the DPS on Federal lands. Although State management plans apply to all suitable habitat outside of the PCA, habitat management on public lands is directed by Federal land management plans, not State management plans. The Montana and Wyoming plans recommend maintaining average road densities of <1.6 km/2.6 sq km (<1 mi/sq mi) in these areas (MTFWP 2002; WGFD 2002). Both States have similar standards for elk habitat on State lands and note that these levels of motorized access benefit a variety of wildlife species while maintaining reasonable public access. Similarly, the Idaho State plan recognizes that management of motorized access outside the PCA should focus on areas that have road densities of <1.6 km/2.6 sq km (<1 mi/sq mi). The area most likely to be occupied by grizzly bears outside the PCA in Idaho is on the Caribou-Targhee National Forest. The 1997 Targhee Forest Plan includes motorized access standards and prescriptions outside the PCA with management prescriptions that provide for long-term security in 61 percent of existing secure habitat outside of the PCA (USFS 2004).

In suitable habitat outside the PCA within the DPS, there are roughly 150 active cattle allotments and 12 active sheep allotments (USFS 2004). The Targhee Forest Plan calls for the closing of two of these sheep allotments while the others are likely to remain active (Jerry Reese, USFS, pers. comm. 2005). The USFS will allow these allotments within suitable habitat to persist along with other existing livestock allotments outside of suitable habitat. Although conflicts with livestock have the potential to result in significant mortality for grizzly bears, with population-level impacts if established sustainable mortality limits are exceeded in several consecutive years, the Strategy should prevent this. The Strategy directs the Study Team to monitor and spatially map all grizzly bear mortalities (both inside and outside the PCA) and their causes of death, identify the source of the problem, and alter management to maintain a recovered population and prevent the need to relist the population under the ESA (Service 2003).

There are over 500 developed sites on the 6 National Forests in the areas identified as suitable habitat outside the PCA within the DPS (USFS 2004). Grizzly bear/human conflicts at developed sites are the most frequent reason for management removals (Servheen *et al.* 2004). Existing USFS food storage regulations for these areas will continue to minimize the potential for grizzly bear/human conflicts through food storage requirements, outreach, and education. The number and capacity of developed sites will be subject to management direction established in Forest Plans. Should the Study Team determine developed sites are related to increases in mortality beyond the sustainable limits discussed above, they may recommend closing specific developed sites or otherwise altering management in the area in order to maintain a recovered population and prevent the need to relist the population under the ESA. Due to the USFS's commitment to managing National Forest lands in the GYA such that a viable grizzly bear population is maintained (Service 2003), the Service does not expect livestock allotments or developed sites in suitable habitat outside of the PCA to reach densities that are detrimental to the long-term persistence of the Yellowstone grizzly bear population.

Less than 19 percent (3,213 sq km (1,240 sq mi)) of suitable habitat outside the PCA within the DPS on USFS land allows surface occupancy for oil and gas development and 11 percent (1,926 sq km (744 sq mi)) has both suitable timber and a management prescription that allows scheduled timber harvest. The primary impacts to grizzly bears associated with timber harvest and oil and gas development are increases in road densities, with subsequent

increases in human access, grizzly bear/human encounters, and human-caused grizzly bear mortalities (McLellan and Shackleton 1988, 1989; Mace *et al.* 1996). Although seismic exploration associated with oil and gas development or mining may disturb denning grizzly bears (Harding and Nagy 1980, Reynolds *et al.* 1987), actual den abandonment is rarely observed, and there has been no documentation of such abandonment by grizzly bears in the Yellowstone area. Additionally, only a small portion of this total land area will contain active projects at any given time, if at all. For example, among the roughly 1,926 sq km (744 sq mi) identified as having both suitable timber and a management prescription that allows timber harvest, from 2000 to 2002, an average of only 5 sq km (2 sq mi) was actually logged annually (USFS 2004). Similarly, although nearly 3,213 sq km (1,240 sq mi) of suitable habitat on National Forest lands allow surface occupancy for oil and gas development, there currently are no active wells inside these areas (USFS 2004).

Ultimately, the six affected National Forests (the Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer, Gallatin, and Shoshone) will manage the number of roads, livestock allotments, developed sites, timber harvest projects, and oil and gas wells outside of the PCA in suitable habitat to allow for a viable grizzly bear population. Because the grizzly bear will be classified as a sensitive species, under Forest Service Manual direction, land management activities will be managed so as not to contribute to a trend for listing or loss of viability for the grizzly bear. There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and the viability of the species (USFS 2004). Any road construction, timber harvest, or oil and gas projects would require compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4331) and the National Forest Management Act of 1976 (15 U.S.C. 1600), considering all potential impacts to the Yellowstone grizzly bear population and its habitat.

Rapidly accelerating growth of human populations in some areas in grizzly bear habitat within the DPS boundaries but outside of the PCA continues to define the limits of grizzly habitat and will likely limit the expansion of the Yellowstone grizzly bear population onto private lands in some areas outside the PCA. Urban and rural sprawl (low-density housing and associated businesses) has resulted in increasing numbers of grizzly bear/human conflicts with subsequent increases in grizzly bear mortality rates. Private lands account for a disproportionate number of bear deaths and conflicts (see Figures 15 and 16 in the Strategy). Nearly 9 percent of all suitable habitat outside of the PCA is privately owned. As private lands are developed and as secure habitat on private lands declines, State and Federal agencies will work together to balance impacts from private land development (Service 2003). Outside the PCA, State agencies will assist NGOs and other entities to identify and prioritize potential lands suitable for permanent conservation through easements and other means as possible (Service 2003).

In summary, the primary factors related to past habitat destruction and modification have been directly addressed through changes in management practices. Within the PCA, the Service and the Study Team have developed objective and measurable habitat criteria concerning secure habitat, road densities, human site developments, and livestock allotments which will be standards on public lands should we finalize delisting. In addition, the Study Team, State wildlife agencies, NPS biologists, and USFS biologists and technicians will monitor the availability and abundance of the four major foods, and of habitat value and habitat effectiveness using the Cumulative Effects Model. The Coordinating Committee will respond to these monitoring data with adaptive management as per the Strategy (Service 2003). Accordingly, the PCA, which comprises 51 percent of the suitable habitat within the DPS boundaries and is occupied by approximately 90 percent of all females with cubs (Schwartz 2005, unpublished data), will be a highly secure area for grizzlies should we finalize delisting with habitat conditions maintained at or above levels documented in 1998. Maintenance of this area as described above is sufficient to support a recovered grizzly bear population.

In suitable habitat outside the PCA on Forest Service lands, 74 percent (12,860 sq km or 4965 sq mi) is currently secure habitat, 68 percent of which (8,737 sq km or 3,373 sq mi) is likely to remain secure. Areas outside the PCA contain about 10 percent of GYA's females with cubs (Schwartz 2005, unpublished data). Management of public land outside the PCA administered by State and Federal agencies also will continue to consider potential impacts of management decisions on grizzly bear habitat. Efforts by NGOs and State and county agencies will seek to minimize bear/human conflicts on private lands.

A total of 88 percent of all suitable habitat within the DPS boundaries (40,293 sq km (15,557 sq mi)) is managed by the USFS or NPS. These public lands are already managed and will continue to be managed such that adequate habitat for the Yellowstone grizzly bear population is maintained. Habitat and population standards described in the Strategy must be incorporated into National Parks and National Forests management plans before the Service makes a final determination on this proposed action (see Factor D—The Inadequacy of Existing Regulatory Mechanisms). We conclude that the combination of these actions regarding habitat will allow for adequate habitat to continue supporting a viable grizzly bear population with continued expansion into adjacent areas of public land in the GYA.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No grizzly bears have been legally removed from the GYA in the last 30 years for commercial, recreational, or educational purposes. The only commercial or recreational take potentially anticipated post-delisting, if this action is finalized, is a limited, controlled hunt. The States will manage grizzly bears as a game animal, potentially with a carefully regulated hunt (for a more detailed discussion, see the State Management Plans section under Factor D—The Inadequacy of Existing Regulatory Mechanisms). Should such a season be implemented, all hunting mortalities will be counted toward the mortality limits for the population and will be strictly controlled to assure that mortality limits are not exceeded by this discretionary mortality source. Significant take for educational purposes is not anticipated. Mortality due to illegal poaching, defense of life and property, mistaken identity or other accidental take, and management removals are discussed under Factor C—Human Predation section.

Since 1980, three accidental trap mortalities were associated with scientific research (Servheen *et al.* 2004). All three mortalities occurred between 1980 and 1982. Since 1982, there has not been a single capture mortality associated with research trapping in the Yellowstone area spanning more than 468 grizzly bear captures (Servheen *et al.* 2004). Because of rigorous protocols dictating proper bear capture, handling, and drugging techniques used today, this type of scientific overutilization is not a threat to the Yellowstone grizzly bear

population. The Study Team, bear biologists, and researchers will continue implementing these protocols should we delist. Therefore, mortalities associated with scientific research will not be a threat to the Yellowstone grizzly bear population in the foreseeable future.

C. Disease or Predation

Disease: Although grizzly bears have been documented with a variety of bacteria and other pathogens, parasites, and disease, fatalities are uncommon (LeFranc *et al.* 1987) and do not appear to have population-level impacts on grizzly bears (Jonkel and Cowan 1971; Kistchinskii 1972; Mundy and Flook 1973; Rogers and Rogers 1976). Researchers have demonstrated that some grizzly bears have been documented with brucellosis (type 4), clostridium, toxoplasmosis, canine distemper, canine parvovirus, canine hepatitis, and rabies (LeFranc *et al.* 1987; Zarnke and Evans 1989; Marsilio *et al.* 1997; Zarnke *et al.* 1997). However, based on 30 years of research by the Study Team, mortalities in the wild due to any of these bacteria or pathogens are negligible components of total mortality in the GYA (Study Team 2005). Disease is not common in grizzly bears, has only very rarely been documented in Yellowstone grizzly bears (Craighead *et al.* 1988), and is not considered a threat to long-term viability of the Yellowstone grizzly bear population.

Natural Predation: Grizzly bears are killed by other wildlife on occasion. Adult grizzly bears kill cubs, sub-adults, or other adults (Stringham 1980; Dean *et al.* 1986; Hessing and Aumiller 1994; McLellan 1994; Schwartz *et al.* 2003). This type of intraspecific killing seems to occur rarely (Stringham 1980) and has only been observed among Yellowstone grizzly bears in the GYA 14 times between 1986 and 2004 (Mark Haroldson, USGS 2005, unpublished data). Wolves and grizzly bears often scavenge similar types of carrion and, sometimes, will interact with each other in an aggressive manner. From 1995 through 2003, Gunther and Smith (2004) documented 96 wolf-grizzly bear interactions and 2 incidents in which wolf packs likely killed grizzly bear cubs. Overall, these types of aggressive interactions among grizzly bears or with other wildlife are rare and negligible to population dynamics.

Human Predation: Humans have historically been the most effective predators of grizzly bears. Excessive human-caused mortality is one of the major contributing factors to grizzly bear decline during the 19th and 20th centuries (Leopold 1967; Koford 1969; Servheen 1990; Servheen 1999; Mattson and Merrill 2002; Schwartz *et al.* 2003), eventually leading to their listing as a threatened species in 1975. Grizzlies were seen as a threat to livestock and to humans and, therefore, an impediment to westward expansion. Many of the early settlers in grizzly bear country were dedicated to eradicating large predators, and grizzly bears were shot, poisoned, and killed wherever humans encountered them (Servheen 1999). By the time grizzlies were listed under the ESA in 1975, there were only a few hundred grizzly bears remaining in the lower 48 States in less than 2 percent of their former range.

From 1973 to 2002, a total of 372 known grizzly bear deaths occurred in the GYA (Haroldson and Frey 2003). Of these, 272 (73 percent of total) were human-caused (Haroldson and Frey 2003). Since 1975, levels of human-caused mortality have remained relatively constant (see Figure 4 in Servheen *et al.* 2004). Although humans have been and remain the single greatest cause of mortality for grizzly bears (McLellan *et al.* 1999; Servheen *et al.* 2004), rates of human-caused mortality are low enough to allow Yellowstone bear population growth and range expansion (Schwartz *et al.* 2005). Implementation of the revised mortality limits ensure that mortality will be managed at sustainable levels. Below we consider human predation impacts including illegal poaching, defense of life and property; accidental mortality, and management removals.

Vandal killing, or poaching, is defined as malicious, illegal killing of a grizzly bear. People may kill grizzly bears for several reasons, including a general perception that grizzly bears in the area may be dangerous, frustration over depredations of livestock, or to protest land use and road use restrictions associated with grizzly bear habitat management (Servheen *et al.* 2004). Regardless of the reason, poaching continues to occur. We are aware of at least 27 vandal killings between 1980 and 2002 (Servheen *et al.* 2004). Although this level of take occurred during a period where poaching was enforceable by Federal prosecution, we do not expect vandal killing to significantly increase should we finalize this delisting.

State and Federal law enforcement agents have cooperated to ensure consistent enforcement of laws protecting grizzly bears. State and Federal prosecutors and enforcement personnel from each State and Federal jurisdiction work together to make recommendations to all jurisdictions, counties, and States, on uniform enforcement, prosecution, and sentencing relating to illegal grizzly bear kills. If this proposed action is finalized, all three affected States will classify grizzly bears of the Yellowstone population as game animals which cannot be taken without authorization by State wildlife agencies (see Chapter 7 of the Strategy). In other words, it will still be illegal for private citizens to kill grizzly bears unless it is in self defense or they have a hunting license issued by State wildlife agencies. States will continue to enforce, prosecute, and sentence poachers just as they do for any game animal such as elk, black bears, and cougars. Although it is widely recognized that poaching still occurs, this illegal source of mortality is not significant enough to hinder the continuing growth and range expansion of the Yellowstone grizzly bear population (Pyare *et al.* 2004; Schwartz *et al.* 2002).

One way to address vandal killing is to change human values, perceptions, and beliefs about grizzly bears and Federal regulation of public lands (Servheen *et al.* 2004). To address the concerns of user groups who have objections to land use restrictions that accommodate grizzly bears, Federal and State agencies market the benefits of restricting motorized access to multiple species. For example, both Montana and Wyoming have recommendations for elk habitat security similar to those for grizzly bears (less than 1.6 km/2.6 sq km (1 mi/sq mi)) and this level of motorized access meets the needs of a variety of wildlife species while maintaining reasonable opportunities for public access. To address the concerns of citizens who feel that grizzly bears are a threat to their safety or their lifestyle, IE programs aim to change perspectives on the danger and behavior of grizzly bears (for a detailed discussion of IE programs, see Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence). Another option is a limited hunt to foster a sense of ownership and obligation toward the grizzly bear. Areas with grizzly bear hunting seasons experience lower levels of poaching (McLellan *et al.* 1999). Hunting is further discussed under Factors B and D.

From 1980 to 2002, humans killed 49 grizzly bears in self-defense or defense of others. This constituted nearly 17 percent of known grizzly bear mortalities during this time period (Servheen *et al.* 2004). These grizzly bear/human conflicts occurred primarily over livestock or hunter-killed carcasses, but also at camp and home sites. Federal and State agencies have

many options to potentially reduce these conflicts by modifying human behavior (Servheen *et al.* 2004). By promoting the use of pepper spray and continuing current IE programs, many of these grizzly bear deaths may be avoided (for a detailed discussion of IE programs, see Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence).

Humans kill grizzly bears unintentionally with vehicles or by mistaking them for other species when hunting. From 1980 to 2002, the Yellowstone grizzly bear population incurred 9 mortalities from roadkills and 13 mortalities associated with mistaken identification. Accidental human-caused mortality accounts for a total of 9 percent of known mortality for this time period (Servheen *et al.* 2004). Measures to reduce vehicle collisions with grizzly bears include removing roadkill carcasses from the road so that grizzly bears are not attracted to the roadside (see Servheen *et al.* 2004). Cost-effective mitigation efforts to facilitate safe crossings by wildlife will be voluntarily incorporated in road construction or reconstruction projects on Federal lands within suitable grizzly bear habitat.

Mistaken identification of grizzly bears by black bear hunters is a manageable source of mortality. The Strategy identifies IE programs targeted at hunters that emphasize patience, awareness, and correct identification of targets help reduce grizzly bear mortalities from inexperienced black bear and ungulate hunters (Service 2003). Beginning in license year 2002, the State of Montana required that all black bear hunters pass a Bear Identification Test before receiving a black bear hunting license (see *http://fwp.state.mt.us/bearid/* for more information and details). Since implementation, no grizzly bears have been mistakenly killed by black bear hunters in Montana's portion of the GYA (Study Team 2005, unpublished data). In addition, Montana and Wyoming include grizzly bear encounter management as a core subject in basic hunter education courses.

The last source of human predation on grizzly bears is associated with management removal of nuisance bears following grizzly bear/human conflicts. Effective nuisance bear management benefits the conservation of the Yellowstone grizzly bear population by promoting tolerance of grizzly bears and minimizing illegal killing of bears by citizens. The Strategy and the State grizzly bear management plans are the regulatory documents that would guide nuisance bear management if we delisted. The Strategy is consistent with current protocol as described in the Interagency Grizzly Bear Committee Guidelines (USDA 1986), emphasizing the individual's importance to the entire population, with females continuing to receive a higher level of protection than males. Location, cause of incident, severity of incident, history of bear, health/age/sex of bear, and demographic characteristics are all considered in any relocation or removal action. If we delisted, State and Park Service bear managers would continue to consult with each other and other relevant federal agencies (*i.e.*, USFS, BLM) before any nuisance bear management decision is made but consultation with the Service would no longer be required. The Strategy emphasizes removal of the human cause of the conflict when possible, or management and education actions to limit such conflicts (Service 2003). In addition, an IE team would continue to coordinate the development, implementation, and dissemination of programs and materials to aid in preventative management of human/bear conflicts. The Strategy recognizes that successful management of grizzly bear/human conflicts will require an integrated, multiple-agency approach to continue to reduce human-caused grizzly bear mortality.

The largest increase in grizzly bear mortalities since 1994 is related to grizzly bear/human conflicts at or near developed sites (Servheen *et al.* 2004). In fact, 20 percent (59 of 290) of known mortalities between 1980 and 2002 were related to site conflicts. These conflicts involved food-conditioned bears actively seeking out human sources of food or bears that are habituated to human presence seeking natural sources of food in areas that are near human structures or roads. The increase in site conflicts during the last decade is likely due to a combination of encroaching human presence coinciding with an increasing and expanding grizzly bear population. These conflicts usually involve attractants such as garbage, human foods, pet/livestock/wildlife foods, livestock carcasses, and wildlife carcasses, but also are related to attitudes and personal levels of knowledge and tolerance toward grizzly bears. Both State and Federal IE programs are aimed primarily at reducing grizzly bear/human conflicts proactively by educating the public about potential grizzly bear attractants. To address public attitudes and knowledge levels, IE programs will present grizzly bears as a valuable public resource while acknowledging the potential dangers associated with them (for a detailed discussion of IE programs, see Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence).

Management removals due to grizzly bear conflicts with livestock accounted for nearly 4 percent of known mortalities between 1980 and 2002 (Servheen *et al.* 2004). Several steps to reduce livestock conflicts are currently underway. The USFS and NPS are phasing out sheep allotments within the PCA as opportunities arise. The USFS also has closed sheep allotments outside the PCA to resolve conflicts with species such as bighorn sheep as well as grizzly bears. Livestock grazing permits include special provisions regarding reporting of conflicts, proper food and attractant storage procedures, and carcass removal. The USFS monitors compliance to these special provisions associated with livestock allotments annually (Servheen *et al.* 2004). If we delist, the USFS would continue to implement these measures that minimize grizzly bear conflicts with livestock. The Strategy also recognizes that active management of individual nuisance bears is required. Removal of repeat depredators of livestock has been an effective tool for managing grizzly bear/livestock conflicts as most depredations are done by a few individuals (Jonkel 1980; Judd and Knight 1983; Anderson *et al.* 2002).

The Study Team coordinates an annual analysis of the causes of conflicts, known and probable mortalities, and proposed management solutions (see Servheen *et al.* 2004 for an example of the form such reports will take). The Yellowstone Ecosystem Subcommittee reviews these reports and initiates appropriate action if improvements in Federal or State management actions can minimize conflicts. As directed by the Strategy, if we delist, the Study Team would continue to summarize nuisance bear control actions in their Annual Reports and the Coordinating Committee will continue with their review (Service 2003). The Study Team also would continue preparing annual spatial distribution maps of conflicts so that managers can identify where problems occur and compare trends in locations, sources, land ownership, and types of conflicts. This will facilitate proactive management of grizzly/human conflicts.

Overall, from 1980 to 2002, the Yellowstone grizzly bear population incurred an average of 12.6 grizzly bear mortalities per year. Despite these natural and human-caused mortalities, the Yellowstone grizzly bear population has continued to increase in size and

expand its distribution in the last 2 decades. Disease and natural predation are not a threat to the long-term persistence of the Yellowstone grizzly bear population. Although humans are still directly or indirectly responsible for the majority of grizzly bear deaths in suitable habitat within the DPS boundaries, we have learned that this source of mortality can be effectively controlled through management and IE.

We have institutionalized careful management and monitoring of human-caused mortality in the Strategy, Forest Plans, National Park management plans, and State grizzly bear management plans (see Factor D—The Inadequacy of Existing Regulatory Mechanisms). In addition, we revised our methodology for calculating the total allowable mortality limits (see the Recovery; Population and Demographic Management section above) to include natural mortalities and estimates of unreported/undetected deaths, so that mortality in the Yellowstone grizzly bear population can be managed at sustainable levels. Because of these actions, human sources of mortality are no longer considered a threat to the future viability of the Yellowstone grizzly bear population.

D. The Inadequacy of Existing Regulatory Mechanisms

The lack of regulatory mechanisms to control take and protect habitat was a contributing factor to grizzly bear population declines (40 FR 31734; July 28, 1975). Upon listing under the ESA, the grizzly bear immediately benefited from a Federal regulatory framework that included prohibition of take, which is defined broadly under the ESA to include killing, injuring, or attempting to kill or injure; prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species; and the requirement to develop and implement a recovery program for the species. These protective measures have improved the status of the Yellowstone grizzly bear population to the point where delisting can now be proposed.

The management of grizzly bears and their habitat draws from the laws and regulations of the Federal and State agencies in the Yellowstone DPS boundaries (Chapter 7 of the Strategy). Forty Federal laws, rules, guidelines, strategies, and reports and 33 State laws, statutes, and regulations in place apply to management of the Yellowstone grizzly bear population (Appendix J in the Strategy). These laws and regulations provide the legal authority for controlling mortality, providing secure habitats, managing grizzly bear/human conflicts, controlling hunters, limiting access where necessary, controlling livestock grazing, maintaining education and outreach programs to control conflicts, monitoring populations and habitats, and requesting management and petitions for re-listing if necessary.

Recovery of the Yellowstone grizzly bear population is the result of partnerships between Federal and State agencies, the governors of these States, county and city governments, educational institutions, numerous NGOs, private landowners, and the public who live, work, and recreate in the Yellowstone area. Just as recovery of the Yellowstone grizzly bear population could not have occurred without these excellent working relationships, maintenance of a recovered grizzly population depends on continuation of these partnerships.

The Strategy is the management plan which will guide the management and monitoring of the Yellowstone grizzly bear population and its habitat after delisting. It establishes a regulatory framework and authority for Federal and State agencies to take over management of the Yellowstone grizzly bear population from the Service. The Strategy also identifies, defines, and requires adequate post-delisting monitoring to maintain a healthy Yellowstone grizzly bear population (see the Post-Delisting Monitoring Plan) (Service 2003). The Strategy is an adaptive and dynamic document that allows for continuous updating based on new scientific information. The Strategy also has a clear response protocol that requires the agencies to respond with active management changes to deviations from the habitat and population standards in a timely and publicly accessible manner. It represents a decade-long collaborative effort among the USFS, NPS, BLM, USGS, the Service, the Study Team, IDFG, MTFWP, and WGFD. State grizzly bear management plans were developed, reviewed, opened for public comment, revised, and completed in all three affected States (Idaho, Montana, and Wyoming). These State plans were then incorporated into the Strategy to ensure that the plans and the Strategy are consistent and complementary (accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The Strategy then went through a separate public comment process before being revised (65 FR 11340; March 2, 2000). With the exception of the Service, all the other State and Federal agencies which are party to the agreement have signed a memo of understanding (MOU) in which they have agreed to implement the Strategy. If this proposed action is adopted, the Service will sign the MOU prior to finalization.

The Strategy and the State plans describe and summarize the coordinated efforts required to manage the Yellowstone grizzly bear population and its habitat such that its continued conservation is ensured. The Strategy will direct management of grizzly bears inside the PCA, whereas the State plans will cover all suitable habitat outside of the PCA. These documents specify the population, habitat, and nuisance bear standards to maintain a recovered grizzly bear population for the foreseeable future. The plans also document the regulatory mechanisms and legal authorities, policies, management, and post-delisting monitoring plans that exist to maintain the recovered grizzly bear population. Overall, the Conservation Strategy and the State grizzly bear management plans provide assurances to the Service that adequate regulatory mechanisms exist to maintain the Yellowstone grizzly bear population after delisting.

In areas of suitable habitat outside of the PCA, individual National Forest Plans and State grizzly bear management plans apply. Should we delist, the USFS would place grizzly bears on its Sensitive Wildlife Species list. This requires the USFS to conduct a biological evaluation for any project which may ''result in loss of species viability or create significant trends toward Federal listing'' (USFS Manual 2600). Under the revised Forest Planning Regulations (70 FR 1023; January 5, 2005), Yellowstone grizzly bears will be classified as a ''species-of-concern'' or a ''species-of-interest''. This designation provides protections similar to those received when classified as a sensitive species and requires that Forest Plans include additional provisions to accommodate these species.

The USFS conducted a NEPA analysis and produced a Draft Environmental Impact Statement (Draft EIS) regarding the potential options available and the effects of implementing the Strategy (USFS 2004). This analysis was undertaken by all six affected National Forests in suitable habitat (Beaverhead, Bridger-Teton, Custer, Gallatin, Shoshone, and Targhee) and was completed in July 2004 (accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The overall purpose of the Draft EIS is to analyze the impacts of incorporating the

habitat standards outlined in the Conservation Strategy and other relevant provisions into the Forest Plans of the six affected forests to ensure conservation of habitat to sustain the recovered Yellowstone grizzly bear population.

The USFS Final EIS is scheduled to be released in 2005. The preferred alternative in the Draft EIS is to amend the Forest Plans to include all the habitat standards described in the Strategy. If the preferred alternative is selected, the minimum standards in these Forest Plan amendments will be the habitat standards required in the Strategy. These habitat standards must be appended to current Forest Plans before the Service would finalize this rule.

Under the revised Forest Planning Regulation (70 FR 1023; January 5, 2005), revisions to Forest Plans will be based upon a ''need for change'' approach. Therefore, it is highly unlikely that any changes relating to the Yellowstone grizzly bear amendments will be identified during the revision process (Aus and Steering Team, in litt. 2005). ''This means that the management direction developed in the amendment(s) will be transferred to the new planning format and will not change. The bottom line is that any potential changes to management direction in either the current plans or during the revision effort will be guided by the agreements reached in the Conservation Strategy and its adaptive provisions (Aus, in litt. 2005).

Roughly 29 percent of all suitable habitat outside of the PCA is within a designated Wilderness Area (6,799 of 23,091 sq km (2,625 of 8,915 sq mi) while another 27 percent is within an Inventoried Roadless Area (6,179 of 23,091 sq km (2,386 of 8,915 sq mi)). Another three percent of all suitable habitat outside the PCA is considered wilderness study area. The Wilderness Act of 1964 does not allow road construction, new livestock allotments, or new oil, gas, and mining developments in designated Wilderness Areas; therefore, about 6,799 sq km (2,625 sq mi) of secure habitat outside of the PCA will remain secure habitat protected by adequate regulatory mechanisms.

The USDA recently published a rule in the **Federal Register** regarding management direction of Inventoried Roadless Areas (70 FR 25653; May 13, 2005). This new rule replaces the former Roadless Rule (66 FR 3244; January 12, 2001) and establishes a formal petitioning process that allows governors of affected States until November 2006 to petition for changes in the management of Inventoried Roadless Areas. Any petitions received will be reviewed by the Roadless Area Conservation National Advisory Committee (70 FR 25653, May 13, 2005; 70 FR 25663, May 13, 2005). If the Advisory Committee approves the petition, the affected National Forest must use the NEPA process and public involvement to consider the impacts any changes in Roadless Area management may have on other resources and management goals. The USFS will monitor any impacts these changes may have on habitat effectiveness while the Study Team will monitor any increases in grizzly bear mortality these changes may cause. In the meantime, the USDA-USFS Interim Directive 1920–2004–1 that became effective July 16, 2004, will continue to regulate activities in Inventoried Roadless Areas (69 FR 42648; July 16, 2004). Under this directive, little road building or timber harvest can be done in Inventoried Roadless Areas until Forest Plans are revised or amended to specifically address activities in roadless areas. The Targhee National Forest is exempt from this interim directive because it operates under a Revised Forest Plan, which addresses the management of roadless areas. Motorized access and other management activities are addressed by specific Management Prescription direction in the Revised Forest Plan. In general, this Management Prescription directs that roadless areas in the Targhee National Forest remain roadless. Similarly, a 1994 amendment to the Shoshone National Forest Plan implemented a standard for no net increase in roads (USFS 2004).

The NPS also is incorporating the habitat, population, monitoring, and nuisance bear standards described in the Strategy into their Superintendent's Compendium for each affected National Park. This would be completed prior to the final rule should the Yellowstone DPS be delisted. Because the BLM manages less than 2 percent of all suitable habitats, they are not modifying existing management plans. Instead, the BLM expressed their commitment to the long-term conservation of the Yellowstone grizzly bear population by signing the MOU in the Strategy.

The three State grizzly bear management plans direct State land management agencies to maintain or improve habitats that are important to grizzly bears and to monitor population criteria outside the PCA. Idaho, Montana, and Wyoming have developed management plans for areas outside the PCA to: (1) Ensure the long-term viability of grizzly bears and preclude re-listing, (2) support expansion of grizzly bears beyond the PCA, into areas of suitable habitat, and (3) manage grizzly bears as a game animal, including allowing regulated hunting when and where appropriate. The plans for all three States were completed in 2002, and grizzly bears within the Yellowstone DPS would be incorporated into existing game species management plans after delisting.

The Eastern Shoshone Tribe of the Wind River Reservation has participated at the Yellowstone Ecosystem Subcommittee meetings. At the 2002 Annual Tribal Consultation organized by Yellowstone National Park, the Service formally briefed the Tribe about the Conservation Strategy, but the Tribe did not provide input or feedback about the Strategy, nor did they sign the MOU in the Strategy. In addition, the Eastern Shoshone Tribe has not designed its own Grizzly Bear Management Plan as of 2005. However, less than 3 percent of all suitable habitats (1,360 sq km (525 sq mi)) are potentially affected by Tribal decisions. This does not constitute a threat to the long-term viability of the Yellowstone grizzly bear population.

Should the Yellowstone DPS be delisted, the Conservation Strategy would be implemented, and the Coordinating Committee would replace the Yellowstone Ecosystem Subcommittee as the leading entity coordinating implementation of the habitat and population standards and monitoring (Service 2003). Similar to the Yellowstone Ecosystem Subcommittee, the Coordinating Committee members include representatives from Yellowstone and Grand Teton National Parks, the six affected National Forests, BLM, USGS, IDFG, MTFWP, the WGFD, one member from local county governments within each State, and one member from each Native American Tribe within suitable habitat. All meetings will be open to the public. Besides coordinating management, research, and financial needs for successful conservation of the Yellowstone grizzly bear population, the Coordinating Committee will review the Study Team's Annual Reports and review and respond to any deviations from habitat or population standards, by implementing management actions to rectify problems and to assure that these standards will be met and maintained.

The Conservation Strategy's habitat standards are the 1998 levels of secure habitat, developed sites, livestock allotments, and habitat effectiveness (Service 2003). The Strategy signatories have agreed that if there are deviations from any population goal or habitat standard, the Coordinating Committee

will implement a Biology and Monitoring Review to be carried out by the Study Team. A Biology and Monitoring Review will be triggered by any of the following causes: (1) A total population estimate of less than 500, as indicated by a $Chao_2$ estimate (Keating *et al.* 2002) of less than 48 females with cubs-of-the-year, for 2 consecutive years; (2) exceedance of the 9 percent total mortality limit for independent females for 2 consecutive years; (3) exceedance of the total mortality limits for independent males or dependent young for 3 consecutive years; or (4) failure to meet any of the habitat standards described in the Conservation Strategy pertaining to road densities, levels of secure habitat, new developed sites, and number of livestock allotments.

A Biology and Monitoring Review will examine habitat management, population management, or monitoring efforts of participating agencies with an objective of identifying the source or cause of failing to meet a habitat or demographic goal. The Study Team will give management recommendations to address the deviation. This Review will be completed and made available to the public within 6 months of initiation. The Coordinating Committee will respond with actions to address deviations from habitat standards or, if the desired population and habitat standards specified in the Strategy cannot be met in the opinion of the Coordinating Committee, then the Coordinating Committee will petition the Service for relisting (Service 2003). Although anyone can petition the Service for relisting, the Coordinating Committee's petition is important because it is requested by the actual management agencies in charge of the Yellowstone grizzly bear population. Additionally, the Coordinating Committee possesses the resources, data, and experience to provide the Service with a strong argument for the petition. Once a potential petition is received, the Service will determine if the petition presents substantial information. If so, we conduct a full status review to determine if relisting is warranted, warranted-but-precluded by higher priority actions, or not warranted. The Service could also consider emergency listing, in accordance with section 4(b)(7) of the ESA, if the threat were severe and immediate. Such an emergency relisting would be effective the day the proposed regulation is published in the **Federal Register** and would be effective for 240 days. During this time, a conventional rule regarding the listing of a species based on the five factors of section 4(a)(1) of the ESA could be drafted and take effect after the 240-day limit on the emergency relisting has expired.

The management of nuisance bears within the Yellowstone DPS boundaries will be based upon existing laws and authorities of State wildlife agencies and Federal land management agencies and guided by protocols established in the Strategy and State management plans. Inside the National Parks, Yellowstone or Grand Teton National Park grizzly bear biologists will continue to respond to grizzly bear/human conflicts. In all areas outside of the National Parks, State wildlife agencies will coordinate and carry out any management actions in response to grizzly bear/human conflicts. In areas within the Yellowstone DPS boundaries that are outside of the PCA, State grizzly bear management plans will apply and State wildlife agencies will respond to and manage all grizzly bear/human conflicts. The focus and intent of nuisance grizzly bear management inside and outside the PCA will be predicated on strategies and actions to prevent grizzly bear/human conflicts. Active management aimed at individual nuisance bears will be required in both areas.

The Idaho, Montana, and Wyoming plans recognize that measures to reduce grizzly bear/human conflicts are paramount to successfully and completely address the issue. The State of Idaho Yellowstone Grizzly Bear Management Plan states that such measures must be given priority, as they are more effective than simply responding to problems as they occur. Similarly, the Grizzly Bear Management Plan for Southwestern Montana maintains that the key to dealing with all nuisance situations is prevention rather than responding after damage has occurred. The Wyoming Grizzly Bear Management Plan also mandates the WGFD to emphasize long-term, non-lethal solutions, but relocation and lethal removal may occur to resolve some conflicts (all three State management plans are accessible at *http:// mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The ways in which the Strategy and the State plans intend to address preventative measures are described in detail in the ''Information and Education'' section in Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence. All three State plans allow for preemptive relocation of grizzly bears out of areas with a high probability of conflicting with humans or their property, including livestock. In general, humans will be given greater consideration outside of the PCA so long as human sources of conflicts are not intentional. The States are committed to responding to grizzly bear/human conflicts in an efficient, timely manner.

The killing of grizzly bears in self-defense by humans will continue to be allowed under both Federal and State management plans. State management plans do not allow for legal take of grizzly bears by humans unless it is within the designated seasons and limits for grizzly mortality. Hunting seasons will not be instituted in any of the States until adequate scientific information exists to ensure that any such hunting take is within the sustainable mortality limits and the impact to the Yellowstone grizzly bear population is negligible. The goal of such a hunting season is to reduce grizzly density in areas of high grizzly bear/human conflicts so that future management actions would be reduced. Outside of the National Parks, individual nuisance bears deemed appropriate for removal may be taken by a licensed hunter in compliance with rules and regulations promulgated by the appropriate State wildlife agency commission. A hunt would only occur if annual mortality limits specified for the Yellowstone grizzly bear population are not exceeded.

In summary, these State management plans provide the necessary regulatory framework and guidelines to State wildlife agencies for the continued expansion of the Yellowstone grizzly bear population into suitable habitat outside of the PCA. By identifying the agencies responsible for nuisance bear management and responding to grizzly bear/human conflicts using a clearly orchestrated protocol, these State plans create a framework within which grizzly bears and people can coexist. Effective nuisance bear management benefits the conservation of the Yellowstone grizzly bear population and State management plans adequately address this issue.

In addition to the Conservation Strategy, National Park Superintendent's Plans, USFS Plans, and State grizzly bear management plans, more than 70 State and Federal laws, regulations, rules, and guidelines are currently in place. We are confident that these documents provide an adequate regulatory framework within which the Yellowstone grizzly bear population will continue to experience population stability, as well as protocols for future management, IE programs, and monitoring. In summary, these documents provide reasonable assurance to the Service and regulatory certainty that potential future threats to

the Yellowstone grizzly bear population will not jeopardize its long-term viability.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Three other considerations have the potential to affect long-term grizzly bear persistence in the Yellowstone including: (1) Genetic concerns; (2) invasive species, disease, and other impacts to food supply; and (3) human attitudes toward grizzly bear recovery and IE efforts to improve these attitudes.

Genetic Management: Levels of genetic diversity in the Yellowstone grizzly bear population are not as low as previously feared, and the need for novel genetic material is not urgent (Miller and Waits 2003). Because the Yellowstone grizzly bear population is an isolated population, declines in genetic diversity over time due to inbreeding are expected (Allendorf *et al.* 1991; Burgman *et al.* 1993), but will occur gradually over decades (Miller and Waits 2003). Experimental and theoretical data suggest that one to two effective migrants per generation is an appropriate level of gene flow to maintain or increase the level of genetic diversity in isolated populations (Mills and Allendorf 1996; Newman and Tallmon 2001; Miller and Waits 2003). An effective migrant is defined as an individual that emigrates into an isolated population from an outside area, survives, and breeds. Based on Miller and Waits (2003), the Strategy recommends that two bears from the NCDE be introduced into the Yellowstone grizzly bear population every 10 years (*i.e.*, one generation) to maintain current levels of genetic diversity (Service 2003).

Federal and State agencies will continue to monitor bears on the northern periphery of the Yellowstone DPS boundaries and the southern edges of the NCDE and collect genetic samples from captured or dead bears in these areas to document gene flow between these two ecosystems. To monitor genetic isolation, the Service will establish a repository for all samples from the Yellowstone population to document any bears moving from the NCDE into the Yellowstone area. Such movement will be detected by using an ''assignment test'' which identifies the area from which individuals are most likely to have originated based on their unique genetic signature (Waser and Strobeck 1998). The Strategy dictates that if no movements are detected by 2020, one to two grizzlies will be transplanted from the NCDE by 2022 to ensure that genetic diversity in the Yellowstone area does not decline below existing levels (Service 2003).

As long as adequate measures to address genetic concerns are continued, these issues will not adversely impact the long-term conservation of the Yellowstone grizzly bear population or its expansion into suitable habitat. Through careful monitoring of movements and levels of genetic diversity, the geographic isolation of the Yellowstone grizzly bear population will not be a threat to population persistence.

Invasive Species, Disease, and Other Impacts to Food Supply: Four food items have been identified as major components of the Yellowstone grizzly bear population's diet (Mattson *et al.* 1991). These are seeds of the whitebark pine, army cutworm moths, ungulates, and spawning cutthroat trout. These food sources may exert a positive influence on grizzly bear fecundity and survival (Mattson *et al.* 2002) and are some of the highest sources of digestible energy available to grizzly bears in the Yellowstone area (Mealey 1975; Pritchard and Robbins 1990; Mattson *et al.* 1992; Craighead *et al.* 1995). Each of these food sources is limited in distribution and subject to natural annual fluctuations in abundance and availability. Because of this natural variability, threshold values of abundance for each food have not been established. However, whitebark pine, ungulates, cutthroat trout, and army cutworm moths are all monitored either directly or indirectly on an annual basis (see Post-Delisting Monitoring Plan section below). Monitoring these important foods provides managers with some ability to predict annual seasonal bear habitat use, and estimate, prepare for, and avoid grizzly bear/human conflicts due to a shortage of one or more foods. In response to normal changes in food supplies due to plant phenology and responses to weather (*e.g.*, frost, rainfall), grizzly bear annual home ranges change in size and extent. By expanding the distribution and range of bears into currently unoccupied suitable habitat within the DPS boundaries, additional areas with additional food resources will be available. These additional habitats will provide habitat flexibility for bears to respond to these normal changes in annual food supplies and distribution.

Several factors have the potential to impact Yellowstone Lake cutthroat trout populations. In 1994, nonnative lake trout (*Salvelinus naymaycush*) were discovered in Yellowstone Lake (Reinhart *et al.* 2001). Lake trout are efficient predators of juvenile cutthroat trout and, on average, consume 41 cutthroat trout per year (Ruzycki *et al.* 2003). In 1998, *Myxobolus cerebralis*, the parasite that causes whirling disease, was found in juvenile and adult cutthroat trout collected from Yellowstone Lake. The Intermountain West has experienced drought conditions for the past 6 years, which has resulted in increased water temperatures, lowered lake levels, and a reduction in peak stream flows; all of which negatively affect cutthroat trout spawning success (Koel *et al.* 2005). This combination of lake trout, whirling disease, and drought conditions has resulted in declines in the Yellowstone cutthroat trout population with subsequent decreases in grizzly bear fishing activity (Koel *et al.* 2005). In fact, bear activity (includes black bear and grizzly bear use) at spawning streams decreased 87 percent between 1989 and 2004 (Koel *et al.* 2005). This decrease corresponds temporally with cutthroat trout declines but may not have a significant effect on the grizzly bear population because adult grizzlies that fish in spawning streams only consume, on average, between 8 and 55 trout per year (Felicetti *et al.* 2004).

In 2001, several environmental and legal organizations petitioned the Service to list the Yellowstone cutthroat trout as a threatened subspecies of cutthroat trout (66 FR 11244; February 23, 2001). A 12-month status review is currently underway and the Service will publish its findings when completed. We will consider the results of the status review fully when making a final decision on this proposed delisting.

Efforts to reduce introduced lake trout populations have been somewhat successful. The Yellowstone National Park managers have removed more than 100,000 lake trout since 1994, and the average size of lake trout caught has decreased, indicating that gillnetting efforts may be effective. The Yellowstone National Park managers will continue to monitor the Yellowstone Lake cutthroat trout population using fish weirs, spawning stream surveys, and hydroacoustic techniques and continue attempts to suppress nonnative lake trout in Yellowstone Lake through gillnetting, capturing on spawning grounds, and fishing regulations which target lake trout (Yellowstone National Park 2003). The Yellowstone National Park biologists will continue to assess the impacts of nonnative lake trout on cutthroat trout populations and will provide an annual summary to the Study Team regarding the abundance of both cutthroat and lake trout.

Currently, there are two noteworthy threats to whitebark pine communities

in North America. These are mountain pine beetle infestation and the introduction of exotic species (Tomback *et al.* 2001). Fire suppression and exclusion throughout most of the western United States during the 20th century has allowed shade tolerant tree species to dominate some whitebark pine communities thereby inhibiting natural regeneration by whitebark pine (Arno 1986; Tomback *et al.* 2001). These later successional whitebark pine communities are more susceptible to infestations of the native mountain pine beetle (*Dendroctonus ponderosae*) (Tomback *et al.* 2001). Their larvae feed on the inner bark, which can eventually girdle and kill trees on a landscape scale (Amman and Cole 1983).

The introduction of white pine blister rust from Europe in the early 1900s also contributes to whitebark pine declines (Kendall and Arno 1990; Tomback *et al.* 2001). While there is evidence of blister rust in whitebark pines in the Yellowstone area, the blister rust has been present for more than 50 years (McDonald and Hoff 2001), and only 2 to 13 percent of whitebark pine trees display signs of infection (Kendall and Keane 2001). This proportion of infected trees is much lower than in whitebark pine communities found in the nearby Bob Marshall Wilderness (83 percent) or in communities of other 5-needled pines in Colorado in which 50 percent of pines exposed to the fungus are infected (McDonald and Hoff 2001).

Both mountain pine beetle (Logan and Powell 2001; Williams and Liebhold 2002) and white pine blister rust (Koteen 2002) outbreaks are predicted to increase with increasing temperatures associated with global climate change. However, the ultimate impacts of climate change on whitebark pine communities are unclear (Kendall and Keane 2001).

Although tree mortality due to white pine blister rust and mountain pine beetles has been low to date in the PCA, some whitebark pine stands are infected with blister rust. The extent of the blister rust infection and the future effects it will have on whitebark pine on the Yellowstone grizzly bear population are unknown. The USFS formed a Whitebark Pine Task Group to gather information on the status of this tree. Current work on whitebark pine includes planting in several areas, cone collection from healthy trees, silvicultural treatments to improve growth and establishment, prescribed burning to encourage natural whitebark pine seedling establishment, and surveys for healthy trees that may possess blister rust resistant genes. Currently, there are 19 whitebark pine cone production transects within the PCA, 9 of which have been monitored on an annual basis since 1980 (Knight *et al.* 1997). Under the Strategy, the Study Team will continue monitoring whitebark pine cone production and the prevalence of white pine blister rust using current methods (Service 2003).

In general, grizzly bears are notoriously resourceful omnivores that will make behavioral adaptations regarding food acquisition (Weaver *et al.* 1996). Diets of grizzly bears vary among individuals and years (Mattson *et al.* 1991; Felicetti *et al.* 2004; Koel *et al.* 2005) reflecting their flexibility in finding adequate food resources as necessary. Mattson *et al.* (1991) hypothesized that grizzly bears are always sampling new foods in small quantities so that they have alternative options in years when preferred foods are scarce. In other areas such as the NCDE, where grizzly bears historically relied heavily on whitebark pine seeds, distributions and sighting records on the periphery of this ecosystem indicate that the population, at least in those areas, has continued to increase and thrive since the 1980s (Servheen, pers. comm. 2005) despite severe declines in whitebark pine communities in the last 50 years (Kendall and Keane 2001). Also, grizzly bear use of cutthroat trout has varied dramatically in the last three decades (Reinhart and Mattson 1990; Felicetti *et al.* 2004), most likely corresponding to fluctuations in the trout population, but the Yellowstone grizzly bear population has continued to increase and expand.

Although there is no way to guarantee how the Yellowstone grizzly bear population will respond to decreases in whitebark pine crops or cutthroat trout, should they occur, we anticipate that they will compensate by shifting their foraging strategies to other foods such as forbs, fungi, ungulates, and small mammals. If there are reductions in any of these foods, they will likely be gradual reductions over decades, spanning generations of grizzly bears, thereby making adjustments to other foods gradual.

The Study Team monitors grizzly bear mortality in relation to the abundance and distribution of all four of the major foods using measurable criteria. For instance, increases in mortality rates of radio-collared independent females are measurable criteria that could reflect decreases in food availability. Because there were no known natural mortalities of independent adult females from 1983 to 2001 (Study Team 2005), any change in this value will be noteworthy and will be investigated thoroughly by the Study Team to determine whether it is reflective of a landscape-scale trend or simply an isolated event. Significant declines in important foods also could result in reductions in cub production and increases in cub mortality over current rates of 0.362. Because human-caused mortality, natural mortality of radio-collared bears, and numbers of cubs, and cub survival rates are all measurable criteria monitored annually by the Study Team, any significant decline in important foods also would be reflected in changes in these measurable population parameters. In summary, if declines in any of the four major foods occur and, using the best available scientific data and techniques, the Study Team concludes these are related to significant increases in known and probable bear mortalities and that such increases could threaten the grizzly population, the Study Team would recommend to the Coordinating Committee that they submit a petition for relisting to the Service (see Chapter 6 of the Strategy—Implementation and Evaluation, for details on this process).

Human Attitudes and Societal Acceptance: Public support is paramount to any successful large carnivore conservation program (Servheen 1996). Historically, human attitudes played a primary role in grizzly bear population declines through excessive human-caused mortality. Through government-endorsed eradication programs and perceived threats to human life and economic livelihood, humans settling the West were able to effectively eliminate most known grizzly populations after only 100 years of westward expansion.

We have seen a change in public perceptions and attitudes toward the grizzly bear in the last several decades. The same government that once financially supported active extermination of the bear now uses its resources to protect the great symbol of American wildness. This change in government policy and practice is a product of changing public attitudes about the grizzly bear. Although attitudes about grizzlies vary geographically and demographically, there has been a revival of positive attitudes toward the grizzly bear and its conservation (Kellert *et al.* 1996).

Public outreach presents a unique opportunity to effectively integrate human and ecological concerns into comprehensive programs that can modify societal beliefs about, perceptions of, and behaviors toward grizzly bears. Attitudes toward wildlife are shaped by numerous factors including basic wildlife values, biological and ecological understanding of species, perceptions of individual

species, and specific interactions or experiences with species (Kellert 1994; Kellert *et al.* 1996). The IE programs to teach visitors and residents about grizzly bear biology, ecology, and behavior enhance appreciation for this large predator while dispelling myths about its temperament and feeding habits. Effective IE programs have been an essential factor contributing to the recovery of the Yellowstone grizzly bear population since its listing in 1975. Being aware of specific values common to certain user groups will allow the IE working group to disseminate appropriate materials and provide workshops that address particular values and concerns most adequately. By providing general information to visitors and targeting specific user groups about living and working in grizzly country, we believe continued coexistence between grizzly bears and humans will be accomplished.

Traditionally, residents of the GYA involved in resource extraction industries such as loggers, miners, livestock operators, and hunting guides, are the largest opponents to land-use restrictions which place the needs of the grizzly bear above human needs (Kellert 1994; Kellert *et al.* 1996). Surveys of these user groups have shown that they tolerate large predators when they are not seen as direct threats to their economic stability or personal freedoms (Kellert *et al.* 1996). Delisting would increase acceptance of grizzly bears by giving lower levels of government and private citizens more discretion in decisions which affect them. Increased flexibility regarding depredating bears in areas outside of the PCA would increase tolerance for the grizzly bear by landowners and livestock operators. A future hunting season also may increase tolerance and local acceptance of grizzly bears and reduce poaching in the GYA (McLellan *et al.* 1999).

Overall, through expanded IE programs and continued monitoring of public opinion, human attitudes will not hinder the continued viability and success of the Yellowstone grizzly bear population.

Information and Education: The future of the grizzly bear will be based on the people who live, work, and recreate in grizzly habitat and the willingness and ability of these people to learn to coexist with the grizzly and to accept this animal as a cohabitant of the land. Other management strategies are unlikely to succeed without useful and innovative public IE programs. The primary objective of the expanded public outreach program will be to proactively address grizzly/human conflicts by educating the public as to the root causes of these conflicts. By increasing awareness of grizzly bear behavior and biology, we hope to enhance public involvement and appreciation of the grizzly bear.

Although many human-caused grizzly bear mortalities are unintentional (*e.g.*, vehicle collisions, trap mortality), intentional deaths in response to grizzly bear/human conflicts are responsible for the majority of known and probable human-caused mortalities. Fortunately, this source of mortality can be reduced significantly if adequate IE is provided to people who live, work, and recreate in occupied grizzly bear habitat. The current IE working group has been a major component contributing to the successful recovery of the Yellowstone grizzly bear population over the last 30 years. Both Federal and State management agencies are committed to working with citizens, landowners, and visitors within the Yellowstone DPS boundaries to address the human sources of conflicts.

From 1975 through 2002, as many as 59 percent (135 out of 230) of human-caused mortalities could have been avoided if adequate IE materials had been presented, understood, and used by involved parties. Educating back-country and front-country users about the importance of securing potential attractants can prevent bears from becoming food conditioned and displaying subsequent unnaturally aggressive behavior. Similarly, adhering to hiking recommendations, such as making noise, hiking with other people, and hiking during daylight hours, can further reduce back-country grizzly bear mortalities by decreasing the likelihood that hikers will encounter bears.

Hunter-related mortalities usually involve hunters defending their life or property because of carcasses that are left unattended or stored improperly. Grizzly bear mortalities also occur when hunters mistake grizzly bears for black bears. All of these circumstances will be further reduced with enhanced IE programs.

Outside the PCA, State wildlife agencies recognize that the key to preventing grizzly bear/human conflicts is providing IE to the public. State grizzly bear management plans also acknowledge that this is the most effective long-term solution to grizzly bear/human conflicts and that adequate public outreach programs are paramount to ongoing grizzly bear viability and successful coexistence with humans in the GYA. All three States have been actively involved in IE outreach for over a decade and management plans contain chapters detailing efforts to continue current programs and expand them when possible. State wildlife agencies have years of experience organizing and implementing effective public outreach programs. For example, WGFD created a formal human/grizzly bear conflict management program in July 1990 and has coordinated an extensive IE program since then. Similarly, since 1993, the MTFWP has implemented countless public outreach efforts to minimize bear/human conflicts, and the IDFG has organized and implemented education programs and workshops focused on private and public lands on the western edge of grizzly bear habitat.

Compensating ranchers for losses caused by grizzly bears is another approach to build support for coexistence between livestock operators and grizzly bears. In cases of grizzly bear livestock depredation that have been verified by USDA–APHIS–Wildlife Services, IDFG, MTFWP, or WYDGF, compensation to the affected livestock owners will continue to occur. Since 1997, this compensation has been provided primarily by private organizations, principally Defenders of Wildlife. The Defenders of Wildlife's Grizzly Bear Compensation Trust has paid over $112,000 to livestock operators within the Yellowstone DPS boundaries and in the northern Rockies for confirmed and probable livestock losses to grizzly bears. If this proposed rule to delist the Yellowstone grizzly bear population is adopted, both Idaho and Wyoming's grizzly bear management plans provide for State funding of compensation programs. In Idaho, compensation funds will come from the secondary depredation account, and the program will be administered by the appropriate IDFG Regional Landowner Sportsman Coordinators and Regional Supervisors. In Wyoming, the WYDGF will pay for all compensable damage to agricultural products as provided by State law and regulation. The WYDGF will continue efforts to establish a long-term funding mechanism to compensate property owners for livestock and apiary losses caused by grizzly bears. In Montana, MTFWP will continue to rely on Defenders of Wildlife and other private groups to compensate livestock operators for losses due to grizzly bears while MTFWP focuses on preventing such conflicts.

Overall, these natural and manmade factors—genetic concerns, declines in natural food sources, public acceptance, and lack of adequate IE programs, if unaddressed, have the potential to affect long-term grizzly bear persistence. Through careful monitoring and adaptive management practices, the

Study Team and the States will be able to identify and address these concerns before they become problems for the Yellowstone grizzly bear at a population level. All of these issues have been scientifically researched and adequately addressed so that removing the proposed Yellowstone grizzly bear population from the Federal List of Endangered and Threatened Wildlife would not adversely impact its long-term survival.

Conclusion of the 5-Factor Analysis

As demonstrated in our 5-factor analysis, threats to this population have been sufficiently minimized throughout all of the range and all suitable habitat within the DPS, and there is no significant portion of the range where the DPS remains threatened.

Our current knowledge of the health and condition of the Yellowstone grizzly bear DPS illustrates that the Yellowstone grizzly bear DPS is now a recovered population. Counts of unduplicated females with cubs-of-the-year have increased (Knight *et al.* 1995; Haroldson and Schwartz 2002; Schwartz *et al.* 2005a), indicating cub production has increased (Knight and Blanchard 1995, 1996; Knight *et al.* 1997; Haroldson *et al.* 1998; Haroldson 1999, 2000, 2001; Haroldson and Schwartz 2002; Haroldson 2003, 2004; Schwartz *et al.* 2005). Grizzly range and distribution has expanded (Basile 1982; Blanchard *et al.* 1992; Schwartz *et al.* 2002; Pyare *et al.* 2004). Calculations of population trajectory derived from radio-monitored female bears demonstrate an increasing population trend at a rate of 4 to 7 percent per year since the early 1990s (Eberhardt *et al.* 1994; Knight and Blanchard 1995; Boyce *et al.* 2001; Schwartz *et al.* 2005), due in large part to control of female mortality. In total, this population has increased from estimates ranging from 229 (Craighead *et al.* 1974) to 312 (Cowan *et al.* 1974; McCullough 1981) individuals when listed in 1975 to more than 580 animals as of 2004 (Study Team 2005).

At the end of 2004, the number of unduplicated females with cubs-of-the-year over a 6-year average both inside the Recovery Zone and within a 16-km (10-mi) area immediately surrounding the Recovery Zone was 40, more than double the Recovery Plan target of 15. The Recovery Plan target for the number of unduplicated females with cubs-of-the-year (15) has been exceeded since 1988. In 2004, the 1-year total of unduplicated females with cubs-of-the-year within this area was 46.

Within the Recovery Zone, the distribution of females with young, based on the most recent six years of observations in the ecosystem, was eighteen out of eighteen bear management units at the end of 2004. The range of this population also has increased dramatically, as evidenced by the 48 percent increase in occupied habitat since the 1970s (Schwartz *et al.* 2002; Pyare *et al.* 2004). Furthermore, the Yellowstone grizzly bear population continues to expand its range and distribution today. Currently, roughly 90 percent of females with cubs occupy the PCA and about 10 percent of females with cubs have expanded out beyond the PCA within the DPS (Schwartz 2005, unpublished data). Grizzly bears now occupy 68 percent of suitable habitat within the proposed DPS and may soon occupy the remainder of the suitable habitat within the proposed DPS. The Yellowstone DPS now represents a viable population that has sufficient numbers and distribution of reproductive individuals to provide a high likelihood that the species will continue to exist and be well-distributed throughout its range and additional suitable habitat for the foreseeable future. Both the threats of habitat destruction and modification, and low population levels, have been directly addressed through changes in management practices.

As per the criteria laid out in the 1993 Recovery Plan, the 4 percent mortality limit has not been exceeded for 2 consecutive years since 1987. The human-caused female grizzly bear mortality limit has not been exceeded for 2 consecutive years since the 1995–1997 period (Haroldson and Frey 2004). Due to the conservative nature of this standard designed to facilitate population recovery, even when human-caused adult female mortality was exceeded for consecutive years during the mid-1990s (1995, 1996, 1997), the population was increasing (Boyce *et al.* 2001; Schwartz *et al.* 2005) and expanding its distribution (Schwartz *et al.* 2002; Pyare *et al.* 2004). Applying the revised mortality limits to the 1999–2004 period, these criteria have not been exceeded for 3 consecutive years for males, for 3 consecutive years for dependent young, nor for 2 consecutive years for independent females. The main threat of human predation has been addressed through carefully monitored and controlled mortality limits through the State management plans. In addition, information and education is a main component of the program to reduce grizzly bear/human conflicts.

The State and Federal agencies' agreement to implement the extensive Conservation Strategy and State management plans will ensure that adequate regulatory mechanisms remain in place and that the Yellowstone grizzly bear population will not become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The threat of overutilization due to commercial, recreational, scientific, or education purposes has been removed due to the management of grizzly bears through State management plan mortality limits. This proposal mentions the possibility, in the future, of a carefully regulated hunt; however, should this hunt be formally proposed, all hunting mortalities would be counted toward the mortality limits for the population.

Based on the best scientific and commercial information available, we have determined that the proposed Yellowstone DPS is a recovered population no longer meeting the ESA's definition of threatened or endangered. Therefore, we are proposing to delist the Yellowstone grizzly bear DPS.

Post-Delisting Monitoring Plan

To further ensure the long-term conservation of adequate grizzly bear habitat and continued recovery of the Yellowstone grizzly bear population, several monitoring programs and protocols have been developed and integrated into land management agency planning documents. The Strategy and appended State grizzly bear management plans effectively satisfy the requirements for having a Post-Delisting Monitoring Plan for the Yellowstone DPS. Monitoring programs will focus on assessing whether demographic standards and habitat criteria described in the Strategy are being achieved. A suite of indices will be monitored simultaneously to provide a highly sensitive system to monitor the health of the population and its habitat and to provide a sound scientific basis to respond to any changes or needs with adaptive management actions (Lee and Lawrence 1986). More specifically, monitoring efforts will document population trends, distribution, survival and birth rates, and genetic variability. Throughout the DPS boundaries, locations of grizzly bear mortalities on private lands will be provided to the Study Team for incorporation into their Annual Report. Full implementation of the Strategy by State and Federal agencies will allow for a sustainable population by managing all suitable habitat.

Within the Primary Conservation Area—As discussed in previous sections, habitat criteria established for the Yellowstone grizzly bear population

will be monitored carefully and any deviations from these will be reported annually. The number and levels of secure habitat, road densities, developed sites, and livestock allotments will not be allowed to deviate from 1998 baseline measures in accordance with the implementation protocols in the Strategy.

The Study Team will prepare Annual Reports summarizing the habitat criteria and population statistics. The Study Team will be responsible for counting the number of unduplicated females with cubs-of-the-year and monitoring mortality, distribution, and genetic diversity (see Appendix I of the Strategy). To examine reproductive rates, survival rates, causes of death, and overall population trends, the Study Team will strive to radio collar and monitor a minimum of 25 adult female grizzly bears at all times. These bears will be spatially distributed throughout the ecosystem as determined by the Study Team.

The Study Team, with participation from Yellowstone National Park, the USFS, and State wildlife agencies, also will monitor grizzly bear habitats, foods, and impacts of humans. Documenting the abundance and distribution of the major foods will be an integral component of monitoring within the PCA as it allows managers some degree of predictive power to anticipate and avoid grizzly bear/human conflicts related to a shortage of one or more foods. Major foods, habitat value, and habitat effectiveness will be monitored according to Appendices E and I in the Strategy and as described in Factor A, ''The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range'' in this proposed rule.

Outside of the Primary Conservation Area—State wildlife agencies will be responsible for monitoring habitat and population parameters in areas outside of the PCA. The three State grizzly bear management plans detail what habitat and demographic criteria each State will monitor. All three States will document sightings of females with cubs and provide this information to the Study Team. Additionally, State wildlife agencies will provide known mortality information to the Study Team, which will annually summarize this data with respect to location, type, date of incident, and the sex and age of the bear for the DPS area.

In Idaho, the IDFG will be responsible for monitoring population trends and habitat parameters. Outside of the PCA, the IDFG will establish data analysis units to facilitate monitoring of grizzly bear distribution, abundance, and mortality. Habitat criteria will be monitored within each unit but will not be established strictly for grizzly bears. Instead, habitat standards will be incorporated into current management plans for other game species. However, the IDFG will monitor important food sources for grizzly bears including elk, deer, moose, Kokanee salmon, and cutthroat trout. The IDFG also will encourage and work with other land management agencies on public lands to monitor wetland and riparian habitats, whitebark pine production, important berry-producing plants, and changes in motorized access route density. On private lands, the IDFG will work with citizens, counties, and other agencies to monitor development activities and identify important spring habitat for grizzly bears, then work with landowners to minimize impacts to bears.

In Montana, the MTFWP will monitor populations using data from research, distribution changes, DNA samples, confirmed sightings, and known mortalities. The MTFWP will collect and analyze habitat data and monitor habitat changes pertaining to key grizzly bear foods, road densities, road construction and improvements, and coal bed methane activities. In addition, the MTFWP will continue to use Statewide habitat programs to conserve key wildlife habitats in southwestern Montana, working closely with private landowners to conserve private lands via lease, conservation easements, or fee title acquisition.

In Wyoming, the WGFD will establish grizzly bear management units to collect and analyze demographic and distributional data. The WGFD will monitor habitat changes, human activities, road densities, and construction. Habitat standards will be monitored in a manner consistent with those already in place for other wildlife and will not focus specifically on the habitat needs of grizzly bears.

Monitoring systems in the Strategy allow for adaptive management as environmental issues change (Lee and Lawrence 1986). The agencies have committed in the Strategy to be responsive to the needs of the grizzly bear through adaptive management actions based on the results of detailed annual population and habitat monitoring. These monitoring efforts would reflect the best scientific and commercial data and any new information that has become available since the delisting determination or most recent status review. The entire process would be dynamic so that when new science becomes available it will be incorporated into the management planning and monitoring systems outlined in the Strategy (Service 2003). The results of this extensive monitoring would allow wildlife and land managers to identify and address potential threats preemptively thereby allowing those managers and the Service to be certain that the Yellowstone grizzly bear population is not threatened with extinction in the foreseeable future.

Clarity of the Rule (E.O. 12866)

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal?; (2) Does the proposal contain technical language or jargon that interferes with its clarity?; (3) Does the format of the proposal (grouping and order of sections, use of headings, etc.) aid or reduce its clarity; and (4) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., NW., Washington, DC 20240.

Public Comments Solicited

We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Generally, we seek information, data, and comments concerning the status of grizzly bears in the Yellowstone ecosystem. Specifically, we seek documented, biological data on the status of the Yellowstone ecosystem grizzly bears and their habitat, and the management of these bears and their habitat.

Submit comments as indicated under **ADDRESSES.** If you wish to submit comments by e-mail, please avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

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 rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the

rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at our Missoula Office (see **ADDRESSES**). In making a final decision on this proposed rule, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal.

Public Hearing

The ESA provides for public hearings on this proposed rule. We have scheduled one public hearing on this proposed rule as specified above in **DATES** and **ADDRESSES.**

Public hearings are designed to gather relevant information that the public may have that we should consider in our rulemaking. During the hearing, we will present information about the proposed action. We invite the public to submit information and comments at the hearing or in writing during the open public comment period. We encourage persons wishing to comment at the hearing to provide a written copy of their statement at the start of the hearing. This notice and public hearing will allow all interested parties to submit comments on the proposed rule for the grizzly bear. We are seeking comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposal.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed DPS and its delisting. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input as part of our process of making a final decision on the proposal.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget (OMB) control number 1018–0094, which expires on September 30, 2007. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.21 and 17.22.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the NEPA of 1969, need not be prepared in connection with actions adopted pursuant to section 4(a) of the ESA. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Grizzly Bear Recovery Coordinator (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by revising the listing for ''Bear, grizzly'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Bear, grizzly	*Ursus arctos horribilis*.	North America	U.S.A., conterminous (lower 48) States, except: (1) Where listed as an experimental population; and (2) that portion of Idaho that is east of Interstate Highway 15 and north of U.S. Highway 30; that portion of Montana that is east of Interstate Highway 15 and south of Interstate Highway 90; that portion of Wyoming South of Interstate Highway 90, west of Interstate Highway 25, Wyoming State Highway 220, and U.S. Highway 287 south of Three Forks (at the 220 and 287 intersection), and north of Interstate Highway 80 and U.S. Highway 30.	T	1, 2D, 9	NA	17.40(b)
Do	.....do	.....do	U.S.A. (portions of ID and MT, see 17.84(l)).	XN	706	NA	17.84(l)
*	*	*	*	*	*	*	

Dated: November 9, 2005.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–22784 Filed 11–15–05; 1:00 pm]

BILLING CODE 4310–55–U

Federal Register

Thursday,
November 17, 2005

Part IV

The President

Proclamation 7961—National Farm-City Week, 2005

Proclamation 7962—America Recycles Day, 2005

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Presidential Documents

Title 3—

The President

Proclamation 7961 of November 15, 2005

National Farm-City Week, 2005

By the President of the United States of America

A Proclamation

Farming is America's first industry, and the success of America's farmers and ranchers is crucial to the prosperity of our country. During National Farm-City Week, we recognize the important relationship between rural and urban industries that helps keep our farmers and our Nation strong.

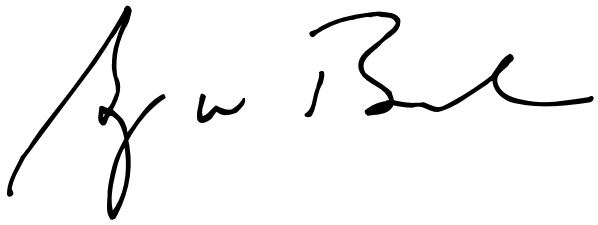
America's farmers and ranchers work hard, and they provide a healthy, safe, and abundant food supply for our citizens and for countless individuals abroad. In order to make their goods available to the public, they depend on partnerships with processors, transporters, marketers, distributors, and many others. These cooperative networks make up America's robust agricultural industry and account for about one-sixth of all jobs in the United States.

My Administration understands that our farm economy is a source of strength for our Nation, and we remain committed to advancing policies that will improve our country's agricultural industry. We have successfully implemented the Farm Security and Rural Investment Act of 2002, which significantly increased conservation funding and provided an important safety net for our farmers. Earlier this year, I signed the Central American-Dominican Republic Free Trade Agreement, which will help ensure that free trade is fair trade and level the playing field for American products exported to Central America. To continue to open new markets for America's farmers and ranchers, we must also work for a free and fair global trading system. Through the World Trade Organization's Doha Round of trade negotiations, we are seeking to reduce and eliminate tariffs and other barriers to U.S. agricultural goods.

As we celebrate National Farm-City Week, we express appreciation for those who make a living off the land. Their hard work and dedication to maintaining strong networks between rural areas and urban communities helps to feed, clothe, and provide energy for Americans and others around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 18 through November 24, 2005, as National Farm-City Week. I encourage all Americans to join in recognizing the great accomplishments of our farmers and ranchers and the entrepreneurship and ingenuity of countless others who produce America's agricultural goods.

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



[FR Doc. 05–22981
Filed 11–16–05; 11:12 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7962 of November 15, 2005

America Recycles Day, 2005

The President of the United States of America

A Proclamation

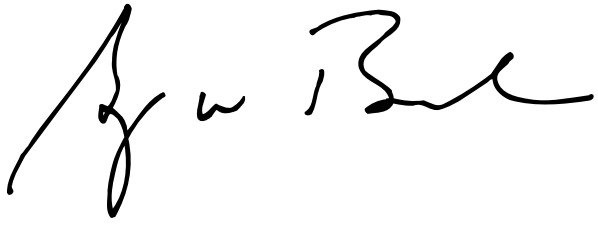
On America Recycles Day, we recognize the importance of recycling and using products made with recycled materials. Today, Americans recycle many items, including motor oil, tires, aluminum cans, plastic, glass, batteries, and building materials. These community efforts are designed to make a difference in our environment and help improve our quality of life.

The Federal Government is working to expand opportunities for recycling across our country. I recently signed into law the Energy Policy Act of 2005, which will increase the use of recycled materials in Federal construction projects. In addition, the Environmental Protection Agency (EPA) operates the Resource Conservation Challenge, a national effort to encourage manufacturers, businesses, and consumers to raise the national recycling rate to 35 percent. To help achieve this goal, the EPA launched the Plug-In To eCycling Campaign in cooperation with American businesses. This partnership helps increase awareness about the importance of reusing and safely recycling electronics and provides the public with additional opportunities to recycle.

Throughout the year, I encourage individuals, businesses, and government entities to participate in recycling programs in their communities. These efforts contribute to a culture of responsible citizenship and good stewardship of our natural heritage, and they can help ensure a cleaner, safer, and healthier environment for our children and grandchildren.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 15, 2005, as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

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



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